

Transcript Prepared by Clerk of the Legislature Transcribers Office

Revenue Committee January 25, 2023

Rough Draft

**LINEHAN:** [RECORDER MALFUNCTION] public hearing. My name is Lou Ann Linehan. I'm from Elkhorn, Nebraska, and I represent Legislative District 39. I serve as Chair of this committee. The committee will take up the bills in the order that they are posted outside of the hearing room. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on proposed legislation before us today. We do ask that you limit or eliminate handouts. If you are unable to attend a public hearing and would like your position stated for the record, you may submit your position and any comments using the Legislature's website by 12 p.m. the day prior to the hearing. Letters emailed to a Senator or staff member will not be part of the permanent record. If you are unable to attend and testify at a public hearing due to a disability, you may use the Nebraska Legislature's website to submit written testimony in lieu of in-person testimony. To better facilitate today's proceedings, I ask you to follow, follow these procedures. Please turn off cell phones and other electronic devices. The order of testimony is introducer, proponents, opponents, neutral, and closing remarks. If you will be testifying, please complete the green form and hand it to the committee clerk when you come up to testify. If you have written materials that you would like to distribute to the committee, please then hand them to the page and I will introduce both the clerk and the page in a couple of minutes. We need 11 copies for all committee members and staff. If you need additional copies, please ask a page to make copies for you now. When you begin to testify, please state and spell your name for the record. So please, even if your name is a common name, please spell it, first and last name. When you begin to testify, please state and-- just read that. Please be concise. How many people are here to testify today? OK. We will use the light system. So the light system will be in front of you up here. You'll have four minutes on green, one minute on yellow, and then when it's red, I will ask you to wrap up. If there aren't many wishing to testify, we'll use-- never mind that. If your remarks were reflected in the previous testimony or if you would like your position to be known but do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. Please speak directly into the microphone so our transcribers are able to hear your testimony clearly. I would like to introduce committee staff. To my immediate right is Lyle Wheeler; to my immediate left-- I'm sorry, legal counsel Lyle Weaver [SIC]. And to my immediate left is research analyst Charles Hamilton. And to the-- at the end of the table on my left is committee clerk Tomas Weekly. They are all new.

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This is all their first hearing. So we're all going to get through this together. Now I would like-- and we have new committee members too, so I'd like the committee members to introduce themselves starting at my far right.

**KAUTH:** Kathleen Kauth, LD 31.

**MURMAN:** Senator Dave Murman, District 38. I represent eight counties, mostly along the southern tier in the middle part of the state.

**BOSTAR:** Eliot Bostar, District 29.

**von GILLERN:** Brad von Gillern, District 4.

**ALBRECHT:** Senator Joni Albrecht, District 17: Wayne, Thurston, Dakota, and a portion of Dixon.

**DUNGAN:** Senator George Dungan, LD 26, in northeast Lincoln.

**LINEHAN:** If our pages would please be so kind to stand up so people can see you. This afternoon, our pages are Amelia, who's at UNL studying political science and is a senior. And next to Amelia is Caitlyn, who is at UNL, political science, and a junior. Please remember that senators may come and go during our hearing as they may have bills to introduce in other committees. Please refrain from applause or other indications of support or opposition. For our audience, the microphones in the room are not for amplification, but for recording purposes only. Lastly, we use electronic devices to distribute information. Therefore, you may see committee members referencing information on their electronic devices. Be assured that your presence here today and your testimony are important to us and is a critical part of our state government. So with that, we will open on LB206. Is the-- sign needs to be turned this way for it to be on both sides. I'm not sure what's going on here. LB206. There's no TV camera. Is that the TV camera? OK, then I think it needs to be on the--

**ALBRECHT:** This way. Can you turn it this way?

**TOMAS WEEKLY:** Caitlyn put it--

**LINEHAN:** Where's the public cameras?

**TOMAS WEEKLY:** It's right there.

**BOSTAR:** It's the one behind us.

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**LINEHAN:** OK, it's the one-- OK, so I've wrong, turn it around. I should just be on both sides. I was wrong.

**von GILLERN:** Can't fix both sides.

**LINEHAN:** Turn it around the other way. OK, there we go.

**von GILLERN:** There we go.

**LINEHAN:** OK. All right. Welcome.

**von GILLERN:** Thank you.

**ALBRECHT:** Sorry.

**von GILLERN:** We got that all figured out now. Well, good afternoon, Chairwoman Linehan and the Revenue Committee. I'm Senator Brad von Gillern, B-r-a-d, v-o-n G-i-l-l-e-r-n. I represent District 4, which includes portions of west Omaha and Elkhorn. Today I'm introducing LB206. Nebraskans want a simple and fair tax code, and LB206 is intended to simplify a small portion of our existing tax code. LB206 would allow partnerships filing Nebraska partnership returns to choose to pay Nebraska income tax directly when an amended return is filed, rather than passing this tax liability through to its partners. Currently, entities that are taxed as partnerships for Nebraska income tax purposes are not subject to Nebraska income tax at the entity level. Rather, partnerships file a Nebraska partnership income tax return and items of income or loss are allocated to the partners in accordance with the requirements of the I-- of the Internal Revenue Code in the Nebraska Revenue Act of 1967. Specifically, income or losses for partnership are reported on Form 1065N, which is a Nebraska return of partnerships' income and schedule K-1N, partner share of income, deductions, and modifications and credits. Partners are then required to include their share of Nebraska partnership items in their own income tax returns. This process is already complicated, however, it is especially challenging in the context of an amended income tax return, federal or state for previous years. This requires forwarding amended schedule K-1Ns to partners. Partners are often reluctant to file their own amended returns because of the difficulties of doing so, as well as the amount of taxes involved, which are often minimal. In 2017, the federal partnership tax audit rules were modified. The new federal audit rules provide that if a partnership adjustment occurs, the default rule is that the partnership pays the deficiency rather than the partners. Numerous states have adopted rules similar

to the federal partnership audit rules, including Iowa, but Nebraska has not yet. LB206 would allow partnerships to pay the income tax on behalf of their partners to avoid this burdensome K-1N requirement. It's important to note that LB206 will not change anything if a partnership adjustment results in a tax refund for a partnership. LB206 will accomplish four things. First of all, the avoidance of multiple amended returns. If all partners continue to be required to file amended income tax returns, the Department of Revenue will continue processing hundreds, if not thousands, of additional tax returns, which come at a significant cost and generate no revenue. Secondly, no revenue loss and likely revenue increase. LB206 will allow partnerships to pay Nebraska tax on behalf of their partners, which would avoid any revenue loss to Nebraska due to partners failing to file amended returns. Thirdly, increased simplicity. Under LB206, the Nebraska Department of Revenue will process only one payment per partnership rather than multiple payments from each partner. And lastly, this brings us consistent with federal rules. In a similar manner to the federal partnership audit rules, LB206 would provide the partnership with the option to pay tax on behalf of its partners. Unlike the federal partnership audit rules, a partnership would not be required to do so, which would generally be considered more taxpayer friendly. I ask for your support of LB206. I'm willing to answer any questions you may have, and there are several proponents to follow. Thank you.

**LINEHAN:** Thank you, Senator von Gillern. Are there questions from the committee? So I just-- not-- just for your closing, a heads up. So the fiscal note says something that I think that you could probably push back on from what you just said.

**von GILLERN:** Yes, I'd like to.

**LINEHAN:** OK. You want to do that right now or you want to do it at closing?

**von GILLERN:** I'd be happy to. I unfortunately did not have time to reach out and get any further clarity on the fiscal note. However, the fiscal note claims that there is an increase in cost to the State Department of Revenue, which, which I believe, unfortunately, is a misunderstanding on their part of the intent of what we're doing. We're actually reducing the amount of paperwork that would flow through that office substantially. So I believe it'd actually be a cost decrease to the Department of Revenue, not a cost increase.

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**LINEHAN:** Because your estimate was how, how fewer forms would be--

**von GILLERN:** Don't have an actual number. It would depend on how many partnerships are impacted in a given year. It could be hundreds, could be thousands of additional returns that flow through with zero additional tax revenue being brought into the state.

**LINEHAN:** All right. Thank you very much.

**von GILLERN:** You're welcome.

**LINEHAN:** Other questions? OK. Thank you.

**von GILLERN:** Thank you.

**LINEHAN:** Are there proponents for LB206? Hop right up. Go ahead. Thank you.

**JESSE SITZ:** Chairperson Linehan and members of the Revenue Committee, my name is Jesse Sitz, spelled J-e-s-s-e, last name S-i-t-z. I'm a partner of Baird Holm Law Firm and I practice in the area of tax law. I'm here in my personal capacity as a tax practitioner and on behalf of KAAPA Ethanol Holdings, LLC, to testify in support of LB206. As, as Senator stated, the bill provides an election that partnerships can make to pay Nebraska income tax directly under certain limited circumstances. I'm sure the committee is aware of the complexity of income taxation of partnerships. As you know, entities taxes partnerships and these can be LLCs, they can be limited partnerships or general partnerships, generally, do not pay income tax at the entity level. Rather, the partnerships pass through income and loss from partnership activities to the partners. The partners then generally include those tax items on their own tax returns. In the past, when an adjustment to a partnership's federal return occurred, that adjustment passed out to the partners for both federal and state income tax purposes. Starting in 2018, however, the federal flow-through mechanism was altered by congressional legislation known as the new partnership audit rules. The new federal audit rules are complex, but they generally improve-- impose income tax arising from an audit of the partnership, on the partnership itself and on the partners. There are several elections available to avoid this result and to pass the tax out to the partners which are beyond the scope of my testimony. While the new partnership audit rules are federal law, state partnership income tax returns are affected. One way that state returns are affected is that most states require that if a federal

adjustment is made, a new state return or more likely many state returns for the, the audited years may also need to be filed by the taxpayer partnership. As a practical matter, the tax impact to the partners of a partnership are often quite small, but the strict letter of the law, including here in Nebraska, requires partners to amend and refile their own returns if a federal return is amended for any reason, which obviously results in transaction costs for CPAs for those particular partners. Some partnerships have a large number of partners. For example, KAPPA has 500 partners, and the burden of refiling amended state income tax returns becomes significant, especially for partners that are themselves are flow-through entities and then have to send, as Senator von Gillern mentioned, K-1s ones out to their own members or partners. LB206 establishes a mechanism to simplify the lives of both taxpayers and the state by allowing a partnership the option of filing an amended Nebraska income tax return and of paying the tax on behalf of its partners rather than issuing K-1Ns to each individual partner. The partnership would pay tax on the Nebraska income tax that would normally be allocated out to the partners at the highest individual rate. LB206 provides no savings of income tax to the partnerships or their partners and, in fact, likely raises revenue. Rather, the bill seeks only to simplify the compliance burden on partnerships and partners having Nebraska income by allowing the partnership to pay if an amended federal return results in an upward adjustment. I would like to thank Senator von Gillern for introducing this bill. LB206 would provide a bit of simplicity to a complex area, and I would respectfully ask the committee to consider advancing the bill to the floor. Thank you for your time, and I'm happy to answer any questions you might have.

**LINEHAN:** Thank you, Mr. Sitz. Are there questions from the committee? Seeing none, thank you very much--

**JESSE SITZ:** Thank you.

**LINEHAN:** --for being here. Are there other proponents? Good afternoon.

**JIM STEWART:** Good afternoon. Feel kind of short here. Good afternoon, Chairman Linehan and members of the Revenue Committee. My name is Jim Stewart, J-i-m S-t-e-w-a-r-t. I'm a farmer. And I also work with Nebraska Farm Business, which we're an accounting firm that primarily works with farmers. My job there is I do income tax preparation and planning with farmers in the state. And I too am in support of this. And I'm here representing Nebraska Farm Bureau, Nebraska Corn Growers, Nebraska Soybean Association. And most everything's already been

stated. It's-- it makes things a lot simpler because like especially with the people I have, it won't affect us very much. We've only got four or five members in the partnership, so it's not a big deal. But when you get into the larger partnerships, they're going to send out a-- they might have to send out, like he said, 500 K-1s. And that's 500 amended returns and they bring the amended K-1N in to me and I say, OK, it's going to cost you 200 bucks to file this return. And they say, what will I owe? Well, maybe \$20. It doesn't make a lot of sense. And so I just tell them I need the paperwork and they're going to go home to get it and I'll never see it. So it would increase revenue for the state because, number one, it's taxed at the highest rate and maybe not all the partners would pay at that rate. And number two, you're going to get those taxes on every dollar owed where before it's hard to telling them how many because it's just such an insignificant number. The state will never go after it. And these people don't want to pay me a lot of money to do a little return. It just, I don't know, makes common sense to me. And that's-- I would like to thank you and thank Senator von Gillern for introducing it, and if you have any questions.

**LINEHAN:** Thank you. Thank you. Are there any questions? Seeing none, thank you very much for being here.

**JIM STEWART:** Thank you.

**LINEHAN:** Are there other proponents? Good afternoon.

**DAWN CALDWELL:** Good afternoon, Chairwoman Linehan and committee members. My name is Dawn Caldwell, D-a-w-n C-a-l-d-w-e-l-l, and I serve as the executive director of Renewable Fuels Nebraska. I'm here to testify in support of LB206 on behalf of RFN membership. And just because, Senator, I said it every time last year, we still remain second to Iowa in ethanol production. So that was, that was our ongoing statement in this committee. LB206 is a small step forward for tax simplification for the state of Nebraska. But for partnerships and their partners, it's a big deal to simplify adjustments to prior year's returns. Under current Nebraska law, all members of a partnership are required to file separate amended tax returns. This isn't the case when partnerships file an amended federal return or when they file an amended state return in more than 20 other states. Nebraska places an unnecessary burden on the partnerships and its partners. LB206 allows partnerships filing Nebraska partnership tax returns to make an election to pay Nebraska income tax directly when an amended return is filed rather than passing through the tax

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liability to its partners. There are several ethanol plants in Nebraska that operate as partnerships that would certainly benefit should LB206 become law. Easing regulatory burdens such as this amended return burden for partnerships would definitely help the ethanol industry to continue to prosper in our state. Thank you.

**LINEHAN:** Thank you very much, Ms. Caldwell. Are there questions from the committee? Seeing none,--

**DAWN CALDWELL:** Thank you.

**LINEHAN:** --thank you very much.

**KORBY GILBERTSON:** Good afternoon, Chairwoman Linehan.

**LINEHAN:** Good afternoon.

**KORBY GILBERTSON:** Well, this is a low chair.

**LINEHAN:** I don't know. My feels right today.

**KORBY GILBERTSON:** Feel like I'm [INAUDIBLE]. Anyway, sorry about that. My name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as registered lobbyist on behalf of the Nebraska Society of CPAs in support of LB206. Since you asked us to be concise, I will not tell you everything that everyone else has already said. Our main statement is that this should actually make the process easier. I scratched my head when I saw the fiscal note because it should actually save them money, so hopefully they can revisit that. But we would hope that you can advance this to the floor. I think Senator von Gillern's got his first consent calendar bill, if it can't just fly through without that, so. I would take any questions if you have them.

**LINEHAN:** Thank you. Are there any questions from the committee? Seeing none, thank you very much.

**KORBY GILBERTSON:** Thank you.

**LINEHAN:** Good afternoon.

**CRAIG BECK:** Good afternoon, Chairwoman Linehan, members of the Revenue Committee. My name is Craig Beck. That's C-r-a-i-g B-e-c-k, and I am the senior fiscal policy analyst with OpenSky Policy Institute. And we are here today to testify in support of LB206 and want to thank



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Senator von Gillern for bringing this bill. It is a fairly technical proposal and I simply want to offer some model legislation that has been drafted for the states as they tackle this issue. The language which we have provided to Senator von Gillern, as-- and which I have handed out to the committee, is from the Multistate Tax Commission, which is an intergovernmental state tax agency working to facilitate the equitable and efficient administration of state tax laws that apply to multistate and multinational enterprises. Nebraska is a member of the Multistate Tax Commission, and so we thought it would be prudent to bring forward the model legislation the Commission itself has put forth. The language that I have given is robust and was developed after a lengthy process and so the committee may wish to review what is drafted in LB206 as compared to the Commission's language to see if there are ways that the bill can be improved upon as, again, this is a very technical issue. Thank you and I'm happy to answer any questions.

**LINEHAN:** Thank you. Are there questions from the committee? You are testifying in support, though, right?

**CRAIG BECK:** Correct. Yes.

**LINEHAN:** OK. Thank you. Seeing no question-- yes.

**DUNGAN:** Quick question for you. Thank you. How many other states, to the best of your knowledge, have adopted this model legislation?

**CRAIG BECK:** Sure. Thank you, Senator Dungan. It is my understanding that 18 states have adopted this provision, so.

**DUNGAN:** Thank you.

**LINEHAN:** Thank you. Thank you, Senator Dungan. Any other questions? Thank you for being here.

**CRAIG BECK:** Thank you.

**LINEHAN:** Other proponents? I know it's short today, we'll work on that.

**JOHN CEDERBERG:** And I'm, and I'm a somewhat tall person. That's, that's what surprised me.

**LINEHAN:** It wasn't on purpose.

**JOHN CEDERBERG:** Good afternoon. I am John Cederberg, J-o-h-n C-e-d-e-r-b-e-r-g. I'm a self-employed accountant here in Lincoln, and I'm here on behalf of myself. I am a member of several business organizations, but I am not representing any of them. The hearing is actually before they were able to have their policy groups. And so that's why if they don't show up to testify, it's because we're in front of their policy groups. I am here to offer my strong support for this. I'm not going to repeat the benefits that you've already heard. I will add one more about it being very timely. We have not seen a lot of partnership examinations historically. The service has been more interested in corporations and individuals. But this is a new focus of the service. They are devoting more resources to examination of returns every year. And so we should be expecting this issue to come up a lot more and to involve a lot more complex adjustments. And LB206 would actually sidestep a lot of potential complications if we have to go collect the money from each and every resident and on as a partner. So I think that that-- the fact that it's a new focus of the IRS makes this very timely. I handed out a statement and there's two suggested very technical amendments, have nothing to do with my support of the bill, but both of them address silent areas in, in the green copy, issues that weren't addressed and not surprisingly. One is the probability that in the private sector in particular, not the big energy partnerships, but in the private sector, it's very likely that the examination of the partnership return will be coupled with the examination of an individual partner or perhaps more. So we will have the situation where the individual partner and the partnership both have adjustments and would file amended returns. And the bill is silent as to what happens at the individual level because under our law the individual partner would have to include the adjustments, the income adjustments in the individual amended return with their other adjustments. But we don't really address what happens to the entities payment. And my amendment is really identical to the provision we already have for the entity to make the payment of tax on behalf of nonresident LLC members or nonresident S corporation members. It, it would carry that provision over and make clear that a-- that if the partner files an amended return, the partner then would have a credit for the tax paid on his behalf by the entity. The other is I only bring up because as a matter of history, which we've never been able to correct, we treat limited liability companies that are taxed as partnerships separately in the Nebraska statute from partnerships. They, they are named differently in one respect. And since there is a difference between how we apportion multistate income between limited liability companies and partnerships, I believe we should make clear

that the limited liability companies that are otherwise taxed as partnerships at the federal level are eligible to make this selection. And that's what my second-- or second amendment would do. And then the third is just an observation that somewhere along the line this is also an issue with S corporation shareholders and in another bill somewhere, because that's a whole different set of provisions, in another bill somewhere we probably should address the same issue for S corporations separately. With that, I'd be happy to answer any questions. I have some history with entity payments, composite payments because I helped with the original provisions for S corporations and LLCs that is in the statute now.

**LINEHAN:** Thank you very much, Mr. Cederberg. Are there questions from the committee? Seeing none-- you'd be happy to work with Senator von Gillern on any--

**JOHN CEDERBERG:** Oh, I mean, any of-- any member of the committee is certainly welcome to reach out to me. You have my phone number and my email on the, on the statement, and you're welcome to reach out and ask questions, ask for wording, whatever.

**LINEHAN:** Thank you very much for being here. Appreciate it.

**JOHN CEDERBERG:** Sure.

**LINEHAN:** Are there other proponents? Other proponents? Are there any opponents? Is there anyone wanting to testify in a neutral position? Senator von Gillern, I couldn't see you, I didn't know you were over there. I said where'd he go? Would you like to close, please.

**von GILLERN:** I'm going to fix this chair when I'm done.

**LINEHAN:** OK, that'd be nice. Then you can come to the Education Committee and fix those.

**von GILLERN:** There you go. Yeah, yeah. Emphasis on trades. Yeah, just a very brief closing. Thanks for all the proponents who spoke today. Just a couple of quick notes. There was an email testimony sent in from a, a-- an interest group, the Multistate, or excuse me, the Council on State Taxation, which has cost that proposed some changes. And then obviously Mr. Cederberg's proposed changes, all of which will be considered. However, I think both of those are expanding this bill beyond its original intent. I certainly agree that there is an expansion that's likely coming and that would be very appropriate. But we'll have to have some conversation about how many, how many of those

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things we can adopt into, to this legislation at this time and still reasonably maintained the goal of the original LB206. That's my first comment. Secondly, there certainly is, and as has been testified, to be a reduction of a burden that currently exists on different businesses. I think it's, it's fascinating when the accountants testify that they're in favor of giving up some work. But thank you. It saves-- it increases some efficiencies. And as has been testified, certainly does not impact the state in a negative way and very, very likely in a positive way. So that's my closing. Any questions?

**LINEHAN:** Thank you. Are there questions for Senator von Gillern? Seeing none, that brings the hearing on LB206 to close, to close. Did we have-- I'm sorry, letters for the record? Do we have any letters for the record? That's OK. Wait a minute, proponents. Wait a minute. Come here. This is a different bill. OK, so we didn't have any letters? OK. OK. All right. So then we will open the hearing on LB28. Senator Erdman, welcome.

**ERDMAN:** Thank you. Wow, this baby is low. [LAUGHTER] Can you see me?

**LINEHAN:** Yes, we can still see you.

\_\_\_\_\_ : Do you need a phone book?

**ERDMAN:** Do I remind you of Senator Halloran? OK. I'm Steve Erdman. I represent District 47, nine counties in the Panhandle. And you spell that S-t-e-v-e E-r-d--

**LINEHAN:** Can you grab-- excuse me, sir, can you grab the door, pull it shut? Yeah, he's got it. OK. Can you start over, please?

**ERDMAN:** Let me start over.

**LINEHAN:** That's OK.

**ERDMAN:** Do I look like Halloran? Oh, you don't want me to start there?

**LINEHAN:** Not that far.

**ERDMAN:** I'll start with my name.

**LINEHAN:** Not that far.

**ERDMAN:** Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent 40-- the 47th District, nine counties in the Panhandle, and I can name those, but I

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won't. OK. So today I'm going to bring you a commonsense bill, is basically is a friendly amendment to the taxpayer. Because under our current system, when you disagree with the valuation you've been given by your county assessor and the Board of Equalization, then your opportunity to appeal that goes to TERC, Tax Equalization Review Committee [SIC]. So what this bill does is very simple, and I have known people who paid the wrong taxes for up to three years as much as \$100,000, and it's because you are required to pay the taxes on the new valuation before you have a hearing with TERC and then make a decision whether you're paying the right taxes or not. So what this bill does, it says that you file with TERC by the deadline, September 15, and they have not had a hearing and made a decision on your valuation. The valuation will remain the same until they do have a hearing and set your correct valuation. It's very simple, straightforward. And as I sit here, I could give you the testimony of those who are going to be opposed to this, but I want them to tell you. But this is an opportunity for us to give the taxpayer a right to pay the right taxes, and they won't have to be penalized because what happened to the gentleman who paid \$100,000 too much, he did that for three years and it took him up to five years. They had up to five years of paying back with no interest. We have since changed that and they have to pay 9 percent. And I think one of our esteemed colleagues here today has a bill to go to 14 percent, which I would cosign. So that is the-- that's the crux of what we're trying to do here and you will hear testimony how it's going to screw up all of their budgets and the sky is going to fall and the world is going to come to an end and we'll have no more roads. And all this is going to happen because we're going to take into consideration the people who pay the taxes and those who collect and spend the taxes. And so I'll let you talk about-- talk to those people and ask those questions. But I want to call your attention to a couple of things. One is the fiscal note. And in the fiscal note, you'll notice a very important section or a comment that I want you to see at the very bottom of the fiscal note, it said there would be potential for revenue loss to political subdivisions that levy property tax if values are reset to the previous year's assessed value. However, however, frequently this would occur-- if this would occur it is expected to be minimal to the political subdivisions. So they sent this to TERC, TERC said there's no financial consequences for them. And then those bottom-- that bottom statement there are those local units of government who collect taxes. So I want to talk to you a bit about what has happened to people that have filed with TERC. And I want to say this: I've been to several TERC hearings, probably eight to ten. The TERC Commission is

very, very generous with people making presentations. They do a thorough job of trying to get the information. I have no problem with how they handle those hearings. They do an outstanding job and they're very cordial to people and they respect their time and they listen to all the information they have. That's not the problem. The problem is TERC has way too many appeals for them to handle in a timely manner. So I think it's important that we have an opportunity to pay the same amount until your, until your hearing has been had. Some people go three years without getting a hearing. Now I'm not-- that's not a reflection on TERC, it's a reflection on the work that they have to do. And so when we look at that and we see the fiscal note and you will hear people from the county will tell you that it's going to be the end of the world and they can't adjust their budget and it's going to be a significant draw on them. And I will explain that after they have. But this is what we're trying to do, we're trying to get the people to make a decision in a timely manner so when you pay your next tax statement you know it's correct. And so as we go through this process, I want you understand that this is not the solution. OK? Because if I had the solution, it would be different than this. What this is, is to force to have a conversation about what the solution is so they can catch up and make decisions on a time-- in a timely manner, whether it's, whether it's more TERC members on the committee or the elimination of TERC altogether. So those are the discussions that we need to have. But I brought this for discussion going forward. But until we do that, until we make that final decision on what fixes it, let's give the people a break. Let's let them pay the valuation that they had before. Because when I originally turned this in, when I originally did this, I said that it would go back to the request of the taxpayer. So if the taxpayer filed a protest and put zero, then their valuation would be zero. So that's, that's not what I intend to do here. I just ask it to be, ask it to be the same as it was. So that is what I'll give you for now and I will close later.

**LINEHAN:** Thank you, Senator Erdman. Are there questions? Senator Albrecht.

**ALBRECHT:** Thank you, Chair Linehan. And thanks for bringing this back up, because it is something we hear about often in this committee. So you're saying that to go to TERC, they would have had to pay the most current taxes before they could be heard on maybe what's happened three years ago.

**ERDMAN:** Right. That's correct. Senator Albrecht, several years ago, I was working with a gentleman who had purchased a nursing home in

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Chappell. And, and as I began to work with him, he filed a protest for his '18 taxes but didn't file for '19. And so you got to continue to file every year because they heard his '18 tax proposal and they did give him some relief, but he didn't file for '19, so he didn't get any for '19. So what happens, they send you a new valuation of what you may have gotten and you've seen your property only went up like 26 percent. OK. You're going to pay the taxes based on the new valuation until you have a TERC hearing if you protest. That could be two years from now. So you're going to pay on that 26 percent increase in valuation until they make a decision. And if they find that you are over-- overvalued, then they'll reduce that. Then they give you a reimbursement. So I think you just keep your money, and then when TERC makes a decision, whatever that value is, then you pay your taxes.

**ALBRECHT:** And the other thing I think is important to know is how backed up are they right now?

**ERDMAN:** That'll be a question for Commissioner Hotz.

**ALBRECHT:** OK, good, because I'd like to know that because I feel like TERC is one of the toughest jobs in the state. Because you have-- I mean, they had a wave of businesses, then they'll have a wave of ag people, then they'll have the urban folks. It's, it's a tough situation.

**ERDMAN:** Correct.

**ALBRECHT:** So I'm all ears on [INAUDIBLE].

**ERDMAN:** Right, and I, and I don't want to-- I'm not coming here talking discouragingly about TERC.

**ALBRECHT:** No.

**ERDMAN:** OK.

**ALBRECHT:** It's a tough job.

**ERDMAN:** Because the hearings that I've attended, I appreciated the due diligence that they did and the courtesy they showed the taxpayer. They did a fine job with that. I'm not, I'm not complaining about that.

**ALBRECHT:** Thank you.

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**LINEHAN:** Thank you, Senator Albrecht. Senator von Gillern.

**von GILLERN:** Senator Erdman, you mentioned that there's a, there's a provision for the state to pay interest on taxes that were over collected if they have to refund them. Is there a counter provision for interest on taxes, for interest on taxes that would be paid in arrears in this case should an adjustment occur?

**ERDMAN:** I, I don't have that in the bill. That would, that would be up to the, to the-- I, I think we have to figure out what that is.

**von GILLERN:** OK.

**ERDMAN:** But so you're saying so if I, if I paid the current valuation, I found out it was 20 percent higher so at the end of two years or three, whenever TERC came,--

**von GILLERN:** Yes.

**ERDMAN:** --then I would pay the taxes.

**von GILLERN:** Yes.

**ERDMAN:** My impression would be just pay the taxes.

**von GILLERN:** OK.

**ERDMAN:** We'll have to see how it goes.

**von GILLERN:** Thank you.

**LINEHAN:** Thank you, Senator von Gillern. Senator Bostar.

**BOSTAR:** Thank you, Chair Linehan. Thank you, Senator Erdman. I, I mean, I, I agree with everything you've said. What I am interested in is do you have any concerns about individuals filing the appeal in bad faith? So essentially, you know, they wouldn't have opposed normally because they, they probably realized that their challenge wouldn't succeed. But in order to just continue to pay a little bit less every year, do you think we might run into a problem where people are just-- we're going to see a spike in the people filing objections to their taxes? And also, if that happens, would that exacerbate the problem that TERC is currently facing?

**ERDMAN:** That's a great question, Senator Bostar, I appreciate it. Here's my intention. As I said in the opening, this is not the



solution. So if that happens, if that does happen and people file fraudulent, you know, knowing we're going to get the same value, that would force us to make a decision to fix this. And that is the reason for bringing this bill. We need to make a, a decision on how to fix TERC so we don't have to do this. It's ridiculous what we do because we've assigned 3 people to do what 93 different courts used to do. Each court and each county used to make this decision. So we boiled this all down from 93 to 3 people. And this was a agency or a program set up by a senator that had this position that I had before. And then he either resigned or was termed out and took the position of the director of TERC. So I'm not so sure that it was well thought out what they did. I'm not so sure everybody-- anybody asked the judicial system if they were overburdened by property tax relief or property tax hearings. And so I think that's an opportunity for us to really come down and zero in on what the solution is.

**BOSTAR:** I recall you brought legislation before to expand the size of TERC. But I don't recall the disposition of that legislation. Do you-- where did that end up?

**ERDMAN:** I don't remember where that ended up.

**BOSTAR:** Thank you.

**LINEHAN:** Thank you, Senator Bostar. Other questions from the committee? Senator Dungan.

**DUNGAN:** Thank you, Chair Linehan. I'm genuinely curious when somebody files these appeals, so the property evaluation has been made, they file this appeal to TERC. Do you know the frequency or can you estimate how often a determina-- a determination is made that that was an incorrect valuation? Is it often that it's reverted back to a lower number, or is-- I'm trying to figure out how frequently that happens--

**ERDMAN:** I know--

**DUNGAN:** --[INAUDIBLE].

**ERDMAN:** Thank you for the question. I think Commissioner Hotz will be able to answer that. As I said earlier, they're very, very diligent in trying to do the right thing. And the gentleman that I helped in the case of the nursing home, he got a reduction. And so I, I think they're very, very, very conscious of what goes on there and try to make the best decision. So I'm not disputing, I'm not disputing their

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decision process. I'm not disputing the decisions they make. What I'm just saying is the timeliness of it is a problem.

**DUNGAN:** Thank you.

**LINEHAN:** Thank you, Senator Dungan. Other questions from the committee? You will stay to close?

**ERDMAN:** I will.

**LINEHAN:** OK, thank you.

**ERDMAN:** Thank you.

**LINEHAN:** Are there proponents?

**ALBRECHT:** He thinks you tried to adjust the chair.

**LINEHAN:** I know, I tried yesterday, I don't know how to do it. Good afternoon. OK. I don't know if there's a better chair.

**DOUG KAGAN:** I need a higher chair or a lower table. Feel like I'm in kindergarten. Good afternoon. Doug Kagan, D-o-u-g K-a-g-a-n, Omaha, speaking on behalf of Nebraska Taxpayers for Freedom. The title page on a TERC website presents itself as, quote, a constitutional body created to provide a simpler, less expensive avenue of appeal for property owners to challenge the assessment of property in Nebraska. Actually, this bureaucracy causes more complex, more frustrating means to appeal. TERC rules require, under its equalization duties, to hear and take action on petitions filed by County Board of Equalization on or before an August date. Soon after, such boards request a hearing. On or before that August date, the TERC must return its order on the petition to the county assessor or clerk. These are both very quick, specific deadlines. Individuals appealing to the TERC must meet short, must meet short deadlines also. Examining another short deadline within seven days of issuing a decision on a taxpayer protest, the TERC must publish such decision on its website that is accessible to the public. However, nowhere on the TERC website could we find a specific date by which an appeal decision must reach, must reach a property owner. The root cause, apparently, is that most TERC appeals are heard in the calendar year after filing. The Commission reviews evidence following the hearing and issues a written decision much later, a copy of that decision mailed to a taxpayer. In many cases, a final decision not reach-- reached until sometimes all the taxes levied on the property paid. In such case, the county treasurer

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refunds the difference between taxes originally paid in taxes on the lower value determined upon appeal. Lost my place.

**LINEHAN:** Middle of the third paragraph.

**DOUG KAGAN:** Oh, here we go. Don't get trifocals. Meanwhile, these dollars could have been earning interest in a property owners bank account. However, in some cases the TERC reaches a decision on the record the day of the hearing but no notice to taxpayer immediately forthcoming. Subsequently, if one wants to dispute the still higher valuation on a house the year after filing an appeal for the previous year, a taxpayer must go through the whole process again by filing another protest with the County Board of Equalization and worry about another higher valuation levy. According-- and we also looked at the Fiscal Office estimate. They said there would be no potential loss to the, the subdivision. So we believe that LB28 is a necessary solution to a continually aggravating problem. Thank you.

**LINEHAN:** Thank you. Are there any questions from the committee? Thank you very much for being here.

**DOUG KAGAN:** OK.

**LINEHAN:** Let's-- can we just switch out one of the regular chairs for that chair?

**ALBRECHT:** This one here?

**LINEHAN:** Or just one of the-- I don't know. We went through this yesterday. I think it's a housekeeping thing maybe. We need to get the people who know. I don't know if this is going to be better or worse. Well, at least it's not--

**DUNGAN:** It won't move, right?

**LINEHAN:** It won't move. Yeah. OK. Next proponent. Have other proponents? OK. Do we have opponents? Good afternoon.

**JON CANNON:** Good afternoon, Chairwoman Linehan, distinguished members of the Revenue Committee. The only committee I refer to as distinguished. Good afternoon, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, you've also heard us referred to as NACO, here in opposition to Senator Erdman's well-considered and well-intentioned LB28. I've known Senator Erdman for a long, long time since at least

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2007. I was an attorney at the Department of Revenue in the property assessment division. Senator Erdman was a recently elected county commissioner in Morrill County. We had a few issues that, that we were able to resolve between the two of us. We've had a lot of conversations about tax policy. I know that he's very concerned about making sure that the taxpayer is well taken care of. And I, I don't have any dispute with that. However, our opposition is because of how this process works. So I'm just going to go through briefly the timeline that we have here. So counties here protest through July 25, or in the big three counties, they can extend that through August 10. Values are certified political subdivisions on August 20. Budgets are filed with the State Auditor by September 30, taxes are due on December 31, and your first half taxes are delinquent on either April 1 or in May 1. Yeah, April 1 in the big 3 counties, May 1 in the remaining 90. So that's what, what we're doing. And when those budgets are finalized and certified and filed with the State Auditor, those-- that's what we're levying against. We are levying against the whole amount of values that have been certified by the Auditor. OK? And so any time that you have an appeal, the counties are certainly from our perspective, we're-- we understand what's going on. We understand that if there's a huge appeal, this is something that might-- may end up being in a refund. And I, I think most county commissioners act appropriately. I know certainly Senator Erdman did in his day when he was in Morrill County. But if you were to do something where on April 1 or May 1, we're going to magically reset your value back to the value that it had been in the prior year, that is going to create a hole in the budget. There's, there's no ifs, ands, or buts. It creates a hole in the budget. It's going to lead to some perverse incentives. I think, Senator Bostar, that you had touched on that a little bit. And frankly, if I'm a person that's got an appeal before TERC, I have every incentive in the world to file a continuance if we're getting close to that April 1 or May 1 deadline. The problem is having the budget timeline dependent upon something that is completely out of our control. Imagine, if you will, that the state of Nebraska was not able to secure funding to finish the runway at Offutt Air Force Base until the federal government had exhausted all their administrative appeals to the IRS. That ain't going to work. That's simply not how it's-- how it happens. And again, because of the fact that we are, we are cash funded, I mean, it's cash in, cash out at the county level. That's something that would just be untenable. And I agree with Senator Erdman that this is not the solution and there are better solutions and, and certainly happy to work with him on those. And frankly, I think he's already touched on something that we agree with. You know,

we need to fund TERC more adequately. I've worked with TERC for a long, long time. They are a bunch of good people. They are very diligent in their work. They provide great value to the taxpayer. They provide great value to the political subdivisions that are before them. They're respectful. They're courteous and they're diligent. Their process is deliberate, and it's designed to give the taxpayer their day in court. I will note we used to have four commissioners on TERC. We had three, one from each congressional district, and then we had an at-large commissioner. And as far as the efficacy of that was concerned, in my time observing TERC, it seemed that they did-- were able to do their jobs a lot better. And frankly, we went from four commissioners to three right around the same time we allowed them to have single panel-- single commissioner hearings. And so it would have been interesting to see how that might have worked out with their caseload had we been able to have four commissioners and each having a single commissioner hearing. The thing that is problematic is that what would happen for counties and other political subdivisions with their budgets, it's going to be dependent upon other factors across the state. And so if I'm out in Perkins County or I'm in Red Willow or I'm in Deuel County, smaller counties with small budgets and frankly can't really absorb as easily as you might expect, those sorts of fluctuations or swings in their budget. And I know that I'm going to have my decision on an ethanol plant or a large commercial taxpayer delayed because 5,000 appeals have been filed out of Douglas or Lancaster County. And as a Lancaster County resident with recent 20 percent increase, who knows how many we're going to get? But that would certainly be problematic from a government standpoint. And again, I'll refer you back to the example, if we had to wait to fund the reconstruction of, of the airway at Offutt based on the federal government exhausting all their administrative appeals is simply not going to work. We've talked about in the past, people brought up the idea of having a tax court, something that involves the judiciary. We used to have tax appeals heard at, at the district court level. That's certainly an option as well. Whatever we end up doing, however, NACO will gladly participate in that study. We have a lot of information. I'm out of time.

**LINEHAN:** Thank you very much. Are there questions for Mr. Cannon?  
Mr.-- Senator Bostar.

**BOSTAR:** Thank you, Chair Linehan. Thank you, Mr. Cannon. So I, I understand the challenge that a county might face with budgeting per its full assessment, and then, and then maybe receiving less because of an appeal is filed, and that could leave a hole in the budget. But

if an individual feels that the, you know, their property valuation is completely egregious and then they have to pay on that while they wait years to find a resolution, I mean, that puts a significant hole in their budget as a, as an individual, as a family. So I think what I'd be interested in understanding is why should we imagine that it's harder for a county level government to accommodate a budget fluctuation than it would be for an individual family?

**JON CANNON:** Well, first, first, Senator, I would, I would amend that by saying it's not just the county level of government. It's every political subdivision that the county is charged with distributing--

**BOSTAR:** Sure.

**JON CANNON:** --their property taxes to.

**BOSTAR:** So my question applies to all of them.

**JON CANNON:** Sure. So if you're-- let's say you're out in Perkins County and you've got that ethanol plant that's out there and you've got that-- you're that rural fire district where, you know, X percent of your budget is from the taxes that were paid by that ethanol plant and those taxes are held in advance. [INAUDIBLE] there aren't any fires out, out in Perkins County because that's going to be problematic for them. They're going to have a hard time with man material and all that sort of thing. The other, the other answer I would provide, Senator, is that when we look at the process that we have, we have a process that goes from January 1 when values are, are determined or the valuation date and it goes-- really runs all the way to September 1 to the following year. And it's this process that's designed to give as much due process to the taxpayer as possible. You know, you have your opportunity to protest your valuation. You have your opportunity to, to protest the exemptions that there are out there. You have your opportunity to go-- to appear before the county board and every other political subdivisions' board and talk about the budget. Those are very real things and very real opportunities that people have to express their dissatisfaction with any of the things that go on in the process. And the way that we have set up the political subdivisions in our state is we have said-- and some of them we've said we're going to be cash funded by the Legislature. I mean, I think there's talk about bringing even more political subdivisions under the purview of the Legislature's appropriations process. But what we've said to the local political subdivisions is we, we have said you're almost entirely dependent upon raising the necessary

revenue for running county government or the schools or the cities from the tax base in your locality. And to the extent that that's what we've said, that is the-- and, oh, by the way, we, we didn't just say raise whatever money you want. We said raise the money that you need to do the duties that we've assigned to you. And so for counties, I'm not here to make grief for any of the other political subdivisions, for counties, we've said roads, bridges, law enforcement, jails, courts, and elections are really the main items within your purview and then the machinery that goes behind it. If, if-- I, I can tell you speaking from experience, that while people really like to talk about property taxes and I'm sure every single person on this committee has heard that when they've been out campaigning, I can also tell you that there is not a single taxpayer in the state of Nebraska that I've talked to that has said I would really like to shortchange our law enforcement. I would really like to shortchange our courts. I would really like to make sure that our, our roads are shortchanged in any way, shape, or form.

**BOSTAR:** I understand, but I don't think that's what we're talking about doing. So if, if the margins that the counties are operating under are so tight that these kind of fluctuations would be defunding the police as is potentially being applied, why can't we solve this problem? Why can't we create-- you know, the state operates with a Cash Reserve, a rainy day fund, because some things don't go the way we expect them to. And we want to be prepared and ensure that the services we offer to the people of Nebraska are maintained. Why, why couldn't we do both of these things? Why couldn't we make sure that the fiscal health of political subdivisions is maintained to absorb financial shocks while also not putting the burden on everyday families to hold a potential debt for years that may not be valid?

**JON CANNON:** Sure. That's a great question, Senator. I'm glad you asked it. So we do have the ability to hold reserve-- funds in reserve, and that's written into our state statutes. And in fact, county governments are-- they're able to levy an amount that is up to 50 percent of the prior year's budget amount as a reserve in order to fund their reserve. And as you can imagine, that would be quite an amount for a lot-- for every single county across the state.

**BOSTAR:** Sounds like we have the solution.

**JON CANNON:** Sounds like we have a solution. Although I can tell you that practically speaking, taxpayers aren't particularly fond of saying my property taxes are going toward a rainy day fund because

it's not something that's being directly applied to the roads, the bridges, law enforcement, jails, courts, and the elections. In, in fact, most counties, not all, but most counties, I would say that they, they essentially have defaulted to their inherent tax fund being their rainy day fund. Very-- I would, I would tell you that there are, there are not nearly as many counties as you might expect that actually hold their funds in a, in a cash reserve because levying a property tax for money that may or may not get spent is not particularly appealing to those taxpayers.

**BOSTAR:** Understood. My recommendation would be that if this passes that NACO help those political subdivisions establish their cash reserves.

**JON CANNON:** I appreciate that. I-- actually, honestly, I'll go back to what I said earlier, I, I agree wholeheartedly with Senator Erdman, we need to find the proper solution for adequately funding TERC to make sure that they're able to, you know, carry out their duties on a statewide basis. And we fully support that.

**BOSTAR:** We agree with that.

**LINEHAN:** Thank you.

**BOSTAR:** Thank you very much.

**LINEHAN:** Thank you, Senator Bostar. Are there other questions from the committee? What a way to start the season.

**JON CANNON:** Yes, ma'am.

**LINEHAN:** OK. I am not going to go into why with counties could tighten their budgets. We can save that for next time you're here, but-- oh, maybe I will just for the benefit of the new members. So do most counties provide full benefits, healthcare benefits, without deductibles? I mean, they have deductibles, but without co-payments?

**JON CANNON:** I would say that most counties do not. There are a number that do. There are a number that have very low deductibles. And I would, I would also say--

**LINEHAN:** But they have fairly good health benefits for their members.

**JON CANNON:** We are generally--



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**LINEHAN:** Better than you usually find in the private sector, right?

**JON CANNON:** We are generally benefits rich, but salary poor.

**LINEHAN:** Yes. And do you-- many-- several of the counties have fixed retirement benefits?

**JON CANNON:** As required by law. Yes, ma'am.

**LINEHAN:** Yes. OK. Why would a county budget against something they know might not be there? Because you're aware of these protests, are you not? You're aware-- the county would be aware-- take your ethanol plant.

**JON CANNON:** Sure.

**LINEHAN:** And its valued at-- you-- your assessor evaluates it at \$5 million and the owners say, no, it's really only \$3 million. Why would you budget against that when you know it's at risk?

**JON CANNON:** Because it's not really a number that you can latch on to. And so, you know, just as, for instance, I live in Lancaster County. If you've read the Journal Star, you know that a number of people experience an increase in their taxes-- or I'm sorry, in their evaluations.

**LINEHAN:** Right. There is a difference.

**JON CANNON:** And there is a difference. There is. And the question becomes how many of those people are actually going to end up protesting to the county board in the first place?

**LINEHAN:** But won't you know that, Mr. Cannon? Won't you know how many protested?

**JON CANNON:** We will know how many protested to the county board. We will not know how many protested to TERC by the time that we are certifying our values and/or filing our--

**LINEHAN:** Couldn't you go back and look at the average and see how many usually file. I mean, there's, there's ways to figure this out. If you were a business, you would have-- and counties are-- you would have a way to go back and see what the history has been and how that will probably be reflected in the future and you wouldn't tax against what

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you think might not be there. That seems like just a prudent business practice.

**JON CANNON:** I would say that in order to do that, ma'am, as a prudent business analyst-- analysis, I would probably want to do some sort of multiple regression analysis and see what the local economy is doing in addition to how valuations have gone up in addition to--

**LINEHAN:** Thank you.

**JON CANNON:** Yes, ma'am.

**LINEHAN:** Yes. OK. Are there any other questions from the committee? Seeing none, thank you very much for being here.

**JON CANNON:** Thank you very much.

**LINEHAN:** Are there other opponents? Is there anyone wanting to testify in the neutral position?

**ROB HOTZ:** I appreciate you getting this chair because I was going to say I am standing up. My name is Rob Hotz, R-o-b H-o-t-z. I'm one of the three commissioners with the Tax Equalization and Review Commission, as being called TERC today. I've been with the Commission for 15 years. The Commission has been in existence for 26 or 27 years. The Commission did receive a-- when, when I saw the green copy, we reviewed it. We did receive a request from the Fiscal Analyst whether there would be any fiscal impact. Our determination is, no, there wouldn't be any direct fiscal impact if this bill were enacted. And it was our intention not even to testify because there was no direct impact upon us. Senator Erdman contacted me personally and asked me to come and testify. And I'd be happy to do that now and try to answer questions. But it occurs to me that it might be helpful, particularly because there are some members of the committee who are new to the committee and new to the Legislature, there is also a context here that really relates strongly to the process that TERC goes through. And unfortunately, about 99 percent of the people who think they know exactly what we do, don't. It-- it's a complicated process. The process-- another way of looking at the process is that when the taxpayers-- let's take 2022-- or excuse me, 2023 as an example, at this point in time, the effective date for tax year 2023 has already passed. It's January 1. June, sometime before June or close to June 1, the taxpayer will find out in 90 counties what the new assessment would be. And that new assessment isn't just a postcard that comes

from somebody who rubber stamped something, but it's from a county assessor who's a duly elected official and who's the only person in the county who's trained and has-- and is required, other than the deputy assessor, to have what's called the state assessor certificate. Now I also have the state assessor certificate, because I want to be as empathetic as I can with that position, if, if that makes sense. During the month of June, a taxpayer who doesn't like that assessment that's been done by that duly elected official who's been trained, who has all the hours. Mr. Cannon, surprised you mentioned all these things, but that has the hours and the training in-- I'm sorry, I can't think of the word, but it'll come to me. That person then provides the assessment, gives notice of the assessment. The taxpayer could file the protest during the month of June. County court looks at it. And if the county board says, you know what, we agree with the assessor. And so the taxpayer has the option at that point in July or August or September, August and September are the due dates depending upon the county, can file an appeal with TERC. It's September now, nine months after the effective date. And if we don't get a decision tomorrow, we're nine months late. OK? We don't even have it yet. All right? Now we get all the appeals, they all come in at once. Back in when I started, the number of appeals was somewhere in the thousands, 1,000, 1,200 or so appeals per year. In 2020-- or excuse me, in 2011-- Mr. Cannon referred to legislation that did two things, LB364 in 2011 did primarily two things. It cut the number of commissioners from four to three, and that was three lawyers and one, and one appraiser to three, which turned out to be two lawyers and one appraiser. And for a short period of time, we operated with two until the third commissioner was appointed in July of 2011. That year, in 2011, and then in 2012, we had 2,100 appeals and 2,200 appeals. Two commissioners held many of those for a while and then three commissioners beyond that. Senator Albrecht, thank you for the words that you say. Frankly, I can think of a lot of people that have harder jobs,--

**ALBRECHT:** I don't think so.

**ROB HOTZ:** --but, but I agree with the general sentiment that this is a very hard thing to manage and it's a moving target all the time. What you might think, because right now more property taxes are at everybody's front of mind, as they say, I guess, of how many appeals this year, about 900. Why would that be when the property taxes are such a major issue to so many people? It's hard to predict. If you were to ask me, how many will we get next year, I'll say probably about 1,500. That was our rolling average for 10, 12, 15 years, about

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1,500 per year. About half of those get resolved by the parties coming to an agreement after we take jurisdiction and we have the appeal and it's called a confession of judgment. The taxpayer gets something out of that deal. About half of those-- Senator, I'm out of time.

**LINEHAN:** You can go ahead. About half of them are what?

**ROB HOTZ:** About half of those, the taxpayer decides to dismiss the matter. And on those, it's going to be at what the assessor set it at. Now of all those that we scheduled for hearing, and I think we schedule about 800 per year, many of those once they are on the calendar, they burn our calendar by letting us know a day before we're not coming or don't let us know they're not coming. OK? And some of those we decide, we affirm the county board determination. Some of those we reverse the county board determination. And it might be close to 50/50 if you were to do the analytics on it. Frankly, I'm not going to be motivated by those numbers. I'm going to be motivated by what the constitution and the law requires us to do. To give you a hypothetical, if you were to enact LB28, the hypothetical would be a \$200,000 property in 2022 that gets reassessed, reappraised, and the assessor says, you know, the market's hot. It's now 220 for 2023, \$220,000, \$20,000 increase. If you're in a 2 percent jurisdiction like Lancaster County, it's simple to do the math; \$200,000 is a \$4,000 obligation paid in two installments the next year, \$2,000 and \$2,000. If it were to 220, it would be \$4,400; \$2,200, \$2,200. If this bill were in effect, the taxpayer would in June would say, I just got a \$20,000 increase. I got to do something about it. OK, that's good. They file the protest. The county board looks at it and says, you know what, we agree with the assessor. Taxpayer says, so we're still now at 220. County board-- it's filed with TERC, TERC takes it, takes care of the jurisdictional determinations that need to be made on every case, sets the matter for hearing. And we can't set them all the same day, all 1,500 appeals in one day. We have to spread it out over the calendar. By the time we spread that out over the calendar, the first delinquent date has already passed. Now the taxpayer under the bill would pay the \$2,000 in that first delinquent based on the \$200,000 from the prior year. And then they'd get a decision from TERC whether it's to reverse or affirm. I can't think of an example of when we went below-- maybe there are examples, but it's rare when we would go below the prior year in the assessed value. So the taxpayer, even if they win at TERC and get a reversal, the last kick in the pants is you still need to pay. Let's say it's 210, not 220, but you still have to make up for that \$10,000. And there's that additional \$200 that would have to be paid. So there are always unintended consequences. You all

know that. That would not be a good one. I'm not here to talk policy, but that would be the practical effect of the taxpayers that I see every day. Every one of them wants lower property taxes, not one of them-- there was one in 15 years who wanted us to raise their value because they wanted to sell their house for more. But they don't want government to raise their values. We try to do that diligently. We try to take care of that. Are we oftentimes feeling like we're up to here in the-- with the alligators around? Yes, no doubt. But to manage that, it requires administrative management. And that's what we try to do. We try to get them on the calendar efficiently. We try to deal with the hearings to provide due process to the taxpayers to have a full and fair hearing and solve it.

**LINEHAN:** Thank you.

**ROB HOTZ:** Thank you.

**LINEHAN:** Yeah.

**ROB HOTZ:** Senator Linehan, thank you for allowing me to extend time.

**LINEHAN:** That's fine. Are there other questions from the committee? Any questions? Yes, Senator Kauth.

**KAUTH:** Thank you very much. What is the average time it takes to get an answer on an appeal? Because it seems that this bill is saying that people are waiting and waiting and waiting and the goal is to speed it up so that the process tightens up a little bit. So can you give me an idea of that?

**ROB HOTZ:** It would, it would be largely an educated guess. I don't have an exact number. And we, we have eight people at the Commission, three commissioners and five staff. We don't do a lot of analytics on that sort of thing because it doesn't, it doesn't bring value on what we do, but.

**KAUTH:** Best guess.

**ROB HOTZ:** Of the number of properties in the state, it's an incredibly small percentage. Of the number of protests, it's still a small, still a small percentage. Of the number of appeals, it's still a small percentage, but there are some and sometimes many that are older than we want them to be. So if we have an appeal that occurred-- someone made a reference earlier, if you have an ethanol plant and we get those and that's a big decision and has a lot of complexities to it

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and you have 50 residential parcels over here, which order do you write first?

**LINEHAN:** OK. But I think she asked the-- I'm sorry.

**KAUTH:** No.

**ROB HOTZ:** No, no.

**KAUTH:** How long does it take when someone files an appeal-- let's say if I decide this is too much, I'm filing an appeal, how long would it be before I would know the answer to my appeal?

**ROB HOTZ:** It could be a fairly short time, months, depending upon a lot more complexity you probably want to hear, but it could be joined with a prior appeal. It could be-- we often get lots of continuance requests. We get a lot of continuous requests and then people say why did it take so long? That's a tough one, too. But it-- and sometimes it's more than a year and it has been longer than that. And those are rare and those are things that we administratively are trying to manage and make sure that we don't see that happen. But I would not say that the administrative load being heavy, that we're staying on top of it all the time. It, it-- I don't know anyone who would be able to finish all of them and be waiting for the next load to come. It'd be very difficult to do that.

**KAUTH:** Thank you.

**LINEHAN:** Thank you, Senator Kauth. Senator Albrecht.

**ALBRECHT:** Thank you, Chair. And thanks for being here and thanks for what you do, because the only reason I can say that I think it's the hardest job is because I was in Sarpy County and got to be the chair of the Board of Equalization. And it's a very difficult thing to see--

**ROB HOTZ:** Oh, my condolences.

**ALBRECHT:** --all the folks that came up. But, but it's hard for people to just go do this. I mean, I don't know what it cost today. Back in the day, it's like 25 bucks to go sign up and you can go down there. But trying to get off work, trying to make the trip across the state or wherever you have to go. All of those things are difficult for the, the individuals. OK? But when, when Senator Kauth asked, how long does it take? Do you bring an assessor in and have them review all of the

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information, is that what takes so long for people to figure out how long, like what your decision is? Is it--

**ROB HOTZ:** OK. Thank you for asking it, because I make some assumptions. When we have a hearing by statute and by decisions in the Nebraska Supreme Court, and our decisions are reviewed by the courts when someone appeals them, the hearing that we have is an evidentiary hearing. You would think that you're in a courtroom. That's what it looks like, feels like, smells like. I think is a little bit more congenial, a little bit less intimidating. We try to have a little bit of levity when we can, but the process is an evidentiary hearing and the parties are the county board. It's their decision.

**ALBRECHT:** Correct.

**ROB HOTZ:** And the taxpayer usually, sometimes the county assessor brings an appeal, but those are usually the parties and they can prepare their witnesses and their evidence. And there are timelines for when people are to exchange that evidence, when they can review it, when they can provide rebuttal. Sometimes we have discovery, like you would expect in a full-blown trial. Some of these appeals involve millions of dollars in value, tens of millions or hundreds of millions of dollars with high obligation for property tax. So we, we treat it that way.

**ALBRECHT:** OK, so just for the record, the counties actually have to pay, don't they, to-- I mean, as a commissioner, and they will not reverse their decision. You know, we as commissioners had to just back off and let it go. But it does cost the taxpayer, correct, for them to come down if they want if you're talking millions of dollars or whatever for an assessment?

**ROB HOTZ:** The cost to the county typically would be a deputy county attorney coming to a hearing, county assessor or someone from the county assessor's office, sometimes more than one, and their travel costs. And when we travel out to western Nebraska, there may be overnight stay for county officials as well. We try to have our hearings in pockets where we have the most appeals. Each year we review that. But yes, there would be some additional costs. The Commission has funded about 90 percent on General Fund at about 10 percent by the user. The actual appellants who, who file the filing fees.

**ALBRECHT:** So one last question. So has anyone-- of course, we as elected officials, have to figure out what we can do to make it an easier task for you and for the, for the constituent. But do you ever have any suggestions that you think would make things work a little bit easier than what we're doing currently today? Do any of your members?

**ROB HOTZ:** Possibly. We've run through a time frame of I'd say at least ten years when I don't recall a state senator calling our office and saying we're thinking about doing this, what do you think of that, or something to that effect.

**ALBRECHT:** Well, sometimes, I mean, it's, it's been going on for some time and everybody who gets elected, the first and number one thing it seems like is property tax. So, you know, with the assessor's office and with, with the TERC board, I, I would think in the county, somebody should be able to come to a reasonable assumption that we could change a few things to make it easier for the consumer as well as, as you folks that have to go through all the cases.

**ROB HOTZ:** Our limitation is when there are pending appeals that we're careful that we're not talking about those pending appeals, we're not talking with the parties about the result.

**ALBRECHT:** Absolutely.

**ROB HOTZ:** But in terms of the state agency having some input, like any other state agency, the kind of resource system you need and so on in order to do what needs to be done, sure, we'd, we'd be happy to be part of that discussion.

**ALBRECHT:** That's something maybe we should be doing. Thank you.

**LINEHAN:** Thank you, Senator Albrecht. Any other questions from the committee? Seeing none, thank you very much for being here. Appreciate it.

**ROB HOTZ:** Thank you, Senator Linehan.

**LINEHAN:** Anyone else want to testify in the neutral position? Senator Erdman, would you like to close?

**ERDMAN:** Thank you, Senator Linehan. I appreciate Commissioner Hotz being here. As I said, you've seen how he operates. He's, he's always very cordial and, and helpful. I want to speak a little bit about Mr.



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Cannon's comments about their budget. I've been out of the commissioner role for over six years, but we used to budget 2 percent extra for those taxes that weren't paid. And so if they all came in, we had a 2 percent extra. So let me just do some math for you, just simple math. Generally, most counties in my district probably have about a billion dollars in valuation. Some a little more, some little less. But if we had a billion dollars in valuation in a county, that's a thousand million. Right? So if the protests were filed and say there was \$5 million worth of adjustment to the valuation, \$5 million, that's a lot of homes. OK? And that may be an ethanol plan with \$5 million. In a smaller county, sometimes the mill levy is 1.5, 1.5 percent. So at 1.5 percent mill levy on a billion dollars is \$15 million. All right? So \$5 million compared to a thousand million is \$5,000 of 1 percent, \$5,000 of 1 percent. So that is \$75,000 compared to \$15 million. Can I use the word insignificant? I think I will. So if you think about it and you boil it down and the county gets generally from 16 to 18 percent, 18 percent of the budget, 18, 16 to 18. So if a county got 16 percent of the budget, they get \$2.4 million. So their portion would be \$12,000 out of \$2.4 million. So if you divide it down, it would be like \$2,400 at \$12 compared to \$2,400. If those counties are running on that thin a budget, they need to have somebody else doing their budgets. So don't allow Mr. Cannon to come here and say the sky is falling and everything's going to come to an end because we've got to adjust our budget by 5,000th of 1 percent. He came to my office today, and I appreciate him coming. I wish he would have come two weeks ago. But we were talking about the real solution. And so he prompted my imagination just a bit. And so what I'm going to offer the committee is this. After he left my office, I called Bill Drafting and I wanted them to draft a bill to eliminate TERC. I am going to do that. I'm going to have a bill draft an amendment to this bill to eliminate TERC. We will go back to the court system. I don't believe it will be any more expensive than what we do now. And everybody get a timely hearing and have a decision made before the next tax statement is due. What we do in government as well as in business most of the time is we put things in place, we never go back and analyze were they successful. Did it accomplish our purpose, what we set out to do? And I can answer this in the TERC setting, it did not. That is not because Commissioner Hotz doesn't do his job. I was complimentary of Commissioner Hotz, and I always will be. And the TERC people work hard. The point is, we put them in a place that they can't succeed. So we have to make a decision. So it's time to make a decision. I wish I had thought about it before today. Had Mr. Cannon came to my office when I first introduced this bill and said, I have a

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suggestion. Maybe we should have more TERC members. Maybe they should be dispersed across the state. Here's an idea. They had a hear-- they had a meeting last Friday to decide what bills they were going to support and which ones they weren't. That was Friday. Today's Wednesday. What happened to Monday and Tuesday? If he'd have come Monday or Tuesday and spoke to me about maybe this is a solution, I may have drafted another amendment that said maybe we need ten TERC members or six or some other number. So as I said in my opening, this was not intended to be the solution. This is intended to drive the conversation about what the solution is. And I think it's inappropriate for me to ask Senator [SIC] Hotz what the, what the solution is. That's not his job, but it's our job to figure that out. And so I'm going to draft an amendment. I will give it to you. And you can make a decision either way. You can make a decision to advance this bill or you can make a decision to amend it and eliminate TERC and we go back to the court system. So it's time to make a decision because we've been talking about this for a long time. OK? And property tax is a big issue and I've never seen another issue that's more prevalent on people's minds than property tax. So let's move forward with a real solution. So with that, I'll close and try to answer any, any questions you may have.

**LINEHAN:** Thank you, Senator Erdman. Are there questions from the committee? Seeing none, thank you very much.

**ERDMAN:** Thank you. I appreciate your time. Thank you so much.

**LINEHAN:** Absolutely. With that, we close the hearing on LB28. We got to have that sign going both ways because I'm-- OK. And we're opening the hearing on LB24. Good afternoon,--

**WAYNE:** Good afternoon.

**LINEHAN:** --Senator Wayne.

**WAYNE:** Who broke the company chair? My name is Senator Wayne. Senator Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I am back here again for my yearly cigar bill. This bill is very simple. It doesn't really change the underlying statute. It just caps it per cigar. As it stands today, cigars are cheaper to purchase online, which hurts local businesses. I might add that the tax imposed when buying in state has gotten a little out of control. And so we're trying to put a cap on it to help, help the cigar industry compete

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with other states and online. Our neighboring states and around the region, like Iowa and Minnesota, enacted similar legislation over the last two years when I first started introducing this bill. And they found actually cigar sales to go up locally because it, it drove their competitive rates. So this-- if you look at the fiscal note, you'll see a little bit of revenue going down. We believe that will be offset by the increase in cigar sales that we've seen in other states. This is not going to lead to cigars going to underage individuals. It's not going to lead to more smoking. It's just trying to boost the local businesses here and all over the state who are trying to sell cigars and, and have a cigar shop. So Chairwoman Linehan, members of the committee, I thank you for your time. It's a really simple bill, and I would ask you to advance it and go from there.

**LINEHAN:** Thank you, Senator Wayne. Are there questions from the committee? OK, looking at the fiscal note, what's this second part? I get the, I get the, you know, we got the chart and it says we're going to lose revenue because we're lowering taxes. Is that what this does?

**WAYNE:** Correct. Well, caps it. But, yeah, essentially lowers it.

**LINEHAN:** OK. What's the-- it caps it or it lowers it? I don't--

**WAYNE:** Well, a little bit-- it, it, it caps it, but it shouldn't be any more than 50 cents. And I think that right now it's a little bit more than that so I guess it would lower it too.

**LINEHAN:** OK. What's the second set of numbers? Department of Revenue also estimates Senior Developer to program and maintain General Processing System with the following expenses.

**WAYNE:** So any time we change anything, they charge you a, a fee to, to develop a, a new program to track it.

**LINEHAN:** So is-- didn't they used to just say \$87,000?

**WAYNE:** Yeah.

**LINEHAN:** OK. So that's neither here nor there. OK. Questions from the committee?

**KAUTH:** I do have one.

**LINEHAN:** Senator Kauth.

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**KAUTH:** How much do cigars cost on average? Is it a fairly wide range?

**WAYNE:** It's a wide range from \$3 to \$20-something. I find the \$3 ones just as good as the \$20 ones.

**KAUTH:** So could-- if you cap it at 50 cents per cigar, then a \$2.50 cigar will have the same tax as a \$20 cigar.

**WAYNE:** Yes. I mean, the maximum should be 50 cents so you could.

**KAUTH:** Right. So but, but-- if it was the 20 percent straight for a \$20 cigar it would be \$4.

**WAYNE:** Correct.

**KAUTH:** Why just cigars? Why not cigarettes? Why not all of the tobacco products?

**WAYNE:** Because then you get a big hearing and people get upset.  
[LAUGHTER]

**KAUTH:** The question is who is purchasing more cigars versus cigarettes? Are we, are we saying people who purchase cigars are getting a better tax break?

**WAYNE:** No, it's just that this niche industry is competing with one. I mean, if you drive across state lines, it's cheaper in Iowa, but the online, so it's to tax itself right now. And so these have been done in other states that recently less than-- I think last year Iowa passed one that had similar language. So they're trying to help out their local businesses, their local storefronts.

**LINEHAN:** Senator Kauth--

**KAUTH:** Thank you.

**LINEHAN:** Thank you, Senator Kauth. Senator von Gillern.

**von GILLERN:** Just as clarity on that, can you buy cigarettes online? You can-- I didn't know you could buy cigars online.

**WAYNE:** You can buy cigars online. I'm not sure about cigarettes. I don't, I don't smoke.

**von GILLERN:** OK. And then you mentioned this is your, your annual update on this bill. Is this any different than what you've brought in the past?

**WAYNE:** No, it is not.

**von GILLERN:** Is the fiscal note any different than what's been presented in the past?

**WAYNE:** Honestly, if you would ask me this, like, in two weeks, I would be a little more clear on most of my bills.

**von GILLERN:** It's all right.

**WAYNE:** But we're still trying to figure out Judiciary right now. So, yeah, I don't, I don't know. I, I can get you that information.

**von GILLERN:** OK. Thank you.

**LINEHAN:** Any other questions? Who's running Judiciary right now?

**WAYNE:** I don't know. I think Wendy DeBoer, but.

**LINEHAN:** All right. You have proponents here I assume.

**WAYNE:** Yes.

**LINEHAN:** Yes.

**WAYNE:** I waive my closing.

**LINEHAN:** OK. Thank you.

**JAY NELSON:** I'd be happy to close for Senator Wayne. Good afternoon. I know it's been a long hearing already, so I'll try to make this brief. My name is Jay Nelson, J-a-y N-e-l-s-o-n. I'm a small business owner. Correction. I'm a co-owner with my wife of a business in Omaha called Ted's Tobacco of Omaha. We are a cigar and briar pipe store. We're here to speak on behalf of LB24 brought by Senator Wayne and thank him for bringing this bill. It would make a minor revision to Nebraska Revised Statute, Section 77-4008, parts (a) and (b). I want to try to anticipate questions before I even get into my point, because I've already heard some of the questions from the senators here. This has nothing to do with cigarettes. This has nothing to do with cigarillos. It has nothing to do with tiny cigars or bundled cigars, basically, because this provision only kicks in at a 50 percent-- I'm sorry, at a

50 cent cap. It overlaps with the current 20 percent OTP tax at the \$2.50 range, as Senator Kauth pointed out, which means that we're only talking about the premium cigar industry, hand-rolled, long-filler cigars. Has nothing to do with cigarettes. You can't buy-- by the way, you can't buy cigarettes over state lines. They have to be individually taxed and, and stamped for that particular state. However, but I answer the question all the time is why are your cigars so expensive? Why can't I buy them online for substantially cheaper? Why would I buy them from you, Mr. Nelson, when I can go up to cigars.com or cigar bid or any number of other sites and buy them at a massive discount? And the reason is that we have a, an anchor around our neck, a 20 percent tax, which is an addition, by the way, to the federal excise tax, 40 cents per cigar if anybody cares. And we also pay sales tax and occupation taxes in the city of Omaha, where my business is. The 20 percent OTP, or other tobacco products, covers things like pipe tobacco, which again, I admit I'm in something of a buggy whip industry here, there's not so many pipe smokers anymore, it's not the 1950s, and premium cigars. What we're seeing in the Midwest and across the country is a big divide between those states that have a substantial percentage OTP tax on cigars and those that don't. What we're seeing happen over the last 10 to 20 years is the growth of, of companies setting up in states that have little to no tax like Texas and Florida marketing to people who are in Nebraska or across the world. And what we see is while I may get a customer who comes in to buy a cigar or two, they're very deeply incited not to buy with me because they can buy them from these online companies so much cheaper. In terms of just backing what Senator Wayne said, and I'm sorry, I'm jumping around a little bit here, 50 cent caps have already been passed by Iowa and Minnesota, Michigan, New Mexico, Wisconsin and Rhode Island. I'll skip over all the ones that are quite a bit lower. But the interest is Wyoming, their Senate just passed last week a 50 cent cap and it'll be headed to the House. That's as of January 19, 2023. And they're 20 cent OTP is exactly what Nebraska's is so they provide the most comparable in terms of comparing stats and sales. Again, this only applies to premium cigars. The businesses that we're talking about, and there aren't many, may be in the state somewhere between 12 and 20 businesses. This affects directly others in a more tangential way. For example, a liquor store that might also sell cigars. Everyone that I'm aware of is a family owned small business. There are no franchise tobacco stores in Nebraska that sell premium cigars. All these are Nebraska businesses. They all employ locally. They all bank locally. They keep money in the state's economy. Of course, what happens is when local business has to compete with

out-of-state online sellers, and while the law says that Nebraska-- that the consumer is supposed to pay the 20 percent OTP at the point of their first import into the state, of course, that doesn't happen. The consumers don't pay the 20 percent. They avoid the entire tax and they leave Nebraska business without that, that business which we would have otherwise had. So to give some example-- I think it was Senator Kauth who asked, what is the average price of a cigar? The current sweet spot in premium cigars right now seems to be right around \$11.95. It seems to hover right in that spot. Online, you can purchase a box of cigars at that rate at around \$239. To buy it from a retailer in Nebraska, you'd be expected to spend more like \$290. So anyone who's rational and sees that moves right along. I see I'm almost out of time. Without any changes to the law, we're going to continue to see Nebraska money get spent out of state. Minnesota has lowered their 95 percent OTP to a 50 cent cap. They've seen a substantial raise in their sales as customers stop buying online and start buying in state. The current law hurts Nebraska businesses, encourages Nebraskans to spend out of state. LB24 is a measure which simply helps level the playing field. We'll still be paying the 50 cent tax. We'll still be paying the state sales tax. We'll still be paying locally the Omaha occupation tax. We believe strongly that it's going to lead to an increase in state business. It's going to lead to an overall increase in likely OTP collection as well, which is in contradiction to the fiscal note that we've seen, which only looks at the static position. Yes, if, if sales didn't change at all, the numbers would in fact decline. You would see less tax revenue. But in fact, if it's like Minnesota, if it's like Iowa, we will see in-state sales increase and revenue increase along with it. That's all I have. If there are any questions, I'd be happy to try to answer them. Thank you.

**LINEHAN:** Thank you. Did I have, did I have you state and spell your name?

**JAY NELSON:** You did. I'll do it again. It's Jay Nelson, J-a-y N-e-l-s-o-n.

**LINEHAN:** Thank you, Mr. Nelson. Are there questions from the committee? Senator Murman.

**MURMAN:** Yes. I may have missed it, but did you say how many states total have a, a cap on taxes? And how many also of the surrounding states do?

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**JAY NELSON:** Sure. Because these-- it is a bit of a moving target, I can only go on the data that we had it maybe a week ago. So I, I know that with a 50 cent cap, we have Iowa, Minnesota, Michigan, New Mexico, Wisconsin, and Rhode Island. Wyoming is in the process of passing theirs. It's just cleared their Senate and it goes now to the House. With lower caps, there will be states like Alabama at 4 cents, Arizona at 21, Arkansas is a flat 50, Connecticut 2, Florida, Texas basically have no taxes. Texas is one cent per cigar, and North Carolina and Oklahoma are both below 30 cents. Others have different tax schemes. Others have higher tax schemes, to be perfectly frank.

**MURMAN:** OK. Thank you.

**LINEHAN:** Thank you, Senator Murman. Are there other questions? So I understand this. So they pay sales, state and local sales taxes when I buy-- if I went and buy a cigar, which I won't, but if I did and it was 12 bucks,--

**JAY NELSON:** Yes.

**LINEHAN:** --I would pay state and local sales tax. I would pay the federal tax and I would also pay-- I'm not really following with the OTP. I'm sorry.

**JAY NELSON:** Oh, sure. That's what we're here to talk about. The, the bill covers the OTP. The OTP is--

**LINEHAN:** What's--

**JAY NELSON:** --other tobacco products.

**LINEHAN:** OK.

**JAY NELSON:** Yeah, other tobacco products. In other words, that which is not cigarettes. Basically everything else is other tobacco products. And it's referred to in the industry as OTP. And if I wasn't clear, the, the OTP is owed not at the time of sale but at the time of import, which means that my business, which is currently sitting on approximately \$250,000 of, of inventory, has already paid 20 percent tax to the state of Nebraska on OTP. I was looking at your fiscal note and I couldn't help but note that my, my business seems to pay about 10 percent of the total OTP to the state of Nebraska. So it does affect us, but it also affects a lot of others in the state. We add that by statute into the cost of the cigar, we can't start it separately at, at the register. We are required by law to charge the



state sales tax and the 3 percent Omaha occupation tax at the register. The federal excise was paid by the manufacturer. It's built into the price. The state OTP is paid by my company and anyone else who is the first importer of cigars, and then the rest is paid by the consumer at the register, if that helps.

**LINEHAN:** So just quick math. A \$12 cigar is how much of it is taxes, whether it be federal, state, local?

**JAY NELSON:** I wish I was better at math. If it's a \$10 cigar, you've already paid 40 cents on it for-- to the-- for the federal excise. If it's a \$10 cigar and it cost me \$5 wholesale and I've paid \$1 on it to the state of Nebraska, and if-- and then we pay, of course, the state sales tax, 6.5 percent, 7.5 percent, and 3 percent on top of that at the register. So what, what the online guy sells for \$10, I have to sell for \$12.40 to make the same margin.

**LINEHAN:** OK. All right. Other questions from the committee?

**JAY NELSON:** I hope that makes sense. Thank you very much for hearing me.

**LINEHAN:** No, thank you for being here. Appreciate it. Are there other proponents? Are there opponents?

**MATT PROKOP:** Good afternoon.

**LINEHAN:** Good afternoon.

**MATT PROKOP:** Chairwoman Linehan and members of the Revenue Committee, my name is Matt Prokop. That's M-a-t-t P-r-o-k-o-p, and I appreciate the opportunity to testify today on behalf of the American Cancer Society Cancer Action Network in opposition to LB24. ACS CAN is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support fact-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN opposes efforts to reduce the tax on any tobacco product, including capping the tax on cigars. Our organization recommends raising, not reducing, or capping the tax on both cigarettes and all other tobacco products, including cigars. Other tobacco products should be taxed at the same rate as cigarettes to encourage people who use tobacco to quit rather than switching to lower price alternatives. Cigars can cause harm to the long-term effects of Nebraskans. Usage of these products can cause laryngeal, oral, and esophageal cancers. Secondhand smoke from cigars also pose, pose health risks for people who do not

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smoke. This is a, this is a health issue where the science should dictate health policy. And that is why ACS CAN has taken a formal position on this bill. Recent data is also concerning relative to youth usage of cigar products in Nebraska. It's the second most popular type of tobacco product for high school students nationally, and our state is above the national average for cigar usage. Cigars and cigarillos are also appealing to young people, in part because some of them are sold in many flavors, such as banana, mango, chocolate, and grape. Tobacco products, including cigars cause great harm to our state in terms of the millions of dollars in monetary health costs and thousands of lives lost. Let's not take our state in the wrong direction in terms of efforts to save lives, lower healthcare costs, and reduce tobacco use in Nebraska. At a time when tobacco use is skyrocketing among youth, we should not be considering lowering the tax on any tobacco product, including cigars, which I mentioned are the second most common tobacco product among youth. So I appreciate the opportunity to testify today and happy to answer any questions.

**LINEHAN:** Thank you very much. Are there questions from the committee? Seeing none, thank you very much.

**MATT PROKOP:** Thank you.

**LINEHAN:** Are there other proponents-- excuse me, opponents? Any other opponents? Are there any wanting to testify in the neutral position? OK. We did have letters for the record. We had no proponents, three opponents, and zero neutral. So with that, Senator Wayne is not coming back, so we have the hearing on LB24 closed. But before all the committee runs away, can we just have a conversation after our guests leave?