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Revenue Committee
January 23, 2015

[LB52 LB70 LB74 LB260 LB261 CONFIRMATION]

The Committee on Revenue met at 1:30 p.m. on Friday, January 23, 2015, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB260, LB261, LB52, LB70, LB74, and gubernatorial appointment. Senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Al Davis; Burke Harr; Jim Scheer; Jim Smith; and Kate Sullivan. Senators absent: None.

SENATOR GLOOR: Good afternoon. I'm Senator Mike Gloor, District 35, Grand Island. I am the Chair of the Revenue Committee. I'd like to welcome you here. We will take the bills in the order that was listed previously, so no surprises there. I've got a few general rules I would like to run through for folks. The first is, please, if you have cell phones, put them on mute or turn them off. We will go through this particular order on bill presentation today: We'll have opening comments by the introducing senator; we'll then have proponents; opponents; those in a neutral capacity; and closing. I would ask everybody to be sure and fill out one of the testifier sheets as you come up and hand those to the clerk before you provide your testimony. If you have handouts, we need ten copies of handouts. And if you don't have ten copies of handouts, now would be a good time to get Ryan's attention, the page over here to my left, so he can help get those ten copies made for you. Please give your name and spell it, not for us because we know who you are. But in reality, we need to make sure the people who do the transcribing get it all down and we want to make sure we have that listed correctly. If you don't want to testify but you want to make your thoughts or your concerns known, there is sign-in sheets in the back of the room and you're welcome to make your mark back there also. I would ask that you speak into the microphone clearly and distinctly. And I say this at every meeting, but that applies to the senators here also. We sometimes have a tendency to lean back and, Senators, we need to make sure that we keep the microphones in front of us, also so we can make sure to get a good record. To my immediate right is committee counsel, Mary Jane Egr Edson. At the far end is research analyst, Kay Bergquist. And to my left is committee clerk, Krissa Delka. And Ryan, as I've already introduced, is our page and he tells me we'll also be joined by Rachel in a little bit. So they'll be supporting us. I think that covers everything up to this point in time and we'll start with the first agenda item, which is a confirmation hearing for Ruth Sorensen. Welcome. You get a pass on the green sheet. Welcome. [CONFIRMATION]

RUTH SORENSEN: Thank you. [CONFIRMATION]

SENATOR GLOOR: I don't know if you have prepared comments or if you want us to quiz you and give you a chance to display your ability to speak off the cuff right off the bat. [CONFIRMATION]

RUTH SORENSEN: Well, I do have prepared comments and I would be happy to go through those real quick or you could just go ahead and ask me... [CONFIRMATION]

SENATOR GLOOR: Why don't you...it would be a shame for you to have taken the time to prepare comments and not use them. So we'll trust your judgment and let you use your comments. [CONFIRMATION]

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RUTH SORENSEN: (Exhibit 1) Sounds good. Chairman Gloor and members of the Revenue Committee, good afternoon. I am Ruth Sorensen, S-o-r-e-n-s-e-n, and I appear before you today to ask for your confirmation of my reappointment to the Property Tax Administrator position with the Department of Revenue for the state of Nebraska. As you may know, I have served in this capacity since 2007 when I was appointed to this position by Governor Dave Heineman. Prior to that appointment as Property Tax Administrator I was also appointed and confirmed as a member of the Tax Equalization Review Commission. Prior to my service on TERC, I served as a senior attorney for the Department of Revenue and, at the time, the Department of Property Assessment and Taxation. Throughout my legal career I've been involved with various real and personal property issues involving taxation, sales and transfers of real property, municipality laws, land use planning, property assessment, and property measurement. I have been actively involved with the assessment and measurement of property in the state of Nebraska. On a personal note, I would tell you that I live in Lincoln with my husband Lee and my daughter Ashley (phonetic) and they are here with me in the back of the room today. And I was raised in New Hampshire where I began my professional career in banking that lasted for about 13 years. In 1992, I moved to Nebraska to attend the University of Nebraska College of Law. And that's when I received my juris doctorate in 1994. I look forward to continuing to work with the property owners of the state of Nebraska and to continuing to fulfill the duties and requirements of the Property Tax Administrator position. And with that, I ask for your confirmation of my reappointment. Thank you. [CONFIRMATION]

SENATOR GLOOR: Thank you very much. This is always an educational process for us, especially for me, but are you an actively practicing attorney with the law offices that you listed on your CV that you gave us? [CONFIRMATION]

RUTH SORENSEN: I was. [CONFIRMATION]

SENATOR GLOOR: Okay. [CONFIRMATION]

RUTH SORENSEN: I don't actively practice with any of the law firms now. [CONFIRMATION]

SENATOR GLOOR: Okay. The CV that I think we have before us says 2000 to present. [CONFIRMATION]

RUTH SORENSEN: Oh. [CONFIRMATION]

SENATOR GLOOR: And I thought...so as you distribute that in the future, you might want to update that. But I thought that was a little unusual. That takes care of a lot of questions that I might have had. [CONFIRMATION]

RUTH SORENSEN: Yes, it does. I only work for the state of Nebraska. [CONFIRMATION]

SENATOR GLOOR: Okay. Other questions? Senator Sullivan. [CONFIRMATION]

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SENATOR SULLIVAN: Thank you, Senator Gloor. Thank you, Ms. Sorensen, for your comments and for your service. If you were to say that there was perhaps something lacking or improvements to be made in the whole process of property tax administration, are there some things that maybe are left on the table, if you will, that could make the whole process better and stronger? [CONFIRMATION]

RUTH SORENSEN: Well, I know that we've heard a lot about the high property taxes. To look at how we are valuing agricultural land, of course, is one thing that we are always looking at and monitoring. But along with the increase in the values is also the levy rates. And...but along with the property assessment side of things, I think we could do more with working with the county officials and educating the county officials. Right now county assessors are required to have continuing education. And I try to get to the county register of deeds, county clerks, county board commissions as often as possible, but there's not the required education there. So we try to do a lot of outreach in that regard to try to educate and help. This year we have 13 new county assessors and they're across the state. And so what we are doing to enhance the process is, for instance, today I had a two-hour...it's a "GoTo" meeting. So they don't have to drive into Lincoln, they can go on their computers and they go to "live meeting." And they can see us because we're on video and we're educating them in that fashion every Friday in January. And then in February we'll actually have them come into Lincoln and we'll meet them and show them some of the things that happen here at the state with the Tax Equalization Review Commission and maybe perhaps come over to see the Legislature in session as well. So I would say more outreach. I think that's where we're probably lacking. [CONFIRMATION]

SENATOR SULLIVAN: Thank you. Appreciate it. [CONFIRMATION]

RUTH SORENSEN: Sure. [CONFIRMATION]

SENATOR GLOOR: Senator Scheer. [CONFIRMATION]

SENATOR SCHEER: Thank you, Chairman Gloor. I've heard several comments, perhaps criticisms, not necessarily of you or the position, but you're here so I'm going to ask. [CONFIRMATION]

RUTH SORENSEN: Sure. [CONFIRMATION]

SENATOR SCHEER: Part of the value from ground is based on the type of soil and so forth. There seems to be some angst in more rural areas that a lot of times those studies are not accurate in relationship to what type of soil might literally be in those particular...how good is that as a resource? And is there room to improve that and, if so, how would we go about that? [CONFIRMATION]

RUTH SORENSEN: Well, that relates a little bit to back to what Senator Brasch asked me the other day at the news release conference. There used to be a soil scientist on staff. We don't have that any longer because we rely on the NRCS for soil surveys. Do we encourage the assessors to

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value by particular soils? I generally don't because you don't know if you're on a 1D or a 1D1 or a 1D2. And that's something that's also a part of education that we are trying to get there and promote, especially when we have new assessors. And so when there's a dry, irrigated, and grass it becomes very difficult when you're looking at the soil types to determine the value for each of those. And so we would encourage them more to look at how...what is exactly made up of that parcel, the majority of that parcel, and we'll go from there. But it dates back many years to having the 1D, 2D, 3D, 4D types of soils and classifications. [CONFIRMATION]

SENATOR SCHEER: Then is that something that maybe has ran its course that we ought not be doing or how do...if we're going to continue to use it...and I'm not saying that it's broke, but it's certainly not functioning as well as we would like if I'm understanding your comments. Is it something that, if it's not necessary, then why would we continue to use it? And if it is a necessary evil, how do we go about improving it so that it actually is more factual than what we're trying to accomplish right now? [CONFIRMATION]

RUTH SORENSEN: Well, what we're doing at the property assessment level when we go through the statewide equalization process...and each county gets a report and opinion that we write and we issue. In there, we provide to the TERC a table of these classifications and show the neighboring counties what they all are valued at per acre. And so we're trying to look more at that type of a classification as far as 1D, 1D1, 1D2, but making sure that it's more...it's consistent between counties as opposed to being such a variance between the counties because many of you in your districts have school districts that cross county lines. And you don't want those property owners paying more for irrigated on one side of the county line as opposed to the other. And so we're working on those types of things in the division as we speak, so. [CONFIRMATION]

SENATOR SCHEER: Okay, thank you very much. [CONFIRMATION]

RUTH SORENSEN: You're welcome. [CONFIRMATION]

SENATOR SCHEER: Thank you, Chairman. [CONFIRMATION]

SENATOR GLOOR: Other questions? Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Chairman Gloor. And thank you for your willingness to serve and the work you have done to date. You and I have had good conversations in the past primarily focused around many of the natural disasters that have occurred across our state where property has been whole for most of the year perhaps or personal property is lost through the tornadoes that hit Wisner and Pilger, the area; flooding along the Missouri. Has the department done any more work in trying to...I know we've always assessed things the same way. I get calls from constituents saying, that doesn't work, it's broken. Have you had any more thoughts along that course or is it just a system that you believe is whole and works solid? [CONFIRMATION]

RUTH SORENSEN: Well, I believe when we were talking, it was the flooding that had happened. And what we had talked at that time was, there's nothing in statute addressing a

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natural disaster and how would you define what a natural disaster is. And if that were to occur, we could put something into the Legislature...into statute. I had looked at a few surrounding states to see if they have varying language regarding natural disasters. And they do, but they also...we also have the constitutional issue that we have to address as well with the uniform and proportionate residential properties and commercial properties. I am going up to Pilger, I believe, February 11 they're having a meeting. They're having somebody come up from Kansas to discuss how Kansas handles some of their rebuilding and incentivizing people to come back into the town. So that would be February 11 if you're going to be there, so yes. [CONFIRMATION]

SENATOR BRASCH: I appreciate your work and that you have been responsive. And thank you for your willingness to serve again. [CONFIRMATION]

RUTH SORENSEN: Sure. Thank you. [CONFIRMATION]

SENATOR GLOOR: Other questions from committee members? Seeing none, thank you for taking the time out of a busy day. [CONFIRMATION]

RUTH SORENSEN: Sure. Thank you. [CONFIRMATION]

SENATOR GLOOR: And we'll be sitting down, discussing and, I'm sure, moving forward with your nomination confirmation. [CONFIRMATION]

RUTH SORENSEN: Thank you. [CONFIRMATION]

SENATOR GLOOR: You bet. [CONFIRMATION]

RUTH SORENSEN: Thank you. Thank you very much. [CONFIRMATION]

SENATOR GLOOR: (Exhibit 2) Are there others in the audience that would like to speak in support? Is there anyone in the audience that would like to speak in opposition to this confirmation? We do have a letter from Commissioner Steve Erdman from Morrill County that will be on the record that was in opposition to this confirmation. Is there anyone who would like to speak in a neutral capacity? Seeing none, that will close our confirmation hearing for Ms. Sorensen for Property Tax Administrator. We'll move on to LB260. Two other quick comments I would make to those in attendance: One is that there is no need for us to go to a five-minute limitation on speech today, although I may try and move you along if you linger in front of the microphone, but would ask people to keep that in mind. The other is, there are senators who will come and go. I think this audience understands that many of these senators have other bills that they are presenting and need to present those bills to those committees. So you'll see a turnover in the audience. I bring that up, in part, because our Vice Chair is not here. But I'm sure Senator Sullivan would be willing to step into those shoes since I have the next two bills that need to be presented. [CONFIRMATION LB260]

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SENATOR SULLIVAN: Welcome, Senator. And we're looking forward to your introduction on LB260. [LB260]

SENATOR GLOOR: Thank you, Senator Sullivan, and good afternoon, committee members. I'm Mike Gloor, G-l-o-o-r, presenting LB260 on behalf of the department. This is a technical bill. The bill would allow the Property Tax Administrator to correct errors affecting valuation of centrally assessed property. Such corrections are not currently allowed once the value is certified to the county or the tax was distributed to the county. The Property Tax Administrator would be authorized to correct such errors within three years of certification and/or distribution. It also contains the emergency clause. We have representatives from the department who are here to both answer questions as well as confirm, if for no one else but me, the intent in case we need to do some wordsmithing, that being as relates to centrally assessed property. So with that, that's the opening. [LB260]

SENATOR SULLIVAN: Thank you, Senator. Any questions for the Senator? All right, very good. We will now hear proponent testimony. [LB260]

SENATOR SCHEER: I love that the family certainly left. [LB260]

RUTH SORENSEN: That's all they were interested in. [LB260]

SENATOR SULLIVAN: Welcome back. [LB260]

RUTH SORENSEN: (Exhibit 1) Thank you. My daughter actually has an interview in Gretna so she's very excited to get going. Chairman Gloor and members of the Revenue Committee, my name is Ruth Sorensen, S-o-r-e-n-s-e-n, and I am the Property Tax Administrator with the Nebraska Department of Revenue. I appear before you today as a proponent of LB260. One of the duties of the Property Tax Administrator is the central assessment of railroads and public service entities such as pipelines and telecommunication companies. These assessments are done in a different way from the standard appraisal of a home or a local hardware store. The financial reports of these large, multistate companies are used to determine what part of their value is properly apportioned to Nebraska, and then how the value gets distributed to all those political subdivisions in each county. As such, we rely on large volumes of information from the companies, and anytime you're dealing with spreadsheets that are driven either by formulas or data that are hand entered, there's the risk of errors to be made. And some of these errors don't materially affect the opinion of the company value, but sometimes they do. We've had a couple of examples where there have been errors that have been found that I would like to share, but for confidentiality reasons, I can't tell you which companies they are. I can tell you that in one case the department received inaccurate information from a company in which investment had been reported in the wrong columns. And the appraisal indicated the company's value was less than one would have expected it to have been; it was about one-third less. The appraisal was mailed and the company did not protest because their value was lower. A couple of months later, after values had been certified to the counties, we did find the error but it was too late for us to make the corrections. After researching the laws regarding public service entities--the centrally assessed companies--we realized that there's no mechanism which allows us to go back and

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correct this type of error. In another case it went the other way. Data was hand entered incorrectly and increased the company value from the prior year. The appraisal was mailed and the company did not protest in time. When they did begin receiving their tax statements from the counties, which was about four months later, they inquired as to how they could get the value changed and reduced back to where it should have been. Based on the research we had done previously, this company was informed there's nothing in statute that gives the authority to make those changes. County budgets had already been set based on the higher value. And again, there was no mechanism that would allow the department to go back and correct its own error. This bill as drafted would allow the Revenue Department to correct either of these types of errors. This proposed change would vest the agency with the same authority to correct clerical errors that county assessors already have to correct clerical errors they discover at the local level. This concludes my formal testimony and I'd be happy to answer any questions you may have. [LB260]

SENATOR SULLIVAN: Thank you, Ms. Sorensen. [LB260]

RUTH SORENSEN: Sure. [LB260]

SENATOR SULLIVAN: What sort of checks and balances do you have within the department because you said, I think in your testimony, the department realized the error on that first case you gave? But how long does it take and what's the process that you do use to uncover these errors? [LB260]

RUTH SORENSEN: Well, since these errors came to my attention...came to our attention we do have many more checks and balances in place. But they weren't in place at the time and this does go back a number of years. But we send out the appraisals on August 10. We try to...what we do, because we have hundreds of companies that come in...that send us the information, what we're doing now for the checks and balances is looking at last year's value compared to this year's value. And some will go down because personal property depreciates off. But we're doing a much more stricter review and check and balance on that in that regard. However, if something were to happen...we really wanted to help the company that was overvalued, but there was just nothing we could do. [LB260]

SENATOR SULLIVAN: I see. Okay, very good. Any other questions? Thank you for your testimony. [LB260]

RUTH SORENSEN: Thank you. [LB260]

SENATOR SULLIVAN: Any other proponent testimony? Anyone wishing to speak in opposition to LB260 or in a neutral capacity? Senator Gloor. Senator Gloor waives closing and we will move right on to LB261, which will be also introduced by Senator Gloor. [LB260 LB261]

SENATOR GLOOR: (Exhibit 1) Thank you, Senator Sullivan. My name is Mike Gloor, G-l-o-o-r. This is also a technical bill from the Department of Revenue. This is actually the

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annual technical corrections bill from the DOR. I'll run through a listing and then this is basically your bill summary so that we have this on the record. But the bill would do the following: remove obsolete references to the Property Tax Administrators assuming the assessment duties for certain counties. That's page 1, lines 13 through 17; page 5, lines 4 through 6; page 7, line 7; page 11, lines 16 through 18; page 13, line 3; page 24, lines 5 through 8. It will also remove unnecessary language regarding disclosure of tobacco tax information which is not confidential. Page 8, lines 16 through 21; page 14, lines 30 through 31; page 15, line 1. It will also correct the language from LB402 which was passed in 2014 defining qualified owner under the Community-Based Energy Development Act by removing that all members in an LLC must be Nebraska residents as shareholders of traditional C corporations are not required to be Nebraska residents. That's page 10, lines 27 and 28, and to include domestic corporations organized under both the Business Corporation Act and the Model Business Corporation Act, page 11, line 8. And that section specifically will, with the committee's approval, of course, be amended out because of problems with the department concerns that will be relayed by other testifiers or the department. Clarifies that miscellaneous tax information may be disclosed to other tax or law enforcement agencies, page 11, lines 25 through 28; page 16, lines 9 through 11. Clarifies that air carriers' property is protected from discriminatory taxation in a similar manner as railroad and other public utilities under federal law, page 12, lines 5 through 25. And finally, clarifies that interest will not be paid on refunds for a renewable electric generation facility, page 17, lines 30 through 31; or under the historic preservation credit, page 18, lines 14 through 15. This bill also will have an emergency clause. And I'd repeat, to avoid some degree of concern and casting the net too wide, LB402 references that component of this we intend to amend out. And, again, that will be discussed a little bit by testifiers who follow me. [LB261]

SENATOR SULLIVAN: Thank you, Senator. Any questions for Senator Gloor? Senator Harr. [LB261]

SENATOR HARR: Thank you, Senator Sullivan. Senator Gloor, you said this affects...some of these changes were due to the change in the Model Business Act. Is that correct? [LB261]

SENATOR GLOOR: Yes, for one component of it. [LB261]

SENATOR HARR: There is a bill over in Banking to change the operative date back a year. How would that...how would those two coexist? If you move the operative--and I don't know...if you don't know the answer, we can look into this--but if we move the operative date back a year... [LB261]

SENATOR GLOOR: A year? [LB261]

SENATOR HARR: ...on the Business Act, would that affect this bill? [LB261]

SENATOR GLOOR: That's a good question. I'm sure it would. We'd need to...we'll need to talk about that. Maybe somebody... [LB261]

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SENATOR HARR: We can work on that. [LB261]

SENATOR GLOOR: ...behind can speak to it. But you...nice catch. I think that's probably true. [LB261]

SENATOR HARR: Okay. [LB261]

SENATOR SCHEER: Are you talking about the one... [LB261]

SENATOR SULLIVAN: Senator Scheer. [LB261]

SENATOR SCHEER: I'm sorry, excuse me. Senator Harr, are you talking about the one in Banking or in Judiciary? [LB261]

SENATOR GLOOR: It's Banking, I believe. [LB261]

SENATOR HARR: I believe it's in Banking. [LB261]

SENATOR SCHEER: Okay. We actually have two bills. The first one will move the date to 2016. [LB261]

SENATOR GLOOR: Sixteen. [LB261]

SENATOR SCHEER: And then one that will come later will move it to 2017. So if this has to rectify with the 2017, I suspect both of those will be passed and the 2017 will become the operative date so that might be the date we're looking at. [LB261]

SENATOR HARR: Okay. Thank you. [LB261]

SENATOR GLOOR: And testifiers will speak to that in a minute or two. We'll have some further discussion. [LB261]

SENATOR HARR: Okay. Thank you. [LB261]

SENATOR SULLIVAN: Any other questions? Thank you. [LB261]

SENATOR GLOOR: Thank you. [LB261]

SENATOR SULLIVAN: We'll now hear proponent testimony for LB261. [LB261]

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RUTH SORENSEN: I'll have to put my reading glasses on since I stumbled through the last one. [LB261]

SENATOR SULLIVAN: Join the crowd. [LB261]

RUTH SORENSEN: (Exhibit 2) It's one of these things I really didn't want to resort to too well. Chairman Gloor and members of the Revenue Committee, again my name is Ruth Sorensen, S-o-r-e-n-s-e-n, and I am the Property Tax Administrator with the Nebraska Department of Revenue. I appear before you today as a proponent of LB261. LB261, as Senator Gloor indicated, is the Department of Revenue's annual cleanup legislation. And within this legislation there are two areas that are applicable to property assessment: removing references to the county assessment by the state; and then clarifying the taxation of air carriers. With regard to the county assessment by the state, that is found in Sections 1, 2, 3, 6, 9, and 14. Upon the passage of LB121 in 2009, the assessment function of the nine state-assessed counties was transferred back to the counties. Since the last of those counties were completely reassumed in 2012 the budgeting provisions for those counties are now obsolete. And those are found in Sections 1, 2, 3, 9, and 14. Section 6 removes the Property Tax Administrator from the definition of county assessor since the state no longer oversees the assessment functions in the nine counties. With regard to the taxation of air carriers, that can be found in Section 8 of the bill. This entails a change to Nebraska Revised Statute Section 77-1248. And that relates to the taxation of air carrier flight equipment. I'll begin my explanation of this change by talking about railroads. Both railroads and air carriers are assessed by the state in two different manners. Both assessments rely in large part upon the reporting of the net book value of personal property to the state. Railroads are able to account for all their personal property inventory, while some personal property in the remainder of the class of commercial and industrial property goes unreported. In the 1970s, the U.S. Congress adopted what's called the 4-R Act, which among other things provides that the personal property of railroads cannot be treated in a discriminatory manner in relation to the assessment of the personal property in the rest of the commercial and industrial class of property. In 1992, Nebraska adopted legislation to incorporate this provision into Nebraska law and provided for an equalization adjustment for the personal property of railroads to bring Nebraska into conformity with that part of the 4-R Act. This adjustment can be found in Nebraska Revised Statute Section 77-693. In the early 1980s, Congress also passed a law called the Tax Equity and Fiscal Responsibility Act, also known as TEFRA, which among other things provided the same kind of protection from discriminatory tax treatment for air carriers. However, under Nebraska law there is no such corresponding equalization adjustment for air carriers. Recently, an air carrier took this issue up to the Tax Equalization and Review Commission where TERC ordered the department to make the adjustment in the same manner as provided in Section 77-693. Due to the TERC decision, the department does not believe that it can provide the kind of relief to air carriers that is required by TEFRA based on current statutory authority. The agency seeks to harmonize our state statutes with federal enactment in order to eliminate the current disparity and confusion. LB261 would spell out an adjustment in a statute that applies specifically to air carriers rather than forcing the air carrier companies to request a hearing at both the department and then at the TERC levels. Those are the two issues applicable to property assessment in LB261. Garner Girthoffer will follow to testify on the remaining sections. And at this time, this concludes my formal testimony and I'd be happy to answer any questions. [LB261]

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SENATOR SULLIVAN: Thank you, Ms. Sorensen. Are there questions for her? Thank you for your testimony. [LB261]

RUTH SORENSEN: Oh, you're welcome. Thank you. [LB261]

SENATOR SULLIVAN: Welcome. [LB261]

GARNER GIRTHOFFER: (Exhibit 3) Thank you. Chairman Gloor, Senator Sullivan, members of the Revenue Committee, my name is Garner Girthoffer, G-a-r-n-e-r G-i-r-t-h-o-f-f-e-r. I'm the legislative liaison with the Department of Revenue. I appear before you today to testify as a proponent on LB261. As the Property Tax Administrator noted, I will discuss the proposals not covered in her testimony which include: clarifying that cigarette tax return information is not confidential; also clarify that audit information may be shared with taxing and law enforcement officials; prohibit interest payments on several tax incentive programs; and then also I'll briefly discuss a provision which the department will be recommending to remove from the bill. And, Senator Harr, I can address your question as well. Confidentiality of cigarette tax return information historically has not been confidential, it's been available to the public. So any information reported by manufacturers, wholesalers, stamping agents, and retailers is generally made available to the public upon request. We do have some of that information on our Web site in aggregated data. However, in 2011, LB590 created electronic reporting requirements for cigarette tax returns. As part of that bill, they added a couple different provisions that otherwise state that cigarette tax return information can be disclosed to law enforcement authorities. There is some ambiguity or a question of whether or not that served as a limitation to strictly limit disclosure to law enforcement or it simply clarified that it could be disclosed to law enforcement. So LB261 will again clarify that this return information is not confidential and can be disclosed to anyone. LB261 also clarifies that audit information for several miscellaneous tax programs can be disclosed to law enforcement and taxing authorities of federal government, state, and local government. This is done more or less to conform with other provisions we have in law with both the income tax program and sales tax program, which otherwise authorize limited disclosure to law enforcement authorities. I will come back to the C-BED provision here momentarily. And then the last section of the bill prohibits interest payments and refunds to both the historic tax credit which passed last year with LB191, and then also the renewable energy tax credit. As is custom with tax incentive programs, a longstanding precedent at least in the state of Nebraska is, we don't pay interest on those refund claims. This was incorporated into LB775 as well as Nebraska Advantage; Microenterprise; and Rural Development. LB261 simply follows that longstanding policy of prohibiting interest payments on refunds claimed under those programs. Regarding the C-BED provision, the department would like to offer an amendment to repeal or to strike Section 5 of LB261. Several individuals raised some concerns that expanding C-BED to LLCs with nonresident members might otherwise undermine the intent of the C-BED legislation. And the department agrees that the potential exists and so we would offer up an amendment to strike that section. We're working with legal counsel for the committee to get that drafted currently with Bill Drafters. That concludes my formal testimony. I'll be more than happy to answer any questions, Senator Sullivan. And then, Senator Harr, the section regarding the Model Business Act, that's going to be struck if you agree with the change to Section 5, and it wouldn't create any issues in that regard. [LB261]

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SENATOR HARR: Okay, thank you. [LB261]

SENATOR SULLIVAN: Thank you, Mr. Girthoffer. Tell me a little bit about the process that you go through arriving at some of these decisions that you've outlined in LB261. [LB261]

GARNER GIRTHOFFER: Well, they come from a variety of sources. They come from both department employees, they come from the taxpayers, generally, concerns that they have, ambiguities. Typically, the department doesn't offer any significant policy changes. But they tend to be more technical in nature, cleanup legislation. We work that through the process and the Tax Commissioner ultimately signs off on those proposals. [LB261]

SENATOR SULLIVAN: I see. Okay, very good. Any other questions? Senator Harr. [LB261]

SENATOR HARR: Thank you. Thanks for coming down here. I guess I have a question about the--let me step close to the mike; sorry about that--about the interest payment. Was there an issue with that? [LB261]

GARNER GIRTHOFFER: No, there hasn't been an issue. After LB191 passed, we noticed that the provision wasn't in there. Based on internal discussions at the department the thought was, well, there's no prohibition. Someone could potentially make that... [LB261]

SENATOR HARR: Okay, but there's nothing that requires them to pay in interest right now either? [LB261]

GARNER GIRTHOFFER: No. [LB261]

SENATOR HARR: So this is more of a belt/suspender? [LB261]

GARNER GIRTHOFFER: Yeah. [LB261]

SENATOR HARR: Okay. [LB261]

GARNER GIRTHOFFER: And we have similar provisions both within the major incentive program, LB775 and Nebraska Advantage, that have the same provision in law. [LB261]

SENATOR HARR: Okay. [LB261]

GARNER GIRTHOFFER: And we've viewed this as more or less as an oversight. [LB261]

SENATOR HARR: Okay. Thank you very much, appreciate it. Thanks for coming. [LB261]

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SENATOR SULLIVAN: Any other questions? Thank you for your testimony. [LB261]

GARNER GIRTHOFFER: Thank you. [LB261]

SENATOR SULLIVAN: Any other proponent testimony? Anyone wishing to speak in opposition to LB261 or in a neutral capacity? Senator Gloor. Senator Gloor waives closing and I will turn the Chair over to him. [LB261]

SENATOR GLOOR: Thank you, Senator Sullivan, for your help. We'll now move to LB52. Senator Scheer, welcome to your committee. [LB52]

SENATOR SCHEER: (Exhibit 1) Thank you, Chairman Gloor and esteemed colleagues. I bring...my name is Jim Scheer, S-c-h-e-e-r, representing District 19 in the Legislature. I am bringing LB52 this afternoon, which excludes sanitary drainage districts from the list of public entities that are providing...having use tax, sales tax collected from them. However, I should note that inadvertently I forgot half of what I thought I was doing. And in order to do that, I would like to explain the amendment that I would be proposing as well. Sanitary drainage districts, very few communities have them, but they actually exist. There is one in Norfolk. And what they are responsible for--at least I can speak in Norfolk's case--we have several drainage gulches that run through the town for flood purposes. Their sole responsibility is to make sure that the ground and the weeds and so forth are kept down and so forth so that the water can actually move through the canals and bypass the town; they're minimizing or eliminating the flooding. Part of the request was also to improve sanitary improvement districts or an SID. So my amendment would also be to include in the sanitary improvement district as well as the sanitary drainage districts. If you look at the statute of what has been chosen before to be exempted, literally everything under their dog where somebody lives is provided. If you...for example, sanitary drainage districts are very, very few. The fiscal impact is nil according to the fiscal note. The SIDs perhaps would have a larger, but I think somewhat minimal, cost effect to it because they are providing more services to their constituents as far as buying new blades to remove the snow or whatever else, the chemicals for their water treatment and so forth. The rationale behind that is simply that it's a living unit. And in several instances around Omaha and the metropolitan areas where some of the SIDs have now been incorporated into the community, once they're incorporated none of those are being taxed anymore. But yet as they are a separate entity, they are paying taxes on all those consumables that they're using as a living unit. And it seems sensible that if they're not part of the city just because of the lack of annexation they should have to pay sales and use tax on the products that they consume. So therein lies the request for not only the drainage districts but also sanitary improvement districts to be included as an excluded entity. With that, I'd be glad to answer any questions. [LB52]

SENATOR GLOOR: Thank you, Senator Scheer. Senator Harr. [LB52]

SENATOR HARR: Thank you. And I'm sorry, I couldn't hear. For MUD in Omaha, the sewer separation, is sale and use tax exempt, if you know? [LB52]

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SENATOR SCHEER: I don't know, Senator. And I would be guessing if I gave you an answer, so I would have to find out on that. I suspect they aren't only because, as I recall, there's been quite a bit... [LB52]

SENATOR HARR: Only because why? Sorry. [LB52]

SENATOR SCHEER: I said, I suspect that they are not only because I've heard a lot about...well, I take that back. We're talking about...what I'm thinking of is the actual reconstruction of that where they're trying to remove the sales tax from the cost of the construction. As far as the utilization of their consumables for that, I'm not positive. But I... [LB52]

SENATOR HARR: Okay. [LB52]

SENATOR SCHEER: Looking at this I cannot tell you one way or the other. [LB52]

SENATOR HARR: Okay. [LB52]

SENATOR SCHEER: I'd be glad to look into that and find out for you. [LB52]

SENATOR HARR: I'll look into it. But thank you very much, I appreciate this. Thank you. [LB52]

SENATOR SCHEER: Thank you. [LB52]

SENATOR GLOOR: Other questions? I don't see any, Senator Scheer. [LB52]

SENATOR SCHEER: Thank you, Chairman. [LB52]

SENATOR GLOOR: Thank you. We'll now move to proponents. Are there proponents of LB52? [LB52]

MATT SCHAEFER: Good afternoon, Chairman Gloor and members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, appearing today on behalf of the Eastern Nebraska Development Council. The council is composed of folks who are in the business of constructing, financing, and advising SIDs in Nebraska. In speaking with Senator Scheer about his bill and after determining that his intent was to exempt SIDs, I thought I would get us on the record as supporting that logical extension of tax policy. For your information, SIDs do purchase quite a few items that are taxable. One good example would be electrical service for the street lights in the SID. And also, of course, the raw materials that go into constructing the infrastructure, for instance, concrete. I think that's all I have, Senator. [LB52]

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SENATOR GLOOR: Okay. Questions? I don't see any, Matt. Thank you. [LB52]

MATT SCHAEFER: Thank you. [LB52]

SENATOR GLOOR: Other proponents? Is there anyone in opposition to this bill? Anyone who would like to testify in a neutral capacity? And Senator Scheer waives, and we'll close the hearing on LB52. We'll now move to LB70. Senator Schumacher. [LB52 LB70]

SENATOR SCHUMACHER: (Exhibit 1) Thank you, Senator Gloor and members of the committee. I'm Paul Schumacher, representing District 22 in the Legislature and here today to present LB70. Revenue Committee typically deals with exemptions and credits and tax rates and incentives and all those very, very exciting things. And rarely do we get a chance to take a ride on the wild side. Today we may venture a little bit into the wild side. And in order for us to understand what we are dealing with, to put a little history into the thing, what's gambling? Well, our Supreme Court has defined gambling as...or a game of chance as something where you put money into it, you get money back determined by a random function; chance rather than skill. Okay? And whether it's any of the things we think of as gambling: horse races, pickle cards, keno, those kind of things, those are the three elements that there are. Well, anytime that you have something that people want to do and a law that says they can't do it, you invite a game of cat and mouse between law enforcement and the public. And thus it was with slot machines. Now back in the olden days a slot machine was a big, cumbersome thing with wheels that spun around and a lever on the side that was spring loaded and it had a slot to put money in. And when the wheels came up three cherries in a row or whatnot, it'd drop money out and went ding, ding, ding, and everybody got all excited. And those machines were heavy, the wheels got out of balance, and they may pay out all the time or not at all. And you certainly couldn't pick them up and move them around very fast. And as a consequence, reasonably easy to enforce the law against slot machines. In fact, I'm told that it was so easy that the only communities that managed to have them were ones where both the priest and the police were well taken care of. Well, life changes a little bit in the 1980s and, in the 1980s, the advent of the computer and the video screen. And it no longer had to a big heavy thing that had to be realigned and balanced and worried about something wearing out on the inside. It was a computer chip and it could keep score with a little meter on it. And suddenly what emerged were a thing called the grays, the old grays. And the old grays would sit in the bar and it looked like it had three cherries and three bananas and some of them even had eight lines, called eight liners. And you'd put your money in and you'd press your button or pull your handle and it'd spin. And, you know, it looked like it was winning or losing or whatever and would run up the score on it. They were clever enough not to have anyplace where the money dropped out of because that would be too big a clue what was going on. But law enforcement was not entirely stupid and when it had the meter on they got suspicious that something more was going on than seeing what kind of score you could get. But...and they really couldn't just take meter readings to determine your winnings to determine your payoff when you went up to the bar owner to payoff, because the bar owner wasn't a very good bookkeeper and he'd forget to subtract off the amount of the point where you started to play, the points on the thing where you finished play, and it was...didn't work very well. Thus the advent of the knock-off switch. And the knock-off switch...and when you went up to the bar owner and got paid off because you ran up some points--and you could play down those points too so you'd put money in and you'd get an initial bunch of points and you could play them up or down--and the bartender would go over to the machine and reach around the back and pop, and

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the score would go back to zero or some fixed number that he knew was a starting point. And that's how the game was run. Well, the Patrol still...pretty easy job to catch them because you look for the knock-off switch. Well, technology marches on, and so no more knock-off switches. Instead, the little clickers like you unlock your car doors with, that was what worked. They had a little sensor and you could reset it just from the bar without even having to walk over and hit the knock-off switch. And there was a really fun game of cat and mouse that went on between bar owners and some of the machine distributors and the State Patrol, sometimes the county sheriff, but most often the part of the State Patrol that dealt with slot machines. And the bar owners had a calling tree so when the State Patrol decided to move in and crack down, the first guy hit would make calls and pretty soon there just were no slot machines in the county or anywhere else. In fact, there are stories of while the Patrol was pulling up with its pickup trucks, the bar owner was pulling out with its pickup trucks. And so that's how the game was played. And there were cycles, times when the bar...when the Patrol pretty well had them cleaned up and times when I think the General Affairs Committee heard there was a couple thousand machines in the state operating, depending on the mood of politics and resources and everything else. Then technology came again and we had the advent of the touch screen. Now the player could touch the screen and do things with it as well as cause the screen to spin the cherries around and around. And a machine was developed here in Nebraska; here in Nebraska because very few other places need to develop one because you can just use slot machines. But here where we can't use slot machines, necessity is the mother of invention. And a machine was developed that combined skill and chance and the machine would spin balls and play games. And depending on how you touched it and how quick you were, you might be able to influence the outcome that's on the screen. And there were three levels of games that were on this particular development: one that was quite a bit of chance, not so much skill; a middle version; and a baby version that was maybe more skill than chance. And the machine was thoroughly tested by a very expensive process, the same process that tests legal gambling machines such as slot machines, and by an outfit I think it was in New Jersey or on the East Coast; a very expensive process. And opinions were formed by the experts on it. Went to the Lancaster County District Court, went up to the Supreme Court, and the outcome was that two of the games on the machine were too much fun for Nebraska and more chance in the outcome than skill. But one, it was maybe more skill than chance and so the court said it was okay. And the court also said that it was the state's burden to prove that the machine was a naughty machine, more chance than skill. All right, now we're setting a stage. Now the folks that had the machines, they didn't particularly want to be bad people or do anything terribly illegal. So rather than picking up their machines, hauling them back to warehouse and getting dust, they left them in the bars, pulled off the bad games. So you have these machines with this lackluster version of the game that is described in the statement of intent, the court case, and it's out there. And it gets...well, it's the kind of fun you're supposed to have in Nebraska and doesn't get much play. Well, all good things must end. And some out-of-state operators started showing up about a year ago. And their machines are suddenly more fun. Well, guess what? They probably are probably more chance than skill. And they began showing up in bars and began showing up in convenience stores and began picking up steam. And so I know I received some calls as an attorney and other people were receiving calls, are these legal, because some machine distributor just put one in down the street and by gosh they're legal, looks like people are playing it. I want it in my bar too. And so, a legitimate question: Are they legal or illegal? So about November I called Attorney General Bruning and said, Jon, this is what's going on. I am told that there are various versions of this machine out there that's fun to play and I'm getting questions whether it's legal or illegal. They're saying that the Patrol comes in and looks at them, looks around and just looks for the little \$35 sticker that you can buy once a year to put on an amusement device. And if it's there, they're walking out without doing

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anything. And usually when it's illegal they're back in a few days and away goes your machine. But the machines are staying there. Okay? And the stories I hear about this machine are that it's hard to believe that it passes the test because one version supposedly, the reels spin and the cherries line up, but they don't line up right even in the middle. Okay? There may be one on the bottom line, one on the middle line, one on the bottom line. So the intense level of skill that has to be exerted to take your finger and move the one on the one side up and the one on the side up so you get them all to line up straight and get paid out, that takes a lot of skill. And who knows? So Jon said, well, you know I'm packing up my office and this is the first time that I've heard of this particular one. He says, why don't I have somebody with the Patrol give you a call. A few days later I got a call from the guy from Patrol. They just had a change of hands, apparently earlier in the year, when the guy who had chased machines for a long time retired. And he said, well, he said, right now we've got the burden of proof. We have got to prove that the machine is a bad machine or has bad games on it. That's an expensive proposition. And so until somebody tells us differently, right now we're just looking for the sticker. Okay? Score one up for the guys from Iowa or North Carolina or whoever designed this machine. And undoubtedly there will be more of them very rapidly because they are rapidly expanding across the state. So thus, Sunday afternoon, sitting in my office, is there anything I can do? Well, you know, these machines are unregulated and untaxed and they may even be illegal. So LB70 was written. And it basically, in the draft that you have before you, the green copy said, okay, a machine that takes in money and pays out a prize can be taxed by the city or village in which it is...it contains or it exists. And a tax can be imposed. A tax would be divided between the city and the state. When the state collects it, it gets a collection fee. And at least...at the very least we will be able to identify where these things are and get some money off of them if there's no way to enforce the existing law and as long as the law enforcement authorities make the determination that they're too expensive to take out of play. Well, I wasn't quite smart enough, because I didn't realize that there were other games that actually paid out money. I thought maybe they were all running up a score on pinball machines, golf games where you pay and you take a swat at the ball and you hit something and apparently you get prize money. And so, as maybe some of you did, I got some calls, some nasty letters that said, you know, hey, what are you doing cracking down on dart games and pinball games and golf games and these kind of things which are more skill than chance? So in talking with those people who are legitimate operators in the state, a redraft of this particular bill is before you as AM46, an amendment which better defines the net so we don't catch dolphins in with the sharks. And it defines what type of game we are focusing in on and it imposes a tax from the state level because there was concern at the...of confusion between various towns doing it their own way, and also concern that maybe one town wouldn't do...would let the things go untaxed in order to attract customers for the bar there and be a little sin city out in the Sandhills. So modifications are: It better defines what machine is being looked at; it puts it in at the state level for a tax. And that doesn't make it legal. We tax marijuana, for example, at the state level. It doesn't make marijuana legal. You can tax illegal stuff, it doesn't legalize it. And what it does is it places this tax on all these types of games and it leaves it up to the machine operator to prove that it is more skill than chance. It shifts the burden around so if there's going to be an expensive testing bill, the Patrol doesn't have to go and engage it. And so what it does is tries to address this particular problem. Now perhaps...now I don't want to represent just yet that this amendment has been fully agreed to. There are a lot of these game operators, some of them you'll hear today. They may even testify in opposition because they have not had time to digest this particular amendment and see whether or not it meets their needs. But I think this is very close to where we're going to need to be if the committee decides to move forward with this. And it may also be that this very discussion will cause the Attorney General's Office and the Patrol to reevaluate how expensive is expensive. And it may also help us in the Legislature focus on the broader

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question of whether or not we aren't at a point where we really need to see whether or not the Legislature should be able to authorize and regulate kind of games that seem to be in high demand and which surround our state, all legitimate points of reference. But nevertheless, this is a taxing measure. It's to tax those devices at a 10 percent tax and to bring this issue to a head. If they're legitimate machines, then the bars out there need to know that, that they're not at risk with the Liquor Commission or something else because they're putting in the same kind of thing that the guy down the street says. If they are not legitimate machines, then this should act somewhat as a deterrent and also a place where the Patrol might be able to start its search for seizures or prosecutions or whatever. So that's my story, and I'd be happy to answer questions. [LB70]

SENATOR GLOOR: Thank you, Senator Schumacher. And the burden of proof is expensive because the testing that's done by these East Coast entities is a time-consuming and expensive or just an expensive proposition? [LB70]

SENATOR SCHUMACHER: Both because any...unquestionably, even the not-so-fun game of this game that the Supreme Court passed on has an element of chance. It just is it's less than half determined by chance, more than half determined by skill. Well, how do you determine that? If there's a skill section of the things...you've got so many milliseconds to hit the cherry as it's spinning fast, at what point does that tilt from skill to chance? Certainly if the cherry is spinning very slow and you stop it, it's probably more skill. And if it's going really, really fast, it's probably more chance whether you stop it or however these things are structured. So they look at the computer programming on the random function of the game that creates the randomness. They look at the...whatever elements of skill, whether or not if it's humanly possible or you have to be Mr. Spock to be able to do it, all those kind of things. And then, ultimately, a court has got to make a decision what the judge thinks. And this is involving. When you have the burden of proof--which you'd better have before you arrest somebody for a crime or go take their property and run over it with a bulldozer--you've got to have that expense before you go into the courtroom and start taking your action. The tax mechanism said, hey, pay up or prove up. And so that's basically what this does. [LB70]

SENATOR GLOOR: Questions? Senator Scheer. [LB70]

SENATOR SCHEER: Thank you, Chairman Gloor. Senator Schumacher...and I was trying to follow as closely as possible so forgive me if I got a little messed up. But did the court rule on a specific game that it was chance versus or was skill versus chance? [LB70]

SENATOR SCHUMACHER: As I understand it, there is a specific machine, in substance, a computer program that produces three levels of games. Two, it threw out; said it was more chance than skill. And one that said, after analyzing the data, was more skill than chance. So it's a game that runs on a computer essentially. [LB70]

SENATOR SCHEER: Okay. My question then is, if the one that was...the courts have ruled is a game of skill versus chance, then is that excluded from this? [LB70]

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SENATOR SCHUMACHER: Because they've got to...in the language of the redraft that you can prove that your machine is okay by, among other things--at line 25--showing that software running on the game remains unchanged except for cosmetic or those changes necessary to run it on a different computer without altering the nature of the game, that it's unchanged from the one determined in the judicial case. [LB70]

SENATOR SCHEER: Okay, thank you. [LB70]

SENATOR SCHUMACHER: So this particular low-end game is okay. And chances are... [LB70]

SENATOR SCHEER: So you're grandfathering whatever the first game that was approved, not necessarily the game after. [LB70]

SENATOR SCHUMACHER: Right. Right. And as long as you make that showing and say, look, this is the game that the Supreme Court said was okay, it's materially unchanged from what the court said, then you prove up your exemption. [LB70]

SENATOR SCHEER: Okay, thank you, Senator Schumacher. Thank you, Chairman. [LB70]

SENATOR GLOOR: You bet. Senator Smith. [LB70]

SENATOR SMITH: Thank you, Mr. Chair. Senator Schumacher, looking at the green copy I think that the enforcement component in the lower portion of page 5 of the green copy stays in place even with the amendment. Right? About line 22 and below that. [LB70]

SENATOR SCHUMACHER: Yes. That has not changed. Strike original Section 2, yes. [LB70]

SENATOR SMITH: Okay. So you have a lot of knowledge and experience in this arena. So how does this enforcement work today and what...and how would that additional enforcement look going forward when they are...when you are asking to also verify that occupation tax has been imposed? So how does it look today and how would it look after that? [LB70]

SENATOR SCHUMACHER: Okay. Right now enforcement isn't working very well. But if we go back to the gray machines before this complicating process, what we'd do...the enforcement...two things would happen. Basically, the Patrol would go out and seize the machine. And those machines typically would be forfeited, destroyed. The second thing would happen is a ticket or citation or court case of some kind, criminal in nature, would be brought. Under this particular additional language that's here, two things can cause your machine to be sealed and to be basically taken off the market: one, if it doesn't have the decal, the \$35 sticker that all these machines have; or if it's a machine that has not been proven okay, registered as being exempted and the tax hasn't been paid. [LB70]

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SENATOR SMITH: So how often does an enforcement official inspect to determine that that decal is there? [LB70]

SENATOR SCHUMACHER: You know, I think they do that reasonably often. They have folks with the Department of Revenue who inspect for stamps, inspect pickle machines, inspect keno machines; Liquor inspectors who inspect the bars for proper liquor confinement. There's a law enforcement person that's got his eye open on these premises quite often and often undercover. So it is...you wouldn't need a special team of enforcement. Sometimes the Revenue Department gets a little bit squirrely in that they will say, look, unless we are told that it is our domain, we don't look for it. Illegal gambling machines are the Patrol's responsibility. And when we go out there, if we see something that has a sticker on the side, that's...our job is over. We don't want to get drug into the mess of seizing a slot machine, so. But there is a lot of oversight that happens in a liquor establishment. These machines right now are appearing though, the bolder versions are appearing in convenience stores too. And I don't know if the level of supervision is quite as high there. [LB70]

SENATOR SMITH: Okay. Thank you. [LB70]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Schumacher. [LB70]

SENATOR SCHUMACHER: Thank you. [LB70]

SENATOR GLOOR: We'll now move to proponents of this bill. Seeing none, we'll move to opponents of this bill. [LB70]

WALTER RADCLIFFE: Senator Gloor and members of the Revenue Committee, my name is Walter Radcliffe, W-a-l-t-e-r R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of the Nebraska Operators of Music and Amusements, not for the reasons most of you would think am I appearing in opposition, because I'm not here in support of the machines that Senator Schumacher described to you as coming into the state. But rather, the individuals who I represent have operated music and amusement devices in the state for years, things that...I mean, pool tables, dart boards, pinball machines, Golden Tee. I could go on, but those are types of things that I'm familiar with. Interestingly, when...okay, our opposition is based upon the fact that LB70 casts too broad of a net. We have met with Senator Schumacher and are trying to work out an amendment that would capture the types of machines that he's talking about and not capture the ones that I'm talking about. Very honestly, the amendment that he has given you is something that we came up with in our office, not good lawyers working on an amendment. And we don't know the ins and outs of all the machines. So...and this is...please, it's been a week to do this. So I've given this amendment to some gentlemen who will testify today. They're going to take a look at it. We're going to coordinate with Senator Schumacher and try to come back to you with an amendment that solves the problem he's presenting and yet allows the existing devices to continue. That's a nutshell. Let me just...just a couple of sidebars and then I'll try to answer some of your questions. Interestingly, I met with some of my clients over the holidays and they were talking about these machines that Senator Schumacher is alluding to. Very honestly, I mean, they're out there. To be very blunt, you've got an illegal

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machine out there that's getting a lot of play and taking away from legitimate machines and impacting on a lot of keno games. Now I'll tell you, if the machines that were out there were legal, the people I represent would be happy to put them out. But they haven't done it because they believe that they are illegal. The burden of proof that Senator Schumacher talks about is kind of an interesting linchpin, because if you're going to put the burden on the citizen, if you will, to prove that they're legal, you can't do that criminally because of the, you know, you're innocent till you're proven guilty. Now you can give an affirmative defense in a criminal action but easier...quite frankly, I mean this isn't the first time that tax law would be used to, for lack of a better word, dictates to impact social policy. Easier to come at it from the tax angle because the tax that's being imposed, very honestly, is confiscatory. You could not operate these machines and pay this tax. It would not happen. Now, I'll be happy to answer questions. I've got two gentlemen that are going to follow me. One, John Fox, I told him not to speak in logarithms to you. He's the one who came up with the illegal game that went to the Supreme Court and it's called Bankshot. And he can tell you a lot about what's legal and why it's legal and why it's not. There are gentlemen from Grand Island just had some experience, frankly, out in the field and is seeing these machines. And there are--I don't want to exaggerate--but there are certainly hundreds if not over a thousand machines out there that are, for all practical purposes, slot machines that nobody is doing anything about. And if we're going to let them have it, then let's at least let people from Nebraska distribute them. But you're not going to do that, you're not going to legalize slot machines. So that's why we're working with Senator Schumacher on this amendment. I'd be happy to answer any questions, try to answer any questions. [LB70]

SENATOR GLOOR: Are there any questions for Mr. Radcliffe? Senator Sullivan. [LB70]

SENATOR SULLIVAN: Thank you, Senator Gloor. So this is simply pushing the envelope to find a way to determine whether or not these machines are legal or not? [LB70]

WALTER RADCLIFFE: Yes. As Senator Schumacher indicated, the state...and I don't have firsthand knowledge. The state has basically said, hey, we don't have the time or resources to go out...and they confiscated these Bankshot machines that Mr. Fox will tell you about. And quite frankly, they litigated it. Mr. Fox came in with evidence and showed, hey, these machines are a game of skill and therefore they can stay out. Well, I don't think the state is too anxious to go through that drill again and to spend the money and to maybe lose. [LB70]

SENATOR SULLIVAN: Where are these located typically? [LB70]

WALTER RADCLIFFE: They're in bars, they're in supermarkets, they're in convenience stores. Some of them have like a local charitable label on them. Some benefits go to, you know, "Aunt Bea's Farm" or whatever. But they're fairly prevalent across the state. I was surprised. [LB70]

SENATOR SULLIVAN: So like if they're in a convenience store, they're probably sitting on a counter somewhere where you... [LB70]

WALTER RADCLIFFE: And some are stand-alone machines, I mean like a slot machine, stand alone. [LB70]

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SENATOR SULLIVAN: Thank you. [LB70]

WALTER RADCLIFFE: And as Senator Schumacher says, not regulated, not taxed, anybody can play them. It's a good deal if you're running the machines. I just don't represent those people. [LB70]

SENATOR GLOOR: Other questions? [LB70]

WALTER RADCLIFFE: Thank you. [LB70]

SENATOR GLOOR: Thank you, Mr. Radcliffe. Other opponents. Good afternoon. [LB70]

JOHN FOX: (Exhibits 2 and 3) Good afternoon. My name is John Fox, F-o-x, my company is American Amusements. We manufacture games of skill, games of chance primarily under other companies'...for other companies. We market under their name for use all over the world. And this...in Nebraska we'd be best known for the game of Bankshot, as Mr. Radcliffe was previously speaking about. The Bankshot saga, if you will, began in 2007. We developed a prototype, we contacted Don Littrell of the Nebraska State Patrol who had on occasion for other manufacturers reviewed games and gave them a determination either verbally or in writing as to whether the game complied with Nebraska law, and that being preponderantly a game of skill. The first version of the game that we showed them, he said that we did not comply with the laws and the skill level was not preponderant. And I want to note that that first version of the game function is effectively identical to the "out-of-state games" that Senator Schumacher was referring to. We then went back, did a lot more work, contacted Trooper Littrell again, we showed him a demo. He said he would prefer to have a third-party expert lab evaluate it and do the testing, and he would recommend that that was accepted. The choice came from the state, I'm assuming the State Patrol, of either Eclipse Compliance Testing or Gaming Laboratories International. One is in Ohio and one is in New Jersey. We met with members of the Department of Revenue that said they would also accept that third-party testing. We sent a game off to Eclipse Compliance Testing as it was one of the two choices the state had given us. The report that came back later that year that it was, in fact, a game preponderantly of skill and therefore permissible in Nebraska. We provided that to Officer Littrell, the Department of Revenue, and anybody else who was interested. About a year later we received a letter from the Charitable Gaming Division of the Department of Revenue that they would like to have more testing done and they would like games provided for that testing to be done and we agreed. Despite our agreeing, the Department of Revenue confiscated two games from a location I believe in Grand Island. One game was sent to Eclipse Compliance Testing and one was sent to Gaming Laboratories International, the same first two labs they gave us a choice of. Both reports came back that the devices were games of skill and thereby legal in the state of Nebraska. Undeterred, and subsequently thereafter, the state again confiscated two more games in McCook, Nebraska, at which time we were effectively forced to file a declaratory judgment action in Lancaster County Court. And in that trial court the...as Senator Schumacher referred to as three games, just to clarify, there's three modes of puzzle presentation of the game and they were fast and slow and spin. And just to clarify a little, fast, the court didn't rule either way. And we just removed fast for the nature of making the question simpler. The court ruled that the game was a game of skill played in spin mode. And the court ruled that the game was a game of chance played in slow

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mode. And again I want to point out for the reasoning for the court finding that the game was a game of chance in slow mode is exactly how, again, the games that Senator Schumacher refers to from coming out of state, exactly how they function. And the Attorney General's Office, they appealed that decision and the Supreme Court ruled in 2011, I believe, that Bankshot when playing the spin mode is, in fact, determined preponderantly by skill and, therefore, under the control of the player. And I'd be happy to take any questions. [LB70]

SENATOR GLOOR: Mr. Fox, you spent most of your time talking about Bankshot. [LB70]

JOHN FOX: Yes. [LB70]

SENATOR GLOOR: But is that to show that...to reiterate what Senator Schumacher had pointed out to us? I think basically he'd said the same thing. But are you convinced that the amendment they're working on will, in fact, address this sort of pushing-the-envelope issue that we're dealing with right now or are you making another argument? [LB70]

JOHN FOX: I think...I first saw the current draft on the way in the car now. And I'm in opposition at this point because I'm afraid the web would snare some activity that it shouldn't. And that's my...and Senator Sullivan, if I may, Mr. Radcliffe just said that the games are in convenience stores and cafes and etcetera. We don't put...Bankshots are on-line and we don't allow operators to put them in convenience stores or...we think it's a bar game. We designed it for adults to play. Although there's nothing...it's as legal as any other amusement game, we think there's places it belongs and places it doesn't belong. So the Bankshots are in bars. [LB70]

SENATOR SULLIVAN: Okay. [LB70]

SENATOR GLOOR: They're actually on-line like the trivia games and some of the other ones that you see? [LB70]

JOHN FOX: Yes. [LB70]

SENATOR GLOOR: Okay. Can I ask you, what are the two documents that the pages handed out to us? [LB70]

JOHN FOX: The documents I included are the judicial history from the Supreme Court case which is essentially the same story that I just told. The other is the trial court, noting page 18 and 19 of the trial court, the court breaks down the fast, the slow, and the spin in their rulings. And underlined is the court's reasoning, that slow was not acceptable. [LB70]

SENATOR GLOOR: We didn't get...yeah. We have page 18 but not page 19. Okay. For the record, we know...and one of the reasons I asked is I thought this didn't look complete and that was the case. We'll make sure we get page 19. Are there other questions for Mr. Fox? Seeing none, thank you. [LB70]

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JOHN FOX: Thank you. [LB70]

SENATOR GLOOR: And thank you for your efforts to run legitimate games. Anyone else in opposition? Mr. Meier. [LB70]

ANDREW MEIER: Hi, everybody. I don't want to take up too much of your time, but my name is Andrew Meier, and I'm from Grand Island, Nebraska, and I own a company called Mid-Nebraska Coin-Op. [LB70]

SENATOR GLOOR: Andrew, could you spell the name for us? [LB70]

ANDREW MEIER: Oh, M-e-i-e-r. And anyway, I own a company called Mid-Nebraska Coin-Op. And we distribute the Bankshot and we do pool tables, jukeboxes, video games, darts, all that stuff. And I guess the main thing today...I just seen that new wording. And I think the main thing is just for us guys to make sure everything looks good so it doesn't, like John said, affect like pool leagues and dart leagues and things like that. So if you've got any questions for me about stuff in the field or anything like that, I'd be sure to answer any questions if you had any. [LB70]

SENATOR GLOOR: I wouldn't let you come all the way down here if I didn't have a question for you. Have you noticed an impact as a result of these on what you currently have overall? [LB70]

ANDREW MEIER: Our actual route is pretty much central Nebraska. And this operator that's kind of been putting them out there from, I believe, on the East Coast. But there's a guy in the Columbus area that's kind of put a few out. We service probably...we service over 100 bars with our equipment. And I'd say out of ours we probably have about eight bars with this other game in it. [LB70]

SENATOR GLOOR: Okay. [LB70]

ANDREW MEIER: And it's not Grand Island/Hastings area, it's more kind of northeast around that Columbus area, but. [LB70]

SENATOR GLOOR: Do you hear from the bar owners that they're pretty popular? [LB70]

ANDREW MEIER: A couple said they'd play some and there's a couple of other places that they don't get played that much. But I've heard in other places they have been getting played a lot, so. [LB70]

SENATOR GLOOR: Okay. Other questions for Mr. Meier? Seeing none, thank you for your testimony. [LB70]

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ANDREW MEIER: Okay, yep. Thanks, you guys. [LB70]

SENATOR GLOOR: Anyone else who would like to speak in opposition? Anyone who would like to speak in a neutral capacity? Senator Schumacher, you're recognized to close. [LB70]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Hopefully, we're pretty close to getting a proper net that doesn't catch dolphins but catches sharks. I do want to...this has kind of been a saga of technology advancements making areas very, very unclear. And Mr. Fox did touch on one other thing that has occurred since the advent of the touchscreen. Machines are now on-line. Their programs that operate them may no longer be inside of them but may be in the cloud, wherever the cloud is, and may make things increasingly difficult for law enforcement because who knows what program was running on the machine at what time or whether or not there's somebody back in some central angel on the cloud with a knob that can turn up or down the level of skill in the game? And if you happen to have a winning player, turn up the skill needed or the element of chance. And if they happen to have somebody who's klutzy and half loaded with booze, sense that, and turn it the other direction. So this is an area that cries out for attention, cries out for regulation, cries out for legalizing what is right and wrong. But the Legislature just doesn't have authority in some of those areas because of some things we did in the 1860s. So that's my comment with regard to this. It's now before the committee. There is a mechanism that we can...the Legislature can intervene using tax mechanism. It's probably also a proper subject for the Attorney General and the Patrol to review again. Thank you. [LB70]

SENATOR GLOOR: Thank you, Senator Schumacher. Are there any final questions? Seeing none,...I see we're getting page 19 handed out to the committee also. Thank you. And that will end the hearing LB70. But Senator Schumacher, other than stretching your legs, you're next up and last up on LB74. [LB70]

SENATOR SCHUMACHER: Thank you, Senator Gloor. My name is Paul Schumacher, representing District 22 in the Legislature, and here to introduce LB74, which actually might have a proponent. So I don't want to get too anxious, but I think there might be one or two here for this bill. This deals with sales tax collection. I think the Revenue Committee last year advanced a bill that tried to address this issue. It, of course, was eaten by mountain lions before the floor could ever get around to addressing it. But it arises back in 2002. Life was good and merchants got to collect a fee for collecting the sales tax. And times got tough and the Legislature got short of cash and needed everybody to put their shoulder to the wheel and pony up. And don't worry, this won't last forever. We will...you agreed to let our fee go away for a while and when times are good again and we can afford it we'll put it back into full force and effect. Well, it didn't happen. Times got worse even around, you know, 2010-11. But now we're talking surpluses. And this particular measure says, let's reinstate things the way they were. Now if the committee takes this seriously and decides that it's something worthy of readvancing and worthy of living up to, we might want to put a cap on how much a business can get as a fee. Certainly, small businesses are being unfairly treated now. I'm not so sure when we get into the huge megabusineses that there is quite as much justice in restoring the program, even though the language does. As legal counsel pointed out in her report, this talks in terms of monthly reports to the Department of Revenue. It certainly was meant to include the smaller operations which

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maybe file only quarterly or yearly. So I will answer any questions and I think I've got testimony probably knows more about the details of what went on than I do. [LB74]

SENATOR GLOOR: Senator Schumacher, what was the impetus behind this? How did this grab your attention? [LB74]

SENATOR SCHUMACHER: Basically, a couple of years ago, Mr. Otto approached me and said, say, this is unfair. And I think he wrote an article or an editorial or something like that for one of the newspapers that pointed it out. And certainly, you know, the cost of collecting taxes, the cost of government shouldn't be foisted indiscriminately upon a business sector. And I just kind of felt sympathetic for it. [LB74]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB74]

SENATOR SCHUMACHER: Thank you. [LB74]

SENATOR GLOOR: We'll move to proponents. [LB74]

JIM OTTO: (Exhibit 1) Senator Gloor and members of the committee, my name is Jim Otto, O-t-t-o, well, J-i-m O-t-t-o. I am president of the Nebraska Retail Federation. I am also a registered lobbyist for the Nebraska Retail Federation and a registered lobbyist for the Nebraska Restaurant Association. I am testifying in support of LB74 on behalf of both associations. First of all, I would like to sincerely thank Senator Schumacher for taking an interest in this and introducing LB74. And I'd also like to point out that I would have had several more restaurant/retailer...actually, I didn't call any to come because I noticed we were the last bill on Friday afternoon. And I thought having three or four more testifiers would not be to our advantage, so I just wanted to point that out. [LB74]

SENATOR GLOOR: That's why you're a good lobbyist, Mr. Otto. [LB74]

JIM OTTO: As I will explain today, it is a well-documented but very little-known fact that Nebraska merchants remit over \$9 million more in sales tax annually than they collect on a net basis. And I would ask you to take a look at the front page of this little handout just go through a real quick story problem. If...this is the result of the large amount of sales tax charged to credit cards. If I have a \$100 credit card sale, in Lincoln or Omaha there is \$7 in sales tax which goes on the credit card. The merchant pays a credit card swipe fee to the credit card company. That's usually because you swipe the card through the machine. We like to think it's because they swipe the money from us. But with that, these fees usually range between 1.4 percent and I have 3 percent. But with the new Square that you put on your phone, I think some of those are up to 4 percent and 5 percent. If we use a conservative figure of 2 percent, that means the merchant pays 14 cents to the credit card company to process the charge of \$7 in sales tax. Thus, the merchant collects a net of \$6.86 in sales tax but still remits the \$7 to the state. That 14 cents on that single sale equated, in 2009, to at least \$8.4 million. The industry thinks it's higher than that, but that \$8.4 million figure was not determined by the industry but by the Fiscal Office of the state of

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Nebraska on LB186, which was introduced in 2009 by Senator Karpisek. And I included on the second page of that handout, stapled to it, the fiscal note on LB186 in 2009. What LB186 would have done, it would have been a nightmare to implement but what it did do...what it would have done is reimburse the merchant only for the credit card swipe fee on the sales tax portion. Well, the Fiscal Office determined that that, in 2009, would have cost \$8.4 millions. And if you interpolate that up it--where I have it highlighted in yellow--2012-13 is \$9.2 million. It goes up about \$400,000 a year, so this year it would be somewhere around \$10 million if we follow the same rationale that the Fiscal Office used. So the state of Nebraska, not the industry, has documented that if you put all remitters and collectors of sales tax together, they actually remit approximately \$10 million more than they collect on a net basis because of the credit card fee. So it is...you know, there really is a rub with retailers, restaurants, whoever that it's kind of felt like it costs nothing to collect and remit because all you do is punch a couple buttons, it's all computerized, all that. But the real...and that bothers them a little. But the real rub is the credit card fee. So with that, as Senator Schumacher said, this was not the case prior to 2002 because prior to 2002, the collection allowance policy was much fairer to merchants by allowing a very small percentage of the tax, .5 percent of all tax collected to be retained by the merchant. In those tight budget times, the Legislature took this away by eliminating any allowance on taxable sales in excess of \$655,000. So that might not be exactly correct, but I just did the math to see where your sales would have to be before you start losing. In other words, the present policy of \$75 a month probably covers you up to about \$650,000 in annual sales. But if you get above \$650,000 in annual sales, you're starting to lose because of this. So I think the intent of the 2002 was to protect the small merchant. We're just saying that, you know, you've got to be above...if you're a jewelry store, a furniture store, an electronic store, you've got to be doing more than \$650,000 a year in sales if you're going to be successful at all. So we're not talking...you know, I think there's some thought that we're just talking about the megastores. We're talking, you know, somebody with maybe \$1 million, \$2 million, \$3 million in annual sales, which if you're going to employ anybody at all, you're going to be in that area. So LB74 does not completely solve, but it significantly addresses, this injustice by returning Nebraska sales tax collection allowance back to the way it was prior to 2002. The fiscal note on LB74 is about \$8.2 million. The fiscal note, if we interpolate LB186 up, would be about \$10 million, so it's still about \$1.5 million short of actually solving the problem. But it's certainly a major step in addressing the injustice. Also, I just want to point out that business development tax incentives, LB775, all those kinds of things, they understandably go to primary employers, employers that employ people making or producing a service in Nebraska and selling it all across the nation so you're bringing more money into Nebraska. Restaurants, retailers, the collectors of sales tax for the most part are considered secondary or spin-off employers. So none of those or very few of those, if any, tax incentives go to restaurants, retailers, or collectors of sales tax. We're not saying that's wrong, we do think it's kind of double whammy to not only not be qualified for any of those things, but actually penalize us the way that the present sales tax situation is set up. So with that, we urge you to move LB74 to General File. If I can answer any questions, I'd be glad to. [LB74]

SENATOR GLOOR: Thank you, Mr. Otto. Are there any questions? Senator Davis. [LB74]

SENATOR DAVIS: Thank you, Senator Scheer (sic). So, Mr. Otto, this is kind of intriguing and we've talked about this before a little, but I've got a couple questions. Has anyone ever thought about or is it possible for us to just pass a law that would require the banks to not...or the credit card issuers to not withhold this from you? [LB74]

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JIM OTTO: Yes. Senator Nordquist has introduced exactly that and there will be a hearing on that. However, it has significant opposition from the banking industry. I don't really understand it, but. [LB74]

SENATOR DAVIS: Doesn't that seem like a more fair approach? [LB74]

JIM OTTO: There are...it may be. I guess I don't know what's fair or unfair but... [LB74]

SENATOR DAVIS: Well, it's not...what's in place today isn't fair to you and I recognize that. You make a very good point. [LB74]

JIM OTTO: Yeah. If we could get either one, we'd be happy. However, implementing the legislation that Senator Nordquist introduced is much more complicated in that you'd have to reprogram every point-of-sale machine, you'd have to reprogram...I think in the testimony I would assume that the credit card banking industry will come in and say just how complicated that might be because each sale would have to be split out between what was actually the purchase price and what was actually the sales tax price then. I don't mean...I mean, I always say, we went to the moon in 1969, we can surely do that. But still, it's going to be complicated. [LB74]

SENATOR DAVIS: I guess I'd have a hard time seeing why it would be a complicated process, but I'm not a banker. And since Senator Scheer is here and he's on the Banking Committee and the Chair of that, I suppose he'll be dealing with that question. So then, you know, this committee is all about revenue and so we're going to have a loss of revenue here. And you made reference to this \$75 a month. [LB74]

JIM OTTO: Correct. [LB74]

SENATOR DAVIS: And so just can you explain that a little bit to us because I don't understand it. [LB74]

JIM OTTO: Well, it's 2.5 percent on the first \$3,000 of tax, which you're capped on and that comes to \$75 a month. That is the maximum you can receive presently no matter how much you collect; it's \$75 a month. [LB74]

SENATOR DAVIS: Okay. Thank you. [LB74]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Otto. [LB74]

JIM OTTO: Thank you. [LB74]

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SENATOR GLOOR: (Exhibits 2 and 3) Other proponents. While Kathy is coming up here, you will have in your file, members, a letter from Robert Andersen, with the Nebraska Cooperative Council, also in support of LB74. And I was just handed a letter to have entered into the record from the National Federation of Independent Business, also in support of LB74, signed by Mr. Robert Hallstrom. Although after Senator Davis' letter, if Senator (sic) Hallstrom happened to be watching this, he's likely to be back in here real fast. So he might be able to do it himself in the next couple of minutes. Welcome. [LB74]

KATHY SIEFKEN: Good afternoon, Chairman Gloor and members of the committee. My name is Kathy Siefken, S-i-e-f-k-e-n, and I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association, here today in support of LB74. It is Friday afternoon. I'll keep this short. Senator Schumacher gave a very good description of the history. There was a budget shortfall. Everyone had to pay. We were part of the group that had to pay. We were promised that we'd be given the money back when times got better. Times are better. We would hope that the promise that another legislative body gave us would come true in this session. And again, the things that Jim Otto shared with you, right down the line we agree with every bit of that, so we are here in support. If you have any questions, I'd be happy to try to answer. [LB74]

SENATOR GLOOR: Are there any questions for Ms. Siefken? Seeing none, thank you for your testimony. [LB74]

KATHY SIEFKEN: Thank you. [LB74]

SENATOR GLOOR: Other proponents? Anyone in opposition of this bill? Anyone who would like to testify in a neutral capacity? [LB74]

LARRY DIX: Good afternoon, Senator Gloor. My name is Larry Dix, spelled D-i-x, I'm executive director of Nebraska Association of County Officials appearing today in a neutral capacity. And when we dig into the fiscal note I think you'll see where our neutrality sort of comes from. I know most of the conversation we've had thus far are typically on retailers. But county treasurers collect a significant amount of sales tax and they collect it every month and it's on the sale of motor vehicles. And so when this happened in 2002 we sort of got caught up in that. And right now, regardless of how many people come to the counter--and we're agents of the state, collect that sales tax for the state--at the end of the month we're going to receive \$75 for collecting that. And what happens as you look out across the counties--and if I look in Senator Davis' district we've got a number of counties that are relatively small--and they're probably going to hit \$3,000; they're going to get \$75 for doing the work to collect the sales tax. And when I look to Senator Smith and I look at Sarpy County or Douglas County, they're going to get \$75 to collect that regardless how many people...because you're going to hit that \$3,000 threshold. So immediately our treasurers are concerned because of the fee that they're receiving for processing these registrations. One of the things that happens with sales tax though when it's collected on cars, now we start to impact the Highway Trust Fund. And once we get money into the Highway Trust Fund, then counties receive money out of the Highway Trust Fund. And so I would ask you to take a pretty good look at the fiscal note. And when we go through there you'll see in the middle of the page on the fiscal note there's a Highway Allocation Fund, Highway Allocation Fund to split half between cities, half between counties. So we lose money out of the

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Highway Allocation Fund under this bill, but we gain money under the collection fee on this bill. So when you look at a county and you try to balance this out what you really see is, we're going to lose money that will go into the Highway Trust Fund. So that money is dedicated towards roads. We're going to increase some money that comes into the fee side and that money goes into the county general fund. And so that money can be spent for whatever the county board elects to spend that. So once you look at the total overall state, we probably come out...totally across the state we may come out a little bit ahead on the collection fee under this bill. But then when you start to divide into counties, because once the money goes into the Highway Allocation Fund then it is distributed back out by yet another formula that is determined on number of road miles, number of agricultural products, there's seven or eight different components. Now within that now we may see some winners and some losers. So you can sort of see here's where the counties are. It's not that we're winners on both sides or we're losers on both sides, but it really is that balancing act that some of the money will, if this bill passes, will have an increase in our general fund money. We'll see a decrease in our road fund money. The absolute reverse happened in 2002. And at that point in time we...the opposite happened. And at that point in time, you know, I don't know what everybody really felt exactly as to if it was a shift or if anyone was concerned about it. At that point in time everybody was just worried about balancing the budget and finding some money, so I don't think we were quite so worried. And the state was looking at it from the point of view that there's a cost savings to the state. Then you also have to interject, since that time we've also had the State Highway Capital Improvement Fund in there, which that also slices off a little bit of money for the counties. So it becomes rather complex. And when I had met with the Fiscal Office I said, you know, we can go through the exercise if the committee wishes. I think we'll probably have to have some help, but we probably could see does Madison County win; does Hall County lose? Either way, by the time we get to that point it's going to be a small amount of money within any county. So it isn't really going to impact one way or another. It isn't that there's going to be Douglas County is going to be a huge winner or another county is going to be a huge loser, but there will be some of that going on. So for that reason our board said, at this point in time we're going to see what happens with the bill, but we're probably neutral because one way or another we're going to see some revenue side. On the city side--which I'm not here to speak for the cities--the cities, because they do share in that Allocation Fund, they would probably be losers in this scenario. So with that, I'm happy to try to answer any questions that you may have. [LB74]

SENATOR GLOOR: Questions for Mr. Dix? Senator Smith. [LB74]

SENATOR SMITH: Thank you, Mr. Chair. Mr. Dix, I wanted to kind of have an exchange with you because I think maybe there might be a little bit of misunderstanding as to what is actually taking place here. The example that Mr. Otto provided is just one example of a cost that a business owner has in collecting and remitting taxes. If a transaction takes place in cash or by check or EFT there still is an allowance even though there may not be the same type of processing fees there that you would have with credit cards. Most likely most retail establishments out there, I know in my business, I understand that there is a cost to credit card companies of processing that. Typically most retail establishments roll that into their cost of doing business and they probably increase their retail cost to cover that. So the example that Mr. Otto provided was just one example of where those costs to businesses are. Most businesses pass those along on to the consumer, those costs of collection. And the state makes an allowance of \$75 to cover the cost of preparing the tax returns and remitting those taxes. Most likely...and, again, I'm certainly an advocate for giving money back to businesses. But most of the time you

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may have the equivalent of one or two hours of processing time for the person in a business to gather that and remit it. The real cost to a business really is that credit card processing and most of the time that's passed on to the consumer. I guess that's more of a comment than anything. Do you have any comments on that? [LB74]

LARRY DIX: Well, and you know when the counties are collecting that we don't have really any product. They're not buying a product, they're buying the car. But that transaction and whatever profit margin there may or may not have been happens at the car dealer. [LB74]

SENATOR SMITH: But last time I went to the county to pay for an automobile fee, I don't think they take credit cards. I think they typically take cash or check. [LB74]

LARRY DIX: Typically they do, although you are seeing more and more starting to collect...take credit cards just because the reason of the way I think the world is somewhat doing business. So they may have a policy in Sarpy County. They do not? [LB74]

SENATOR SMITH: I wish they did. [LB74]

LARRY DIX: But in other counties they do allow credit card payment. [LB74]

SENATOR SMITH: Okay, thank you. [LB74]

LARRY DIX: Yep. [LB74]

SENATOR GLOOR: Other questions? Senator Scheer. [LB74]

SENATOR SCHEER: Just a follow-up on that, Larry. A number of the counties that I'm familiar with that do accept the credit cards also have a surcharge in accompaniment to that. So even though they are getting usually the reduction of whatever the card fee is, going back so that they are still made whole. So there may be counties out there that don't. But I'm aware that there's a multitude of counties out there that actually have a surcharge with the use of a credit card to cover those fees that you are speaking of. [LB74]

LARRY DIX: Yeah, they do. And I think if you go onto renew your registration on-line at the state's portal there's a convenience fee. And really that convenience fee is there because you really don't want to diminish the amount of tax,... [LB74]

SENATOR SCHEER: Yeah. [LB74]

LARRY DIX: ...you don't want to, you know, go through that process. And so that's why we have the convenience fee. The thing that when you see it in a retail store, at least I know when I go, I swipe my card and I walk out the door and at the end I get a little receipt that says, here's

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how much sales tax there is. When you go through the process in the treasurer's office it becomes a very manual process. There's a Form 6 that has to be filled out. And so we have a lot more staff time, I would tell you, in processing that because that Form 6 is going to come in. And if I go...and I go to Fremont and I buy a car and I know I'm going to register it in Lancaster County, the car dealership in Fremont is not going to calculate my tax in Lancaster County. So when I come back here, I come back with a Form 6. Now I go to the Form 6: Now I'm going to go up and I'm going to have a series of questions to determine where I am. You know, am I inside or outside the city limits? And then I go through and process it. So on our side, while I realize there's a retail issue on our side, it truly is a significant amount of a workload process that we deal with on sales tax as being agents for the state. [LB74]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Dix. Anyone else to speak in a neutral capacity? Senator Schumacher for closing. [LB74]

SENATOR SCHUMACHER: Thank you, Senator Gloor and members of the committee. Platte County I think is one of those counties that has a little extra sting if you use a credit card, so I think it probably is fairly common out there. I would think that if we look at putting a cap on the amount of the fee that could be gotten, a grand or two, something like that, that we probably will not see that fiscal note being quite as high. It'll probably be fair. Probably where it can be passed on to the consumer by big, big operations, passed on with ease, that can be factored into it. And we may be able to halfway live up to the promise that was made back in 2002 that what was taketh away would be given back. And so I think probably one of the questions that we need to look at--and Mr. Otto has suggested some numbers to me--are a cap of somewhere between a grand or two. So I would be happy to answer any questions. [LB74]

SENATOR GLOOR: Okay. Any other questions? Seeing none, thank you Senator Schumacher. And that ends the hearing on LB74 and that ends today's hearing agenda. [LB74]