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Revenue Committee  
February 19, 2016

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[LB974 LB1021 LB1047 LB1088]

The Committee on Revenue met at 1:30 p.m. on Friday, February 19, 2016, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB974, LB1021, LB1047, and LB1088. Senators present: Mike Gloor, Chairperson; Paul Schumacher, Vice Chairperson; Lydia Brasch; Al Davis; Burke Harr; Jim Scheer; and Jim Smith. Senators absent: Kate Sullivan.

SENATOR GLOOR: Good afternoon. Welcome to the Revenue Committee. I'm Mike Gloor, the Chair, from District 35. We'd like to welcome you. We will take the bills today in the order listed on the agenda posted outside the door. We have some general rules and I think many of you are frequent fliers and understand them, but for the few that don't, please turn off your cell phones, or put them on mute if you have them. If you are going to provide testimony today, we would ask you to fill out a sheet in the back. You'll see it. Fill that out and be sure and hand that to the clerk when you come up here to provide your testimony. The order of our process today is that the senator who has introduced the bill will open, then we'll go to proponents, then opponents, then those in neutral capacity, and then the introducing senator will have an opportunity to close on that bill if they choose to do so. If you have handouts, we need 11 copies. Give those to the pages, they'll distribute them for you. If you've just now realized you have something you'd like them to have copies of and don't have 11, get their attention and they'll help you out with that. We have a five-minute rule here. You have five minutes to provide your testimony. There's a light tree, not unlike stock cars. Green is go, yellow is get ready, you've got a minute left of that five minutes, and red means stop. So please remember that or I'll help move you in that direction. We'd ask you to be concise and if the testimony given by someone before you says it all, you can say, the person before me said it all. I'd like to put an emphasis on it. We don't, in fact...in fact, we look very positively upon people who take that approach. (Laughter) We also need you to be sure and give us your name and spell your name for the record. That way we get it down accurately. To my immediate right is committee counsel, Mary Jane Egr Edson. Our research analyst is Kay Bergquist, who is on the far right, and Krissa Delka is my committee clerk, and she'll also be the one who takes papers from you. I'll ask that the senators introduce themselves starting with Senator Harr.

SENATOR HARR: Thank you, Chairman Gloor. My name is Burke Harr and I represent Legislative District 8.

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

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

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

SENATOR SCHEER: Jim Scheer, District 19, which is Madison County and a little bit of Stanton County.

SENATOR GLOOR: And our pages are Jordan from Oakland and Brenda from Wakefield. And most of you, I think, understand that senators have other bills and come and go and so you'll see a little activity around that, and I know Senator Davis will be joining us a little later. With that, we'll start, as I said, with our agenda. Senator Kolowski, you're recognized to open on LB974. Welcome.

SENATOR KOLOWSKI: Thank you very much, Chairman Gloor and members of the Revenue Committee. It's a pleasure to be here this afternoon. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31 in southwest Omaha. LB974 establishes a Nebraska back to school sales tax holiday on the same weekend in August as the already existing holidays in both Iowa and Missouri. The bill exempts clothing priced at \$100 or less and computers priced at \$750 or less. Seventeen states presently have back to school sales tax holidays. In many of those states the weekend retail sales volume has grown to the point that this weekend is second only to Black Friday following Thanksgiving. As a retired educator, I know how much money is spent on both required and general back to school items. This bill would give hard-working parents a break in that particular direction. I urge you to advance LB974 to General File and I'm here for questions if you have any. [LB974]

SENATOR GLOOR: Thank you, Senator. Are there any questions? Seeing none, thank you. We'll move to proponents. Mr. Otto. [LB974]

JIM OTTO: (Exhibits 1 and 2) Thank you, Senator Gloor, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president and a registered lobbyist...president of and registered lobbyist for the Nebraska Retail Federation, and I'm here today to testify in favor of LB974. First of all, I want to thank Senator Kolowski very much for introducing LB974. I will have to say that it is a great beginning to an important discussion. I do want to emphasize that it is a great beginning, but I would ask the committee to consider several points. As mentioned by Senator Kolowski, the back to school sales tax holiday has become second only to Black Friday in many states, and there is a handout coming to you that is actually a copy of an article from the Omaha World-Herald, last August that points out that it is the...extremely large and a large volume holiday in Council Bluffs, right across the river from us. And so I just want you to take

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that into consideration. And also, you probably will take the fiscal note into consideration and it is considerably higher than we'd planned. It seems to be one of my traits is to get high fiscal notes, (laughter) but I do want to point out that the fiscal note can only, and understandably, from the state of Nebraska's point of view, the fiscal note can only express the sales tax as lost. It does not take into account the purchases that are made that are not exempt on the same weekend that people purchase. And for that purpose, I have enclosed a study that was done by the state of Florida, or for the state of Florida, which kind of points out the things that are purchased that are not tax exempt as a result of the sales tax holiday and there are significant advantages to that. I also would like to point out that there are direct effects to this, indirect effects, and induced effects. When a consumer purchases an item of apparel, there is a direct economic impact on the retail industry, the apparel industry, and apparel manufacturing. That is a direct effect. For indirect effects, as a result of that purchase, apparel distribution and manufacturing in turn consume other inputs such as fuel, transportation, stock, and textiles. Indirect effect. There's also an induced effect as workers indirectly and indirectly impacted industry spend their earnings, they create a demand for other goods and services. Having pointed those advantages out to you, I cannot with a straight face say to you that those advantages balance out the sizable fiscal note on this bill. As I said earlier, this is a great beginning to an important discussion and we very much thank Senator Kolowski for that. I would simply ask that the committee realize that there is a level of exempted items that will be a net benefit to the state of Nebraska. We will go back and try to determine a lower level exemption. Also understand there was a misunderstanding or a clarification that needs to be made on definition that might be...have impacted the high fiscal note and, hopefully, we'll meet that goal next session. Would just like you to have open minds about it. [LB974]

SENATOR GLOOR: Thank you, Mr. Otto, and I think we also had some definitions related to Streamline Sales Tax that could also be worked on and we can easily, I think, give you some help and support... [LB974]

JIM OTTO: Okay. [LB974]

SENATOR GLOOR: ...Senator Kolowski and staff some help and support on that too. Senator Harr. [LB974]

SENATOR HARR: Thank you. Thank you for coming to the Revenue Committee and this question may be unfair and you may not be able to answer, but it won't stop me from asking. (Laughter) Do you think if we don't pass this and we have a different sales tax between Iowa and Nebraska, that that would encourage ISIS or al-Qaeda? [LB974]

JIM OTTO: No. [LB974]

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SENATOR HARR: Okay. Thank you. [LB974]

SENATOR GLOOR: Any other questions? Senator Schumacher. [LB974]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Jim, for your testimony today. Mechanically, how does this work? I mean, right now they scan something in the store and the computer knows whether to put tax on it and then it adds to the tab. Is there then a...from a practical business point of view, is there a separate programming, separate list or something that's got to go into that computer so that they know that, well, on this one day of the year, this one skew number is tax free and is that a big expense for businesses? [LB974]

JIM OTTO: That was a concern and may still be a concern to very small businesses, but to most...the states that have been...you know, have it implemented, it is such a much larger benefit to get people out to shop that it is well worth the effort to go through and for those two days, change the skews to be nontaxable just for those two days and then change them back. So, it does take some time but not a significant amount of time, I guess, I am told by...with the present computerization. [LB974]

SENATOR SCHUMACHER: Thank you. [LB974]

SENATOR GLOOR: Senator Scheer. [LB974]

SENATOR SCHEER: Just one clarification. You have the limits, \$107, \$150, or is it the first one hundred or so, if I buy a jacket for \$120, is the first \$100...? [LB974]

JIM OTTO: It has to be \$100 or less. If it's \$120, it's not exempt. [LB974]

SENATOR SCHEER: So if I...it's \$100.03, I'm going to pay tax. [LB974]

JIM OTTO: Exactly. [LB974]

SENATOR SCHEER: If it's \$97.99, I pay none. [LB974]

JIM OTTO: Exactly. [LB974]

SENATOR GLOOR: Thank you for your testimony. [LB974]

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JIM OTTO: Thank you. [LB974]

SENATOR GLOOR: Any other proponents? Are there any opponents? [LB974]

TIFFANY JOEKEL: (Exhibit 3) Good afternoon, Chairman Gloor and members of the committee. My name is Tiffany Joekel, T-i-f-f-a-n-y J-o-e-k-e-l, policy director at OpenSky Policy Institute and we're here to testify today in opposition to LB974. We certainly appreciate the intent with which this policy has been brought forward. Unfortunately, the research bears out that the benefits targeting families who struggle to afford these items that they prepare for school, the benefits of such a policy are not necessarily targeted to only low-income and middle-income families who may struggle to afford some of these items. It's available to any person who makes a purchase of these items during this tax holiday, so that could be someone that's buying a computer less than \$750 that's not preparing for school, or some...or out-of-state residents who happen to be in the state at the time. Furthermore, research has demonstrated that the economic impact, the growth in sales during those weekends are generally a result of shifting the timing of purchases as opposed to stimulating purchases that wouldn't have occurred otherwise. And similarly, the purchase of exempt items that occur...or nonexempt items that occur during this holiday would likely also occur...they're called impulse purchases, and they would also likely occur outside of the holiday if the timing of those purchases weren't shifted. And so there was a study in New York, that New York was the first state to implement a tax holiday for clothing in the mid-90s and what they found was, while there was a significant increase in clothing purchases during that weekend, there was also reduced purchases on either side. So again, we see the major benefit being a time shift. And honestly, the family is best able to shift the timing of their purchases are often upper- and middle-income families with more financial flexibility as opposed to families living paycheck to paycheck who sort of have to make those purchases when they have the funding available whether or not it's inside of the tax holiday. So to the extent that the Legislature and this committee is interested in providing targeted sales tax reduction to low- and moderate-income families, the better way to target that might be through a refundable sales tax credit through the income tax code. So with that, I'd be happy to answer any questions. [LB974]

SENATOR GLOOR: Seeing no questions, thank you, Tiffany. Anyone else in opposition? Anyone in a neutral capacity? Senator, you're recognized to close. [LB974]

SENATOR KOLOWSKI: Senator Gloor, committee, thank you for the time today and for those that took the time to comment on the bill. I look forward to the opportunity to fine-tune that in the future, having physically been involved in one of the sales date across the river in Council Bluffs, now when you witness what does get sold on those days, you know it's significantly more than just the marked items as people are trying to make some savings before their kids head back

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for school. So I think there's the fine-tuning on definitions, and the rest that we can work on. Try to make this palatable and possible for Nebraska as we do have the surrounding states that do have choices. We'll try to make that better and if it looks like it will be balanced better and financially a good situation for Nebraska, we'll try to work on that for next year. So I thank you very much for your indulgence today. Thank you. [LB974]

SENATOR GLOOR: Any final questions for Senator Kolowski? Don't see any. [LB974]

SENATOR KOLOWSKI: Thank you, sir. [LB974]

SENATOR GLOOR: (Exhibits 4-5) Thank you. And that will end the hearing...hang on a second. I need to read into two letters from...proponent letters: Jessica Lechner from Auburn Chamber of Commerce, and Amy Allgood for the Nebraska City Tourism and Commerce Division. And that will end the hearing on LB974. We'll now move to LB1021. Good afternoon, Senator Crawford. [LB974]

SENATOR CRAWFORD: Good afternoon, Chairman Gloor and members of the Revenue Committee. My name is Senator Sue Crawford, C-r-a-w-f-o-r-d, and I represent the 45th Legislative District in Bellevue, Offutt, and eastern Sarpy County. I'm here to introduce LB1021 today for your consideration. LB1021 would provide that in cases where municipality has adopted the Nebraska Advantage Transformational Tourism and Redevelopment Act or NATTRA, that the Nebraska Department of Revenue shall provide to the municipality via secure means, copies of the sales and use tax returns. Under current law and practice, a municipality, after certifying an individual to the Department, may come to the Department on a quarterly basis to examine the sales and use returns. This bill does not change that process, but rather creates an additional option for cities that have adopted NATTRA and those cities only. Timely access to this information is particularly critical for these municipalities because in NATTRA, the city itself is responsible for disbursing the revenue to developers. So unlike other bills you may have heard in this committee where the focus of the municipalities was getting information for budgeting and planning purposes, in this case the information is very critical because they are administering the program returning those tax dollars. So having the information is critical. For those of you who are unfamiliar with NATTRA, it was introduced by my predecessor in the Legislature, Senator Abbie Cornett and passed by the Legislature in 2010. This legislation allows cities following a vote of the people to commit a portion of their local options sales and use tax to either a new project or to a redevelopment project. I would note that the sales and use tax is only that local option sales tax within that area being developed and does not include the state sales and use tax. During the interim, the Urban Affairs Committee conducted an interim study on economic development tools for municipalities with two public hearings, one in Lincoln and one in Norfolk. During the hearing in Norfolk, representatives of the United Cities of Sarpy

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County offered testimony and raised the issue that is before you today. I would note that a representative of that group, Mr. Jeff Kooistra, from the city of Gretna, will follow me in testimony in order to give the committee some perspective on why the provision in LB1021 is necessary. As the city of Gretna is one of only two cities that have adopted this economic development tool, I encourage the committee to take advantage of his knowledge and expertise in this implementation. You will hear from him about some of the issues they are facing with limited timely access to sales and use tax return data. For the record, the city of La Vista is the other city that has adopted NATTRA for it's 84th Street quarter project. I urge your consideration of this bill. As you'll note, the fiscal note notes there's no fiscal impact of providing this information in a secure manner. And again, in this case, the municipality is the one returning...with doing the turnback. So having information is critical for them to do their...to implement the tool well. I appreciate your time and attention. I can try to answer questions, but you may want to hear from the other the testifiers and I'm happy to answer questions again in closing. [LB1021]

SENATOR GLOOR: Okay. Are there any questions for Senator Crawford at this time? I don't see any. [LB1021]

SENATOR CRAWFORD: Thank you. [LB1021]

SENATOR GLOOR: Thank you. Proponents for this bill. [LB1021]

JEFF KOOISTRA: (Exhibit 1) Good afternoon, members of the Revenue Committee. My name is Jeff Kooistra, K-o-o-i-s-t-r-a, and I serve as the city administrator for the city of Gretna. While I am here today to speak in support of LB1021, primarily on behalf of Gretna, I also represent the United Cities of Sarpy County which includes the cities of Papillion, La Vista, and Springfield, who have also supported this proposed legislation. I want to thank Senator Crawford for introducing this bill. The city of Gretna approved by a vote of the citizens a 1.5 cent sales tax. The city also approved LB1018 which allows the city to commit the sales tax that is generated from a development to be paid to a developer as an incentive for a specified project. The city of Gretna agreed to this incentive to the redevelopment of the Nebraska Crossing Outlet in 2014. Our agreement is not to exceed ten years, but may be shorter if the development generates a dollar commitment before the ten-year requirement. The 1.5 cent sales tax is levied throughout the city and is remitted to us from the Revenue Department monthly in one payment. It is our responsibility to separate the amount that is owed to the mall developer and the amount that comes to the city. We are only authorized to come to the Revenue Department quarterly to acquire the needed information to make this separation. This separation is accomplished by totaling the sales generated by 70-plus businesses at the outlet mall. This is a tedious and time consuming task. Presently, we are required to manually write all this data down from information

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supplied by the Revenue Department at their offices. This information includes gross sales, net taxable sales, city sales tax, and city use tax for each store requested. We ask that this data be available to our designated person in an agreed upon secure format and that this information be sent to our designated person. Presently, our designated person needs to arrange a time with the Revenue Department to come to their offices and view the data that's requested. This takes a designated person about a half day, including driving time. For communities in the western part of the state, this would involve a much longer time frame. By passing this bill, our limited public funds can be better used while still maintaining the confidentiality and security of the sales tax data. Thank you for your time and consideration this afternoon. We respectfully request that you advance LB1021 as currently drafted. I'd be happy to answer any questions. [LB1021]

SENATOR GLOOR: Thank you, Mr. Kooistra. Are there questions? Senator Scheer. [LB1021]

SENATOR SCHEER: Thank you, Senator Gloor. I'm looking at the bill to see if I can find, are you requesting that if divided on a monthly basis that you can keep current or is that...you still doing it just on a quarterly basis? [LB1021]

JEFF KOOISTRA: The bill doesn't address that part. It would be nice if it was monthly. I mean, that would help the cash flow issues for us in the development, but the bigger issue today is just that we can maybe have it sent to us in a secure manner to our designated person. [LB1021]

SENATOR SCHEER: Rather than having to go in and... [LB1021]

JEFF KOOISTRA: Yeah. Instead of coming in. Because right now, she has to hand write all that data and there's always chances of mistakes. I do that myself. [LB1021]

SENATOR SCHEER: Okay. Thank you. Thanks, Senator Gloor. [LB1021]

SENATOR GLOOR: Seeing no further questions, thank you for your testimony. [LB1021]

JEFF KOOISTRA: Thank you very much. [LB1021]

SENATOR GLOOR: Other proponents for this bill? Good afternoon. [LB1021]

GARY KRUMLAND: Senator Gloor and members of the committee, my name is Gary Krumland. It's G-a-r-y K-r-u-m-l-a-n-d. I represent the League of Nebraska Municipalities in support of LB1021 and we appreciate Senator Crawford introducing the bill. As was mentioned,



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in 2010, the Legislature adopted LB1018 which was an economic development tool that cities can use where they can use their own sales tax to help develop businesses and things in the city. And this is just another little tweak to the process to help those cities that are doing it to become more efficient in doing it. As mentioned, two cities have done it already and others have looked at it, but only two so far have adopted it, but this bill will be helpful to them. So we do support the bill. [LB1021]

SENATOR GLOOR: Gary, is it safe to say that the reason there's a designated person isn't just a security issue, but also to make sure that there weren't a host of people who came in asking for the same information. [LB1021]

GARY KRUMLAND: Yeah, and I think...and that's based on what the current law is. Right now a city can designate one person to go to the Department of Revenue and review the sales tax for the local option sales tax purposes and this kind of just carries that over and... [LB1021]

SENATOR GLOOR: Okay. [LB1021]

GARY KRUMLAND: ...for that reason and for security. [LB1021]

SENATOR GLOOR: Okay. Other questions? I don't see any. Thank you. Continuing with proponents. Any opponents? Commissioner Fulton, welcome. [LB1021]

TONY FULTON: (Exhibit 2) Thank you, Chairman Gloor. Mr. Chairman and members of the Revenue Committee, for the record my name is Tony Fulton, T-o-n-y F-u-l-t-o-n. I am here appearing in...I'm Tax Commissioner for Nebraska. I'm here appearing in opposition to LB1021, which would allow greater access to return information for municipalities which have an agreement in place under the Nebraska Advantage Transformational Tourism and Redevelopment Act. Under current law, certified representatives of municipalities that have adopted a local sales tax may examine sales and use tax returns of businesses within the municipality with ten days' notice to the Department and within the premises of the Department. LB1021 would allow municipalities with an agreement under NATTRA to have access to the return information sent to him or her outside the premises of the Department in a format designated by the individual. Our opposition is based upon one of our primary and critical responsibilities, that being the protection of confidential taxpayer information from disclosure, either intentionally or inadvertently. Confidentiality of taxpayer information is at the center of what we do. It is a condition upon which taxpayers entrust our Department with massive amounts of personal data. This trust is the lynchpin of voluntary taxpayer compliance. It is a condition placed upon us not only by state statute, but also by the federal government in allowing the Department to use federal tax information in our compliance efforts. In short, it cannot be

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compromised. Just to give you a flavor for how taxpayer information is handled within the Department, every Department employee must annually review Department policies, undergo training, and pass a test covering how the Department and every person in the agency must handle and protect state and federal tax information. Any employee of the Department who learns of any breach of confidential tax information has an affirmative duty to report it immediately to the Tax Commissioner, who in cases involving federal tax information, fills out a report to the Federal Treasury Inspector General for Tax Administration within 24 hours. Unlawful disclosure is a felony. The taxpayer may also seek civil damages from the Department or its employees for any improper disclosures. Department policies provide, among other things, that any improper and intentional release of any taxpayer information results in termination, and failure to exercise due diligence results in various levels of disciplinary action. LB1021 would allow cities with an agreement under NATTRA to have greater access to confidential taxpayer information than has ever been allowed before to any entity. Even the Auditor of Public Accounts, when its staff audits our agency, cannot remove records from the premises of the Department. All records must be viewed within the secured confines of the Department and cannot leave the premises. It is the same with the Legislative Auditor for performance audit purposes and it is the same for cities that wish to view sales tax information of retailers operating within their boundaries. We believe the current restrictions on access strike the proper balance already. There are good reasons for the conditions that are currently imposed in the statute. One is because we cannot guarantee that the information is protected once it leaves the Department. This is not a question or a matter of trust or integrity of the individuals involved, or sanctions that might accompany an improper disclosure. I touched on this with the Executive Committee earlier on a similar bill. I just remind the members of the committee that when we make...when you make policy, it is not just the present day for which the policy is made, but indeed for decades and even generations in the future. And so, we ask you to consider that in your consideration of the bill. For the Department of Revenue, we view our duty to protect confidential taxpayer information as extending beyond our employees and beyond the second floor of the State Office Building, or our other offices, for that matter. We believe it is our responsibility to assure, to the greatest extent possible, that confidential taxpayer information cannot be intentionally or inadvertently released by anyone, including persons outside the Department. Therefore, the Department opposes LB1021. And I could answer any questions, or try to if you have any. [LB1021]

SENATOR GLOOR: Thank you, Mr. Fulton. Let me ask. When you went through your confirmation hearing with us, one of the things you talked about was the opportunity to do some degree of modernization within the Department. I think you might have talked about it more as it relates to efficiencies. I have an understanding of your concern now, but in the future it would seem to me that in some states this information can be gathered in a secure fashion. Obviously, your concern is, we can't do it now, but you see this being something that we're pointing towards in the future anyway. [LB1021]

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TONY FULTON: I think that potential exists. There is encryption technology out there. There's recovery technology out there that exists. Well, I can say, personally I'm...we're not at a level of comfort with that right now, but that's not to say that we wouldn't be at some point. So there's always a willingness on the part of the Department to work with whomever and whatever technology exists. So I know there is technology that is purported to accomplish X, Y and Z. Yeah, I don't think it's there yet. [LB1021]

SENATOR GLOOR: Okay. Other questions? Senator Scheer. [LB1021]

SENATOR SCHEER: Thank you, Senator Gloor. Welcome, Commissioner. I...you're going to have to help me because I must not be understanding the process because if I'm the designee of Gretna or La Vista and I walk into your office, you provide me the information, and I physically write it down on another piece of paper. I take that paper with me. I don't take yours, but I take my paper with me. Now it would seem to me that it would be much safer and more controlled to have whatever amount of encryption we might have even at this point to have the information transferred via an encrypted text...information process to Gretna, to a specified address than having a paper copy floating around in somebody's car as they go back or sitting on somebody's desk as they're trying to provide this information rather than having it in an e-mail or some other type of downloaded process that only that person would have access to on their own computer that no one else could see. So if that's not the system, then I'm trying to figure out how this actually, even as it is now, would not be a more controlled safer document change then...and I get the fact that you're responsible for it. Maybe in here you have...we would have to place the burden of any loss of information that came from any community that you provided it in that case, that person would also be held responsible as a felon for a felony conviction and as well that those communities would be liable to any third party for the loss of that information. But having somebody walk out with handwritten information just doesn't seem to me to be very protected at all. [LB1021]

TONY FULTON: Okay. With respect to translating or transferring information in an electronic format, that which would be transferred would be taxpayer information in its entirety. I'm assuming that's... [LB1021]

SENATOR SCHEER: Well, you wouldn't have to send them all, but, I mean they're only looking at specific items on those sheets. I would assume if it's in there, you can transfer item, sheet 8, you know, line 8, line E and line Z and you're not providing necessarily their tax I.D. number. You may be giving them a state I.D. number that it goes towards that specific entity, but they don't have their tax I.D. number. They may...and I don't know if they're looking at gross sales, net sales, whatever the case might be, but you don't have to provide them all the information. You can specify on most programs of which one of those columns you may want to shift. [LB1021]

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TONY FULTON: Yeah, I...my understanding is there's a request that comes to the Department and with that request, we make a decision as to what we are able to provide within the confines of confidentiality. So to transfer something across electronic documents to, you know, in this case the...I forget the appropriate terminology but the designated individual, we just...we would not be comfortable with it. We're sending...and this is not about the designated individual so much as it is about the inadvertent release of confidential taxpayer information. [LB1021]

SENATOR SCHEER: But that's my concern. It's...we have more capacity for that loss of material having them have it on a piece of paper, and inadvertent disclosure to some other third party by having it literally on paper in some other office on somebody else's desk or trying to be in a pile in a secured place. I mean, it... [LB1021]

TONY FULTON: I guess it depends on what actually gets written on that piece of paper. [LB1021]

SENATOR SCHEER: Well, and I guess you don't know because they're doing it, so. [LB1021]

TONY FULTON: Yeah. I just...with some experience transferring documents electronically, it's not...there has to be some security, some guarantee to the Department with respect to the transfer that's actually occurring and with respect to what's being done afterward. And so there are...I guess that's an easier way to break this down logically. There are two issues for which we would have concern, whereas, under the present statutes there is just one. And indeed, it was a compromise that was struck back in 2000...whenever this was, 2010. That's how I remember it and that's how I understand it. This was explained to me in the present that this indeed was a compromise struck back then. [LB1021]

SENATOR SCHEER: Okay. Thank you, Commissioner. Thank you, Senator Gloor. [LB1021]

SENATOR GLOOR: Senator Schumacher. [LB1021]

SENATOR SCHUMACHER: Thank you, Senator Gloor and thank you, Commissioner Fulton, for appearing before us today. What Senator Scheer raises is something that I think merits for the discussion with the Department, not necessarily confined to this bill, but to tax policy in general because without...I assume there has to be some way to strip out identifiable personal information out of the system so that we can get a profile of how the system is working, who it's taxing, some distribution charts, and things like that for the purposes of policy making. And maybe that should be an effort of everyone as to how we can, without disclosing privacy, disclose the system. [LB1021]

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TONY FULTON: Right. This is the performance audit that's ongoing. This is a challenge which...a challenge that is being collaborated upon. Senator Watermeier, myself, and members of the Department of Revenue and members of his staff and Performance Audit and this is something that's being worked on presently. So, yeah, with respect to policy, the policy decisions would have to be made over here. We still...we, as a Department...I recognize full well that there have to be policy decisions. I mean, with a great sensitivity I recognize this. But we still have a responsibility federally and at the state level for confidentiality of taxpayer information. It's the Department is always going to be...it's going to err on the side of caution in that regard. I recognize that there have to be decisions made. And this is where we have...why we have aggregated data was...that was a buzz word when I was in this body and that stands to reason because that is a way by which one can apprehend pertinent information which could be used to make policy decisions in such a way as to protect confidentiality. So that's something that exists now. With specificity, the taxpayer records, that's being worked through right now and it's not without challenge, but it is being...there's a collaborative effort going on right now. [LB1021]

SENATOR SCHUMACHER: Well, one of the bigger issues, I think, we're struggling with is, we've got the 6.84 percent income tax rate, which applies to almost all of our income because we have a very low bracket where it shifts from the lower brackets to the higher, but yet our effective tax rate on that group of income is four point something percent. Well, it would really be nice to know the demographic of the person who or how the system is working to reduce, which if everything were applied informally, 6.84 percent down to four point something percent, what program, what exemption, what wrinkle in the tax law is it that is responsible for this? Is it credits, is it charitable deductions, is it mortgages? So we get a feel for those, and you almost got to play with the data in order to get that feeling. [LB1021]

TONY FULTON: The Department stands ready to work with you with the understanding that we have a very earnest responsibility for confidentiality of taxpayer information. [LB1021]

SENATOR SCHUMACHER: Thank you, Commissioner Fulton. [LB1021]

SENATOR GLOOR: Senator Scheer. [LB1021]

SENATOR SCHEER: Thank you, Senator Gloor. One final one, Commissioner. How do you get the information from the federal IRS? [LB1021]

TONY FULTON: Say it again, how? [LB1021]

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SENATOR SCHEER: Yeah, how does your information come from the federal government? [LB1021]

TONY FULTON: Lacking the experience in the...I'll have to give you a more detailed answer, but there is a...as I've been over there, there is a specific room that we have in which a lot of sensitive federal information is found and, I mean, even I have to...I'm not able to access the information as Tax Commissioner without... [LB1021]

SENATOR SCHEER: Well, I guess my point is, they don't send you a copy of every return do they? [LB1021]

TONY FULTON: No, so you're asking whether electronic or...? [LB1021]

SENATOR SCHEER: Yeah. [LB1021]

TONY FULTON: Yeah. [LB1021]

SENATOR SCHEER: I mean, they found a way to do it. We don't have to reinvent the wheel. There's some type of encryption system out there that allows the safe and diligent transfer of information. [LB1021]

TONY FULTON: Yeah, I will...I, as the Tax Commissioner, am not convinced that encryption technology as stands today would guarantee the confidentiality of taxpayer information. [LB1021]

SENATOR SCHEER: But the federal government does. Would that be a fair assumption then? [LB1021]

TONY FULTON: The federal government has its opinion. This Tax Commissioner has his opinion. (Laughter) [LB1021]

SENATOR SCHEER: Fair enough. I'm not trying to put you on the spot. I'm just trying to figure this out. Thank you very much. [LB1021]

SENATOR GLOOR: Senator Harr. [LB1021]

SENATOR HARR: Commissioner Fulton, I'm going to pile on for a second. [LB1021]

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TONY FULTON: Oh, why not? (Laughter) [LB1021]

SENATOR HARR: You know, they bring up great points. How come we can do this on the federal...you know, IRS.gov you can find out all kinds of data and analysis and numbers and we have access. And then you go the state and we don't. I mean, maybe some of it's encryption, but a lot of it is just numbers. It's not even identifying tax returns. It's someone else analyzing that data because you're hearing the frustration that we have of trying to make tax policy. [LB1021]

TONY FULTON: Yeah. [LB1021]

SENATOR HARR: We're the policymakers and we don't have access to the raw data, which I would like. But we don't even have access to analysis of the raw data. We just have, trust us, this is what it is, this is what it is, and when we ask specific questions of how...what would this do? We're stonewalled, not just by our own Fiscal Office, but by the Department of Revenue of what we can and can't do and it makes it very difficult for us to do...what we need to do. The way we do fiscal notes, fine, and to a certain degree if you're on Appropriations, but when you're in this body, on the other rest of the body, we're given a sliver of the budget, less than one-tenth of 1 percent. And so we have to fight and claw for every dollar. And so we want to know, number one, where did this data come from? Number two, how was it analyzed? And that's just for individual bills. But then when we went to a broader tax policy because our previous Governor told us we need a modern tax system, we don't have a modern tax system. We're told we have a property tax problem. It's our Governor's number one priority, but then when we try to do something in tax, or try to figure out the numbers and the data, we can't. And it's, you know, I feel the frustration of my constituents and I kind of look back and I say, I know, and they say, but you're the state senator, you're the policymaker. I say, I know. And I kind of look at them kind of blindly and say, I wish I could do something for you. Believe you me, I feel your frustration, but we don't have that. And I'm not asking for an answer today. I'm just kind of trying to let you know our frustration that we feel. I know you're new to the job, but I want you to know that when you're making policy, if you could look and say, why can't we be like the feds? Why can't we at least offer as much as the feds because I think we all agree that we're close to the people and we should probably be able to create a little bit more. [LB1021]

TONY FULTON: We should...maybe we can discuss what the federal government makes available that the state doesn't. My...there is information that can be garnered from our Department without the release of confidential taxpayer information. So it does exist. I'd be glad to work with you. I was...when I was on this side of the body, I was able to get a lot of that information. So, I'd be pleased to work with you. I mean, that's...I need to know more specifics as to what you're looking for. [LB1021]

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SENATOR HARR: And what I would say, and some of it, if it's just public, and it may be available if I call, but some of it we'd like just publicly available because our constituents would like to know. And so if we can have it on a web page. [LB1021]

TONY FULTON: Yeah, to the extent that we can provide that without--a broken record here--releasing confidential tax...there's a willingness on my part to work with you on that. [LB1021]

SENATOR HARR: By the way, you've been great to work with so far and I appreciate all you've done, so...and I believe that. Thank you. [LB1021]

TONY FULTON: Okay. Thank you. [LB1021]

SENATOR GLOOR: Seeing no further questions, thank you, Commissioner. [LB1021]

TONY FULTON: Thank you. [LB1021]

SENATOR GLOOR: Anyone else in opposition? Anyone in a neutral capacity? Senator Crawford, you're recognized to close. [LB1021]

SENATOR CRAWFORD: Thank you, Chairman Gloor and members of the committee. I appreciate your great questions and I respect the need for security and confidentiality, and all of those protections that are in place for that identified person are still in place if you allow the transmission of information in an alternative format. It just is providing information in an alternative format and I appreciate that Senator Scheer asked some great questions about how that could perhaps even improve security and confidentiality of the system. And I appreciate the Tax Commissioner's statement that he's willing to look at this issue, willing to work on new changes in technology, and as you've seen, it's an issue also for your committee as well in terms of getting good access to information. I think it is 2016 and so, you know, I think there are great advances we could make not only for the municipalities that are in NATTRA, but for many other reasons it's important that we work on modernizing our tax system so that people can have this access. Right now, we have taxpayers paying someone to drive to Lincoln to sit in a room to write things on a piece a paper, carry that piece of paper back to the city. There are...in addition, that's not, you know, a lot of inefficiency in that process as well as errors and so, it's not an efficient system for many reasons. And so I am encouraged by your interest in making sure we continue to work with the Revenue Department to modernize our system, and I hope that making that information available to these municipalities will be part of that effort. [LB1021]



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SENATOR GLOOR: Thank you. Questions? I see none. Thank you, Senator Crawford. [LB1021]

SENATOR CRAWFORD: Thank you. [LB1021]

SENATOR GLOOR: And that will end the hearing on LB1021. We move to LB1047. Senator Harr. [LB1021]

SENATOR HARR: (Exhibit 1) Thank you, Chairman Gloor, fellow members of the Revenue Committee. It is an honor to be back in front of your committee again today. I am Burke Harr, H-a-r-r, representing Legislative District 8 located in midtown Omaha, which may beg the question, why are you bringing a co-op bill? Well, I have a great interest in co-ops, to be honest. My grandparents own co-ops, so...worked in co-ops. I'm bringing...LB1047 was brought to me by the Nebraska Co-ops. LB1047 stems from their work with the Department of Revenue over the interim for clarification in existing statute 77-2704.13 relating to sale and purchase of energy sources or fuel used directly in the generation of electricity. After accumulation of positive meetings and conversations between Commissioner Fulton, Nebraska Cooperative representatives and conversations between...and my office, they have worked together to come up with AM2012 which was being distributed now by the pages, hand to pages. AM2012 amends current statute, 2704.13, Section 2, adding, quote, processing includes the drying and aerating of grain in commercial agricultural facilities, unquote. I believe this amendment allows for common ground between both parties in order to move forward in a positive direction. Again, I want to thank the parties. So often, two sides build walls and these two parties have come together to work out an amendment and a compromise that is...probably is a good compromise because neither side is happy, but they have agreed to it. I believe Commissioner Fulton of the Department of Revenue, who has answered plenty of questions already, and Rocky Weber of the Nebraska Co-op will be testifying behind me and can answer specific questions. However, if you have any questions for me, I'd be more than happy to answer them. In closing I want to thank, again, Commissioner Fulton, Department of Revenue, and Nebraska Co-op for working towards a middle ground in finding a solution. With that I would answer any questions. [LB1047]

SENATOR GLOOR: Are there any questions? Senator Schumacher. [LB1047]

SENATOR SCHUMACHER: Thank you, Senator Gloor, and thank you, Senator Harr, for bringing this issue to the committee. So in this particular case, the exemption sought is for electricity essentially used in moving grain around, running and drying it in the fall, in that nature. [LB1047]

SENATOR HARR: An input, yes. [LB1047]

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SENATOR SCHUMACHER: As an input. How does...I'm assuming your law office, you have a copier, you have computers, and you have other things that are necessary for you to do legal stuff. How philosophically do we say if it's an input to move grain around as a way to make money in your business, you can have a tax break on it, but if it's to run the photocopier and the lights so people can read the documents and the computers to generate it in a law office, then it's a different input. [LB1047]

SENATOR HARR: Great question. And that gets to the heart of the matter and I think those coming after me might be able to answer it better, but it goes back to the analogy of a couple of years ago we did a tax exemption for ag repair. We didn't do a tax exemption for my car repair. I practice law, I need a car to get to my office to do the work to make the money, but it's not an integral part of the process of the law. Law...what really makes the magic is what's between my ears. As scary as that seems, that's what it is. It's not the lights. You can't...I could do it without lights. I could do it by candle, I could do it outside. You can't do this final product without the electricity so it's a more integral and important input. It's not just a small part, it's a larger, and it's the basis of the final product. If that makes sense? Just like we give ag repair because the tilling and the agricultural machine is much more important than me driving to work. [LB1047]

SENATOR SCHUMACHER: But without a computer and without your printer and without your xerox machine, what's between your ears never gets on paper, and to a judge or your client. [LB1047]

SENATOR HARR: And somehow, St. Thomas More survived. (Laughter) [LB1047]

SENATOR SCHUMACHER: That's right. Thank you, Senator Harr. [LB1047]

SENATOR GLOOR: Other questions? Thank you, Senator Harr, and we know you will be staying. [LB1047]

SENATOR HARR: Yes, thank you. [LB1047]

SENATOR GLOOR: We'll continue with proponents. [LB1047]

ROCKY WEBER: (Exhibit 2) Senator Gloor and members of the committee, my name is Rocky Weber, R-o-c-k-y W-e-b-e-r. I am currently the general counsel and I'm the incoming president of the Nebraska Cooperative Council. The council is a statewide trade organization that represents approximately 96 percent of Nebraska's farmer-owned grain and supply cooperatives and many of our members operate commercial grain facilities. LB1047 is an attempt to resolve

disputes between several of our cooperative members and the Nebraska Department of Revenue that have resulted in nearly nine years of tax protest litigation over whether the cleaning, drying, sorting, aerating of grain constitutes processing and thus whether sales tax charged on the utility cost for those processes should be exempted under current law. Nebraska Revised Statutes, Section 77-2704.13 provides that the sale, purchase, use or other consumption of electricity, natural gas, propane, and other energy sources is exempt from Nebraska sales and use tax if more than 50 percent of the amount is purchased, used, or directly consumed in processing, manufacturing, refining, generating of electricity, irrigation, or farming. Processing or manufacturing has been defined by the Department of Revenue as an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. It is the position of our members that the aerating and drying of grain transforms that grain into a different quality, state, form, property, or thing, and thus should be considered as processing under the current statute that exempts sales and use tax for the energy uses for these processes. Commercial grain facilities, including those owned and operated by our members, use a series of electric motors and fans to move, sort, clean, blend, dry and aerate grain that they purchase for resale to end users or in the export markets. The marketable grain product is the bushel of grain, that depending upon the needs of the buyer, must meet certain quality standards to satisfy the terms of sale. Foremost is importance of these standards is moisture content of the grain which affects quality, the weight of the grain, as well as its suitability for transport. Not all buyers want the same moisture content in grain. Not all buyers want the same quality of grain. So through the use of these appliances to dry, aerate, sort, clean, and blend grain, commercial grain facilities improve the quality and therefore the value of the bushels they receive. These processes change the varying qualities of grain with varying degree of moisture, foreign material, and other grading qualities, to a consistent and generally improved product. These processes not only render grain safe for storage, but improve the quality and the value of grain. Further, these processes are not limited only to the harvest season, but involve continuous flow of fungible grain through these grain facilities that is constantly being improved and brought to standards necessary to maximize the ongoing sale of stocks of grain. The members of the Nebraska Cooperative Council have been unable to effectively utilize this current sales and use tax exemption since approximately 2007. In late 2010, members of the council filed numerous refund claims seeking clarification of the application of the energy exemption to grain handling processes, specifically with regard to drying and aerating of grain. A hearing officer was appointed by the Department of Revenue in 2015. These protests are now pending hearings sometime this summer and to the extent that this does not get resolved through this legislation, that processed litigation will go forward. The problem is that the standard as to how much aerating or how much drying of grain will be considered by the Department as "processing" for the purposes of the sales and use tax exemption have never been codified by statute or in regulation. Consequently, it is impossible for commercial grain facility operators to determine when or under what conditions their grain processing activities would qualify for sales and use

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tax exemptions. There's been a series of changing positions by the Department over the year as to what moisture, drying, or processing, aerating should cease. How much air is put on and whether the processing ceases at a certain point, given how much air is put on, about what time of the year aerating takes place or drying takes place, and whether any of that processing in other times of the year should be considered as an exempt activity under the statute. As originally introduced, LB1047 seeks to have blending, cleaning, and sorting of grain in addition to the aerating and drying of grain in commercial agricultural facilities qualifies processing. With the appointment of our new Tax Commissioner, Tony Fulton in late 2015, we were allowed the opportunity to have a new dialogue with the Department regarding these issues. Through a series of conversations with Commissioner Fulton, literally in the first week of his assuming his office, and with his staff as well, the council and the Department have agreed to an amendment of LB1047 which you will see as AM2012. The amendment would statutorily define that drying and aerating of grain is processing for the purposes of the exemption. At this time, the council would like to acknowledge and thank Commissioner Fulton for his openness and willingness to begin that dialogue that has resulted in us being here today. Our members have incurred over \$70,000 worth of expenses so far to clarify this energy use exemption and at what point processing begins or ends with these activities. While Nebraska courts have not weighed in on this issue, a Kansas Supreme Court case has issued a decision directly on point that would support the cooperative's position in this matter. Further, the Iowa Department of Revenue has issued private letter rulings providing that aerating, in fact, dries grain, which the Nebraska Department of Revenue has debated with us. Therefore, we believe that this legislation is necessary to provide once and for all clarity on this issue and bring an end to the continually shifting standards applied by the Department. I want to thank you, Senator Gloor, Senator Harr for sponsoring this, also Senator Dan Watermeier, Senator Heath Mello, and Senator Jerry Johnson have been instrumental in getting this matter put together. We appreciate the efforts of Matt Miltenberger and Lauren Kintner and we appreciate the opportunity to bring this bill before you today. For the foregoing reasons, we wish that you would...we would hope that you would advance this bill, and if you have any questions, I would be willing to answer those at this time. [LB1047]

SENATOR GLOOR: Thank you, Mr. Weber. Questions? Senator Schumacher. [LB1047]

SENATOR SCHUMACHER: Thank you, Senator Gloor, and thank you for your testimony today. This is about, maybe, the fourth or fifth bill of this flavor, I think we've seen this year in which there's a statute passed that says, here's how the taxes should work. You know, you get a tax break if this, this and this is met and then there's some ambiguity as to how that's interpreted and the Department takes a position on one side and the taxpayer takes it on another. And years ago the Legislature said, we're going to kind of abide by a thing called the Administrative Procedures Act and we've got a procedure for handling such things and there's...if the thing comes to the head and they can't negotiate it early on, there's an administrative law judge that's

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appointed, usually some staffer at the Department of Revenue, that holds a hearing, makes recommendations to the Commissioner, the Commissioner decides, assigns a ruling of some sort. And if there is a problem with that and the taxpayers disagrees with the Commissioner's ruling, it then goes to the District Court through the court system and the court says, one side is right or the other. And that's a process that with this pattern that we've seen this year, and maybe some in other years, is broken when they say, well, the heck with it, we haven't even gotten a ruling out of the Commissioner, we got...we haven't had the completion of the administrative law process, we haven't had a court decision, let's go back to the Legislature and abort the administrative procedure system and have the Legislature change the rules. So, why not wait until the court system does what it should on this and many, many other kinds of fine points where taxpayers may legitimately differ with the Tax Commissioner. [LB1047]

ROCKY WEBER: Senator, our members have been following that administrative process for nearly nine years and we still do not have a ruling. The hearing officer was not appointed until January of 2015 and a hearing is scheduled for sometime this year. Recently, the Department asked for thousands of pages of documents from one of our members that is involved in this dispute, seeking grain records of every grain purchase and every grain sale over a several year period. This is expensive, it is time consuming, and while that process exists, as so far not worked very well, and so we feel that we needed to resort having the Legislature clarify the existing statute that when you're aerating and drying grain, you are changing the quality of that grain and, therefore, that meets the definition of processing under the statute and so this is resolved once and for all. [LB1047]

SENATOR SCHUMACHER: But if this thing...these issues were originally raised in 2008, 2009, and have taken to 2015, then one of the things to just get the process rolling, that no answer in that entire period of time, one of the things that should concern us is what is wrong with that process? Because it is in a process that we've imposed on not only on taxes, but on EPA and every administrative agency has got this process. So if for some reason somebody had an argument and something not decided years and years ago, that the Department or somebody was not giving prompt attention to and reasonable attempts to use, then we've got a bigger problem than what takes to dry grain. We've got a problem with the system that if it were working, and what you're describing is, is not working, that ends up us being the administrative law judge and saying, oh, well, we think this fits and a political decision where it should be a legal decision. [LB1047]

ROCKY WEBER: Well, and we've considered whether or not we could bring an action to force the Department to move more quickly on these cases, but they really...this doesn't fall within that purview of when the court can mandate a state agency to do something. [LB1047]

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SENATOR SCHUMACHER: So your problem then is, you cannot get this brought to a head before an administrative law judge and they just, what, didn't call a hearing, didn't set a hearing...? [LB1047]

ROCKY WEBER: Didn't appoint a hearing officer and so the process has not been forwarded in a timely basis. In 2009, we brought this bill before the Legislature and at that time the Department staff came to us and said, we want to work this out, let's sit down and talk about changing our regulation to resolve this issue and clarify it. And so we pulled the bill. It was LB234. Thereafter, though, we ended up, basically, going down the same path of not being able to agree as to aerate and drying being processing of grain and, therefore, falling into the exemption of the statute. So we've tried both processes and we're back here again. [LB1047]

SENATOR SCHUMACHER: Well, thank you for your testimony. I think I learned a little about the aerating of grain, which I kind of knew a little bit about before, but that we might have a problem with some way that we effectively handle things under our Administrative Procedures Act we may need to look at. Thank you. [LB1047]

ROCKY WEBER: Yeah. [LB1047]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Weber. [LB1047]

ROCKY WEBER: Thank you, Mr. Chairman. [LB1047]

SENATOR GLOOR: We continue with proponents. Good afternoon. [LB1047]

RICHARD SANNE: (Exhibit 3) Good afternoon. Senator Gloor and members of the Revenue Committee, my name is Richard Sanne, R-i-c-h-a-r-d S-a-n-n-e. I am the executive vice president of the Nebraska Grain and Feed Association. We, too, are a trade association for grain elevators. Our membership not only includes cooperatively-owned members, but also privately-owned members. On behalf of our membership, we'd like to thank you for the opportunity to appear on this bill. I will be very brief. I am not intimately familiar with the administrative details that Mr. Weber already testified to. We do, however, have members that this will impact equally to Mr. Weber's members and so we are here to register our support for the adoption of LB1047. We believe that LB1047 will, in fact, clarify the current statute and remove any ambiguity surrounding...I shouldn't choose large words if I can't say them, (laughter) surrounding what constitutes processing grain. And again, I would thank you. That is the extent of my testimony. [LB1047]

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SENATOR GLOOR: Thank you, Mr. Sanne. Are there any questions? There are none. Thank you. [LB1047]

RICHARD SANNE: Thank you. [LB1047]

SENATOR GLOOR: (Exhibits 4 and 5) Other proponents for this bill. Are there opponents for this bill? Anyone in the neutral capacity? And while the Commissioner is getting settled in, I will read into the record for LB1047, proponent letters from Jessica Kolterman with the Nebraska Farm Bureau Federation, and a letter from the Nebraska Agri-Business Association. Both of those, again, as proponent letters. Mr. Commissioner. [LB1047]

TONY FULTON: (Exhibit 6) Thank you, Chairman Gloor, members of the committee. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I serve as Tax Commissioner for Nebraska. I testify in the neutral capacity on LB1047 to share with you that Senator Harr has indeed collaborated with me on this bill. The Department asked that the green copy referenced to "drying, aerating, blending, cleaning, and sorting" be tightened such that only "drying and aerating" be included as activities falling within the definition of processing for purposes of this subdivision. And this appears in AM2012 offered by Senator Harr, and we thank him for proposing this change to LB1047. While I testify in the neutral capacity, I would like to inform the committee that this is an issue in long need of clarification, and during the course of working with Senator Harr and the industry, the Department recognized such clarification must come from the Legislature. This is a longstanding issue that the Department would be most pleased to receive clarification on. I thank you for your time and would be glad to try to answer any questions. [LB1047]

SENATOR GLOOR: Thank you, Mr. Commissioner. The challenge here for me is that the Department has it within its ability, its authority to make this clarification on its own, or determination on its own, doesn't it? [LB1047]

TONY FULTON: It does. I can't speak to the past as to...in what has transpired, but at this point, at this point in the present there is a decision that has been made and maybe not overtly, but there is a decision such that there is a disagreement, and that's making its way through the judicial branch of government. [LB1047]

SENATOR GLOOR: Okay. Well, clearly the challenge is for this bill, for Senator Harr and the proponents, that legislatively it comes with a fiscal note. [LB1047]

TONY FULTON: Yeah. [LB1047]

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SENATOR GLOOR: And so what otherwise would seem to be some significant handholding going on with a point of contention that everybody would like to resolve is weighted down a bit because of that fiscal note, so that's why I ask. [LB1047]

TONY FULTON: Understood. [LB1047]

SENATOR GLOOR: Senator Scheer. [LB1047]

SENATOR SCHEER: Thank you, Senator Gloor. Looking at maybe different semantically than Senator Gloor, my assumption is this has been going on a long time, we're not going to backtrack, we may have that ability, but it's a lot easier for somebody to define it by statute rather than by rule and regulation and so we don't have to worry about things that have transcribed before the last ten years during those types, and it becomes effective only and with the passage of the bill. Does that sound...? [LB1047]

TONY FULTON: Not precisely. The Department...yeah, the Department has made an interpretation and that's how...this is how, when I've come into this, that's my understanding. [LB1047]

SENATOR SCHEER: Well, I understand that, but then I guess I don't understand why when Senator Gloor, if you need some definition or statute changed by this committee and the Legislature, and if it's in your powers to go back and say, look, I'm reviewing previous disputes and it is now the intent of the Department of Revenue that...and exclusively to, whatever the amendment speaks to, that's the new ruling. [LB1047]

TONY FULTON: Yeah, the Department...I am not able to make a different interpretation than what has been made. [LB1047]

SENATOR SCHEER: Okay. That's my point. You're stuck with an interpretation. [LB1047]

TONY FULTON: And I want to make that clear that, you know, as I read the statutes I am...I've come to the same interpretation of the statutes. And so I'm not able to...that's not the right language. I have the ability to, but I am not changing an interpretation. [LB1047]

SENATOR SCHEER: And you won't and so, therefore, we need to give that guidance, fair enough? [LB1047]



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TONY FULTON: Yeah, guidance, sure, that's right. That's right. [LB1047]

SENATOR SCHEER: Okay. All right. Thanks, Senator Gloor. [LB1047]

SENATOR GLOOR: Senator Schumacher. [LB1047]

SENATOR SCHUMACHER: Thank you, Senator Gloor, and thank you, Commissioner Fulton. So the status of this was, there was a dispute with the taxpayer, some administrative hearing before an administrative judge, you or a former Tax Commissioner signed an order saying, this is the way it is. Has that happened yet? [LB1047]

TONY FULTON: I'm not sure about that. [LB1047]

SENATOR SCHUMACHER: Because that's how it's supposed to happen. [LB1047]

TONY FULTON: Yeah, I'm not able to speak with knowledge. I'm not certain. [LB1047]

SENATOR SCHUMACHER: Because if there...I think, and this isn't the first time we've heard this flaw in the administrative law procedure. A couple of years ago, I think Senator Harr may remember this, where folks with the advantage act or something were complaining that there was this delayed process and they couldn't get action and then the folks that were complaining a little bit, cynically said, well, the Department can win just by doing nothing. And if this has percolated through a, you know, over the years to the various branches of government that are charged with administrative authority, then administratively or legislatively find out because it's not fair to play by well, you know, you spend the money, but we won't issue an order. [LB1047]

TONY FULTON: That's right. Yeah, I have...there has not been...you're correct. There's not been...there was not an administrative decision made. There's not an order signed. [LB1047]

SENATOR SCHUMACHER: So, in answering then to Senator Scheer's question, you may be perfectly empowered to enter one, but if this is not going back after so many years on a very clear issue as whether or not the juice to dry grain has been before you... [LB1047]

TONY FULTON: Right. [LB1047]

SENATOR SCHUMACHER: ...these folks are sitting there with \$70,000 in legal bills and finally decided that the lobbyist was cheaper than a tax attorney, and here we sit. So that's

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something...and I know you genuinely will because I think we know you, Tony. If that unfairness is the way things have developed over the years, then people are contesting the Department and contesting the regulation's interpretation deserve a quick answer so they have access to the judicial system. [LB1047]

TONY FULTON: Agreed. [LB1047]

SENATOR SCHUMACHER: Thank you. [LB1047]

SENATOR GLOOR: Seeing no further questions. Thank you, Commissioner. [LB1047]

TONY FULTON: Okay. Thank you, Mr. Chairman. [LB1047]

SENATOR GLOOR: Anyone else in a neutral capacity? Seeing none. Senator Harr, you've been anxious to talk to us, I bet. [LB1047]

SENATOR HARR: Thank you. Let me first start by saying that, not specifically us, but we, the Legislature, created this problem. We passed a bill, it had a definition. The Department has to strictly construe and narrow definition as much as possible. That's their job. They're...you know, they protect us the taxpayers. And sometime, it can be difficult and it puts them in a bad spot. And yes, we could take it to the courts, and yes, maybe we could have the courts decide, but the courts aren't the policymaker. They interpret the law that we passed. And so if we don't have...like the definition, we as policymakers can choose to change or clarify that definition. We don't have to wait for the courts to say whether we...they agree with what we think it should be or not. If we created this ambiguity, we have the right and the ability and the duty to correct that, and that's what we're trying to do here today. And that's what we're trying to do with a lot of these other bills. I...look, I don't blame, and I want to thank the Department for being, you know, very strictly construing these definitions and being good--what's the term I'm looking for of our tax dollars--shepherds of our tax dollars. So that's what this is about. This...the amendment I sent out furthers, narrows the definition that will hopefully lower the fiscal note. But as we all know, since this seems to be the day to bash fiscal notes and the Fiscal Office and Department, we don't get new fiscal notes until the amendment is passed and is adopted on the floor. So, I think it will lower the fiscal note. Unfortunately, you know, we sit here and we make tax policy and we don't always know what the cost is. To his credit, you know, Commissioner Fulton could have had a more broad definition and, lo and behold, it would have cost us a lot more money, and it would never be a fiscal note, you know. We know that we find money at government, when once it's passed, government finds money to spend it. We magically found \$300,000 to send out a whole bunch of yellow postcards. I would love to see if that would have been legislation, how long that would have taken and the debate that would have gone, is this worth \$300,000 or not to send to

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every taxpayer? You know, so, sometimes we get so enamored with the fiscal note that it's, you know, it's not only just death by fiscal note, we're just spinning our wheels. I got, while we were in here, and I just...this follows up on my comment earlier, and I apologize, but I want to read it into the record. It is an e-mail from Kim Conroy, who many of you know is the former commissioner of the Department of Revenue. And it says...I can't read... [LB1047]

SENATOR SCHEER: You need a bigger screen? (Laughter) [LB1047]

SENATOR HARR: "Running scenarios for you is not the Department's job, especially when you combine more than one change at a time. It is dynamic and becomes very time consuming for overworked staff. My understanding is the Department has lost another economist in the research section due to a lack of any promotional potential." That's the frustration that I think is being vented today is that we're asked to make tax policy and we have in the past experienced individuals that did not want to work with us. I will give Commissioner Fulton a lot of credit. I've talked to him, and since he's been appointed, numerous times he's been great to work with. I hope he continues to be great to work with and he can address some of these frustrations that we do have over fiscal notes, fiscal analysis, and how do we spend this money and how should they interpret laws that we passed, and if we disagree, how we should handle that. But that's what I think we're going to see a lot of bills that, as Senator Schumacher said so precisely, we're going to have a lot of those...we had a lot of those bills this year and how do we want to address that. So when we don't agree, do we want to wait for the courts or do we want to do this on our own? That's the question. And I would rather be proactive than wait so that we make sure that we pass what we thought and what we intended to pass. He's doing his job, to strictly construe it. And when we disagree with that, it's our job to say, well, no, here is what we meant. Here is the legislative intent, here is why we're doing it. And to his credit, and to the Department's credit, they've been willing to work with others and say we'll do that, but we don't have the authority today. Get legislation written, if it's passed, we will follow that. That's our job to enforce the law that's passed, but we have to pass that law first. [LB1047]

SENATOR GLOOR: Senator Schumacher. [LB1047]

SENATOR SCHUMACHER: Thank you, Senator Gloor and Senator Harr. I have no disagreement with what you said, but the question is, we don't know what the law we passed says... [LB1047]

SENATOR HARR: That's shame on us. [LB1047]

SENATOR SCHUMACHER: What's that? [LB1047]

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SENATOR HARR: That's shame on us if we don't. [LB1047]

SENATOR SCHUMACHER: No, no, no, no, no, the system doesn't know what the law we passed says, whether or not the language in the existing law what it means because we've had no administrative ruling on it. We've had no interpretation by the courts on it. So those are the people in the chain of command that need to sort out what we meant because honestly, we don't know what we meant when we pass a lot of stuff up there. [LB1047]

SENATOR HARR: Is that Obamacare? Pass it, so we know what's in it? (Laughter) [LB1047]

SENATOR SCHUMACHER: Well, that's just routine isn't it? But the...so we don't know whether or not what we said already is what we're saying now or not. And, you know, they've got the judges and the administrative law, all those people, that's their job to do that interpretation in the first instance. We have 60 days, 30 of which we've blown, and this is a real, real cumbersome process to fix what could be fixed in two branches of government that we've already created and paid for. [LB1047]

SENATOR HARR: But wouldn't you rather do it where it's public and transparent? [LB1047]

SENATOR SCHUMACHER: Every court hearing is public and transparent, every administrative hearing is public and transparent. Is it right to be before us? [LB1047]

SENATOR HARR: Well, we are the policymakers and if we disagree with what some of the others say, we need to change the policy and we need to make sure that it says what we intended. If we don't agree with the interpretation that comes out, you're right, we may not know and it may be...I'll even say, bastardized what we thought. And it's our duty to then say, no, this is what we meant and this is what we're trying to do and this is the answer we're trying to get to. You know, we are ultimately...they interpret, one interpret, one enforces, we make. And if we don't like the way it's interpreted, then we got to remake. [LB1047]

SENATOR SCHUMACHER: What if we made it right in the first time and we haven't gotten an interpretation yet of whether...of what we really said? [LB1047]

SENATOR HARR: Well, there's ambiguity, though. And so, instead of...we can clarify that ambiguity. [LB1047]

SENATOR SCHUMACHER: Thank you. [LB1047]

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SENATOR GLOOR: Seeing no further questions. Thank you, Senator Harr. [LB1047]

SENATOR HARR: Thank you. [LB1047]

SENATOR GLOOR: And that will close the hearing on LB1047. We now move to LB1088. Senator Davis, welcome to your committee. [LB1047]

SENATOR DAVIS: Thank you, Senator Gloor, fellow senators. I'm Senator Al Davis, A-l D-a-v-i-s representing District 43 and I'm here to introduce LB1088 which simply adds center for rural...for independent living to a list of sales tax exempt nonprofit organizations. Federal law defines centers for independent living as a consumer controlled community-based cross disability, nonresidential, private, nonprofit agency for individuals with significant disabilities regardless of age or income. More specifically to be considered a center for independent living, the facility must be designed and operated within a local community by individuals with disabilities. They must also provide an array of independent living services, including at a minimum, information, referral services, independent living skills, training, peer counseling an individual, and systems advocacy. It is important to underscore that these centers are nonresidential. Their services are explicitly meant to help keep people in their homes living independently. There are three centers for independent living in Nebraska, the League of Human Dignity, which has offices in Lincoln, Omaha, Norfolk, Scottsbluff, Kearney and North Platte, as well as Independence Rising in Grand Island, and Panhandle Independent Living Services in Scottsbluff. Nebraska state law currently exempts several types of nonprofits that aid those with disabilities from sales tax. In that same vein, centers for independent living serve individuals without regard to the type of disability they have, including individuals who are blind, those who have developmental disabilities or those that struggle with drug addiction. Centers for independent living are exactly that. They provide services solely to assist people living with disabilities to continue to be independent in their day-to-day lives. As a result, these individuals are able to remain self-sufficient and stay out of institutions which has an economic benefit to the state and allows these individuals to contribute more accurately to their communities. Today's centers for independent living must pay sales tax on all aspects of their operation. For example, materials to build a ramp for someone who uses a wheelchair to enable them to stay in their home. LB1088 would allow these facilities to use their funds more efficiently in helping individuals with disabilities live independently and to provide an important economic service to our state. With that, I thank you for your time and I'll be happy to answer any questions, but I do have people following me. [LB1088]

SENATOR GLOOR: Thank you, Senator Davis. Questions from anyone? Seeing none, thank you. [LB1088]

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SENATOR DAVIS: Thank you. [LB1088]

SENATOR GLOOR: We'll now move to proponents for this bill, LB1088. Good afternoon.  
[LB1088]

KATHY KAY: (Exhibit 1 and 2) Good afternoon, Chairman Gloor and members of the Revenue Committee. My name is Kathy Kay, K-a-t-h-y K-a-y, and I'm representative of League of Human Dignity. I am following on some very good explanation already before you, so I will make my testimony very brief. As Senator Davis said, the mission of centers for independent living is to assist individuals with a disability to achieve or maintain their independence. The first funding for Centers for Independent Living was made available in 1979 and there were ten centers allocated in the entire United States. In 1980, funding was made available to fund 50 additional centers and today there are approximately 400. As the Senator already testified, there are three in the state of Nebraska. Under the current regulatory standards, in order to be designated as a center, very stringent requirements have to be met. Centers are mandated to be held to the standards of the Rehabilitation Act. In order to be a center, these regulatory standards require that 51 percent or more of the board of directors that comprised of individuals with a disability as well as 51 percent or more of the staff. The reason that this is set up that way is because a person with a disability is able to help others overcome their barriers. That personal experience and knowledge is an effective way of assisting the individual to be able to remain or become an independent citizen. In addition to the five core services which the Senator already noted, centers for independent living also can provide many more services including assisting people who are homeless find housing, working with veterans who have received a disability in the service of their country, helping people learn new skills to aid in their independence, helping them to be able to stay in their own homes and communities by finding people and resources to assist them. Having a medical equipment loaned and rental program, having a wheelchair repair program, providing home modifications, including ramps, chair lifts and bathroom remodels, conducting disability awareness training, providing vehicle modifications, and also providing grants to income eligible people to make accessibility modifications to their homes. We serve individuals with all types of disabilities and Centers for Independent Living serve the populations identified in the current legislation which receive the tax exemption, and in addition to serving those populations, we serve people with any type of disability and of any age. We would ask you to support LB1088 in order to support us in our mission of helping Nebraskans with a disability. Thank you for your time. [LB1088]

SENATOR GLOOR: Thank you, Ms. Kay. Any questions from committee members? I see none at this time. Thank you. [LB1088]

KATHY KAY: Okay. Thank you very much. [LB1088]

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SENATOR GLOOR: We'll continue with proponents. [LB1088]

KENT ROBERT: Chairman Gloor, members of the Revenue Committee, my name is Kent Rogert, K-e-n-t R-o-g-e-r-t. I'm here today representing LeadingAge Nebraska, which is an organization of nonprofit nursing home, assisted living facilities, and providers of day services such as the independent living centers and we're just here to support Senator Davis in his efforts today. [LB1088]

SENATOR GLOOR: Questions? Senator Schumacher. [LB1088]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Rogert. The fiscal note, it says it's minimal, which I think is a good thing for the bill. [LB1088]

KENT ROBERT: Yeah. (Laughter) [LB1088]

SENATOR SCHUMACHER: But as a practical matter, what are we exempting? What things, what purchases are we exempting? It must not be very much of them. [LB1088]

KENT ROBERT: Well, I don't think they...I think it's hard to tell, it's hard to predict. I think it would be any...basically, any purchase that these facilities would make at any of the retail store that charges sales tax, so. [LB1088]

SENATOR SCHUMACHER: So what do they buy at retail stores? I mean... [LB1088]

KENT ROBERT: So one of the things could be if they're doing wheelchair repair places or they're building a ramp, they've got to go buy stuff down at Menards to build these things. They do some stuff for some folks at their homes. All those materials they buy are sales taxable. They are just a...you know, an organization with a...it would be like a strip mall place, they would rent out, so then they'd have cleaning supplies, you know, paper, office supplies, and those things. [LB1088]

SENATOR SCHUMACHER: All of the miscellaneous stuff. [LB1088]

KENT ROBERT: Yeah, everything, yeah. And so some or one of these places may only save, we'll say a few hundred dollars a year on sales taxes, but it may be just a point to where they'd be able to offer a few more services by doing so. [LB1088]

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SENATOR SCHUMACHER: Thank you. [LB1088]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Rogert. [LB1088]

KENT ROBERT: Happy Friday. [LB1088]

SENATOR GLOOR: Other proponents. Anyone who would like to speak in opposition to this bill? Anyone in a neutral capacity? Senator Davis. [LB1088]

SENATOR DAVIS: Thank you, Senator Gloor. Just to answer your question, Senator Schumacher, essentially, it's anything...so they operate as businesses, so it's essentially anything that they're going to need for their business. I made reference to supplies they might need to build a ramp for a person that's in a wheelchair, or if they need office equipment or office supplies, those would be exempt. The fiscal note says it has got negligible impact, I believe, or minimal and the Fiscal Office for their definition of that it's below \$15,000. [LB1088]

SENATOR SCHUMACHER: Thank you. [LB1088]

SENATOR GLOOR: Further questions of Senator Davis? Seeing none, thank you, Senator Davis. [LB1088]

SENATOR DAVIS: Thank you. [LB1088]

SENATOR GLOOR: And that will end our hearing on that bill and that will end our hearings for today. Thank you and thank you, committee members. (See also Exhibit 3.) [LB1088]