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Government, Military and Veterans Affairs Committee  
February 10, 2011

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[LB337 LB425 LB443 LB577]

The Committee on Government, Military and Veterans Affairs met at 1:30 p.m. on Thursday, February 10, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB425, LB443, LB337 and LB577. Senators present: Bill Avery, Chairperson; Scott Price, Vice Chairperson; Lydia Brasch; Charlie Janssen; Russ Karpisek; Rich Pahls; Paul Schumacher; and Kate Sullivan. Senators absent: None.

SENATOR PRICE: Command decision here, ladies and gentlemen. We'll start the hearings for today. Again, I'd like to welcome you to the Government, Military and Veterans Affairs Committee hearing and I'd like to introduce our senators, and I would also make caveat. You'll see the senators coming in and out of the room. Please don't be offended by that if they're out and about doing their duties introducing different bills. And that is why I'm going to go ahead and lead off this. Chairman Avery is off introducing a bill. Off to my far right and not here yet is the seat Senator Pahls from Omaha occupies; next to him is Senator Lydia Brasch from Bancroft; Charlie Janssen will be to my immediate right when he comes in, he's from the Fremont area; of course, I'm Senator Price, I'm from Bellevue, and I'm the Vice Chair; sitting to my left is Christy Abraham, she's our legal counsel; and in the center, eventually will be Chairman Avery, here from Lincoln area, but he's off presenting a bill in Health and Human Services; we have Senator Russ Karpisek who will be joining us later out of the Wilber area; Senator Kate Sullivan from Cedar Rapids; Senator Paul Schumacher from Columbus and all points around; and our committee clerk, Sherry Shaffer. Now bills will be taken up in the order that they're on the agenda that you saw at the door. And again we will follow that order and we will probably...we may see one small change in that we may have Ms. Abraham introduce the bill for Senator Avery, whether or not he can make it here in time. We have sign-in sheets at both the doors and you only need to sign in if you're going to testify. And there is a sheet such as this, please sign it and hand it to the committee clerk before you begin your testimony. That way we keep things in a good orderly conduct. Now if you're not going to testify but would like to have your statements on record and be on record as either a proponent or opponent on a bill, there's another sheet you can fill out. And again these are on the tables at both doors. Print your name to indicate who you are representing, and before testifying please spell your name for the record even if it's a simple and/or common name. Introducers will make their initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator and/or staff. Please listen carefully to what is being said today. We don't have a lot of people out there today, but please listen so we don't have repetitive testimony. Please turn off all your cell phones or put them in a manner such as they will not interrupt proceedings here today. Now if you have a prepared statement and/or an exhibit, please hand them in to the page and they will distribute or make copies as we will need 12 of them. When our pages do show up, we have Danielle Henery from Battle Creek. I saw her in and about as I'm sure she will be

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coming in, and and/or Kyle Johnson from Sutton. Now we are implementing and using lights this year. We're going to make sure we're consistent on that. And the way this is going to work, just like a stop light, you'll read that from your left to your right, green light, you'll have four minutes, we'll go to the amber light, one minute, red, and we would like you to conclude your testimony. We appreciate that because it sure does help things move along. And with that, we'll move to the first bill today, LB425, introduced for Senator Lautenbaugh by Mr. Smoyer. Mr. Smoyer.

BRENT SMOYER: Thank you, Mr. Vice Chairman, members of the committee. For the record, my name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r. I'm legal counsel for the Rules Committee and as Chairman Senator Lautenbaugh, who could not be here today due to some court-ordered mediation in his day job, he tried to get it changed. Unfortunately, he fought the law and the law won. (Laughter) So he's stuck there today, so you get the B squad and I promise I'll keep it short and sweet and we can get this covered for you. Basically, LB425 was brought to us on behalf of one of the great communities in our district, Blair, Nebraska. LB425 proposes to amend the law regarding industrial areas, to clarify and tighten eligibility for designated real estate as industrial area, and to expand the procedure to review an industrial area designation, as well as allow a city to annex an industrial area if its assessed taxable valuation is \$15 million or less. Now just a touch of history here, in 1957 the Legislature adopted legislation that would allow counties to declare tracts of land as industrial areas to be reserved for the location of industry. Now this legislation was an early attempt to providing incentives for economic development. An industrial area could not be annexed into a municipality and therefore was not subject to municipal taxes. In 1967 the law was amended to provide municipal approval of the industrial area prior to the county board's designation. There was no termination date for an industrial area and, although starting in 1980, a county board could review an area every two years to determine if the designation was still appropriate. Now the purpose of LB425 is simply to clarify and tighten the eligibility requirements for this designation and continuation of industrial areas. I do know there's a few more details as to the reason for this tightening, but again the community of Blair, and I believe Phil Green will be testifying on behalf of Blair, will help kind of clarify the impetus behind this need for the tightening. Some of you members who were here two years ago will remember LB350. It looked a lot like this. LB425 essentially is LB350. It addresses the same issues but it's been refined, tightened. A lot of the unintended consequences that would have come with LB350 have been remedied with LB425, which again we can address in the following testimony. Now LB425 seeks to clarify the definition of what constitutes an industrial area, and clarifies the procedure that a county board would follow to review whether an industrial area continues to be eligible for industrial area designation. It would also allow a city to annex an industrial area if its accessible, taxable valuation is \$15 million or less. Now several cities have grown adjacent to or surrounded industrial areas of this type that were designated years ago. And because these areas cannot be annexed, they can be an impediment to orderly municipal growth and planning. Therefore, we're trying to use this bill to try and create

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some order, so to speak, create some organized growth. Following me, in testimony, will be Phil Green from Blair, as well as Jerry Wilcox from Crete. And, of course, the League of Nebraska Municipalities will also be testifying in favor. And I would be happy to take questions. I do know that those following me are just a little more well-versed in the actual nuts and bolts of why this legislation is completely necessary, though I will say, in my experience having dealt with both LB350 and LB425, the reasonable reorganization and designation of industrial areas should probably be clarified because when I first learned of all this, I do know that I got confused. And I like to think that I'm able to understand most of this stuff, and despite the dumb blonde jokes that come out, I do think it's something that needs to be clarified, especially if somebody like Senator Lautenbaugh and myself were having some issues understanding it ourselves, so. [LB425]

SENATOR PRICE: Thank you very much, Mr. Smoyer. Are there any questions from the committee? Senator Sullivan. [LB425]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Brent. Refresh my memory. Why is the increase so dramatic from \$286,000 to \$15 million? [LB425]

BRENT SMOYER: Well, from what I understand from the initial understanding and research, it's...the increase is actually because the statute has not been....at least as far as the monetary side of it, has not been changed since the '50s, in which case, you know, it was entirely reasonable to see valuations around \$250,000 there. And now, of course, I mean, with land values going up as they do, and with the values of businesses and industries going up as they do, it's just...it's pretty much an inflation adjustment. And I know the city of Blair, I know in LB350, it was originally \$5 million was the suggested dollar amount. Since then they have upped it and, of course, I know Phil would be happy to address that, but essentially it covers the fact that, you know, we're adjusting for inflation more or less. [LB425]

SENATOR SULLIVAN: Thank you. [LB425]

SENATOR PRICE: Thank you. Senator Schumacher. [LB425]

SENATOR SCHUMACHER: Thank you, Senator Price. It must have been a heck of a rate of inflation, huh? [LB425]

BRENT SMOYER: A little bit. And like I said, it's...of course, it's also to kind of look into the future as well. That would be my suggestion. It's better to try and plan ahead than it is to try and adjust on the fly. [LB425]

SENATOR SCHUMACHER: Can you tell me what research that has been done as to the impact of the moving of a parcel of land, either removing the designation, and/or its

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annexation on the tax base of the area that it's being moved to. Does the tax base go over there from outside the city into the city for like school purposes, and also what about electrical services? Some of these things would probably be served by one of the rural electric company and some by one that serves the city. Does that responsibility shift too? [LB425]

BRENT SMOYER: And I have to say, I have to admit on the electrical side of things, we didn't necessarily look there. As far as the tax liability, as far as those changes, it would shift into the city. I do know, like one of the examples that has been used, is if a gentleman wants to build a storage facility, a U Stor-It and they build on this industrial tract, they can actually avoid the city taxes by simply building in the industrial tract, which may be essentially surrounded by the city, might be almost in the middle of the city. But by building within this industrial area, they're kind of free of the city taxes, which is a lot of the reasons why LB425 is in existence to allow these cities to say, well, you know, you're not using it for its intended purpose, you're not operating accordingly, and take care of that loophole, so to speak. And I know again... [LB425]

SENATOR SCHUMACHER: But the county board is supposed to kick them out of there every couple of years. [LB425]

BRENT SMOYER: Supposed to. Doesn't always happen. You know, governmental entities across the board, and I think we see this even with the state and with the cities, there's a lot of things that sometimes are supposed to happen that just kind of get accidentally tossed by the wayside, I believe. You know, just caught up in the bureaucracy, so to speak. And again, I do know that Phil and Jerry could definitely give you anecdotes specific to their towns and their entities. [LB425]

SENATOR SCHUMACHER: So basically, in addition to the county board kicking them out of the industrial tract, which is the old way, the cities could pull them out of the industrial tract. [LB425]

BRENT SMOYER: Basically. I mean with the construction of the bill, if the industrial tract is not being used for its intended purpose for a certain amount of time, I believe seven years was...I don't have the bill in front of me, seven years was the standard there that the city could then take action and encourage the board to operate. And again that's...it's to make sure that the industrial tract is being used accordingly. [LB425]

SENATOR SCHUMACHER: Is the \$15 million figure for just a lot or the improperly used building or tract within the industrial tract or the value of the entire industrial tract? [LB425]

BRENT SMOYER: I believe that would be for the entire industrial tract. Once again, that would be a question slightly more fitting for Phil. But from my understanding, it was the

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industrial tract itself, rather than just the single building. [LB425]

SENATOR SCHUMACHER: I don't have any further questions. Thank you. [LB425]

SENATOR PRICE: Thank you, Senator Schumacher. Are there any other...Senator Janssen. [LB425]

SENATOR JANSSEN: Thank you, Vice Chair Price. Mr. Smoyer, I'm going to ask you this and then...I would assume there are going to be some proponents and perhaps some opponents come up just recalling LB350 that we had? [LB425]

BRENT SMOYER: Certainly. Certainly. Yes. [LB425]

SENATOR JANSSEN: Do you think, or do...or Senator Lautenbaugh think that this is a business friendly bill or is it a little bit of a tax (inaudible)... [LB425]

BRENT SMOYER: Sure. I think it's a fairness bill because it will...of course, it will allow for communities to increase the taxable valuation of lands they had earlier...have access to the taxable lands. But at the same time, it also keeps people from being able to abuse the presence of industrial tract, and then go without paying their fair share of those taxes while the next guy over, who's not in the industrial tract is paying, you know, the city taxes that the other one doesn't have to. So I would say, it is in some cases business friendly, some cases community friendly, but in the end it's more of a fairness aspect because it's really...well, it's a lot like collecting wheel tax outside the city limits. You know, how fair is that to people who don't get to vote? How fair is it to people who are trying to raise...make their living and run their business when somebody across the way doesn't have those...they're selling the exact same thing, operating in the exact same manner, doesn't have those same restrictions, those same taxes? So I think it's really a matter of fairness. [LB425]

SENATOR JANSSEN: Thank you, Mr. Smoyer. I can tell you just came through an election with that answer. (Laughter) It reminded...(inaudible) [LB425]

SENATOR PRICE: And we have Senator Avery back now and we are just working with that. Thank you. [LB425]

SENATOR AVERY: Thank you. [LB425]

SENATOR PRICE: Thank you. [LB425]

SENATOR AVERY: You're answering questions on the proponent side, I take it, right? [LB425]

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SENATOR PRICE: He's the introducer. [LB425]

SENATOR AVERY: You're the introducer, okay. Any more questions from the committee? Senator Schumacher. [LB425]

SENATOR SCHUMACHER: I have one follow-up question. We're talking fairness and everything, why are the big guys, or the big tracts, which might have more valuation shift, treated...have to go through more hoops to get them into the city than you do for the little guys? [LB425]

BRENT SMOYER: You know, I wish I had a really, really good answer for that. And, of course, I would suppose that would be where the committee involvement would be important if you feel that you need to make those adjustments. This is really...I mean, it's a start. I think the important thing is that we get the ball rolling and, of course, that's where we have the committee process and we have everybody putting their heads together trying to make improvements. So I would say, Senator, honestly, I cannot give you the greatest reason why we would stop at \$15 million. But again, if you feel appropriate, or the committee feels it's appropriate to address something larger or address something differently, I think that would be well within your purview. And I do know again, the following proponents will again...or I always like to say, they're neck deep in it. I get to dabble. The Senator gets to dabble as he does with what goes on here with the various aspects, but these guys are dealing with it every day. They are neck deep in it, and they could give you the anecdotes and the specific information as far as their own communities why they would choose to go one way rather than the other. [LB425]

SENATOR SCHUMACHER: Do you see any reason why we just shouldn't say that the same standard that applies for the big guys also applies for the little guys? [LB425]

BRENT SMOYER: I really don't see any reason behind it, but then again, I, like I said, the approach I take again is dabbling. I'm not the expert. There may be a caveat out there that I am unsure of or a statute there that may have prevented it from the get-go, so. [LB425]

SENATOR SCHUMACHER: I don't have any further questions. [LB425]

SENATOR AVERY: I may have missed a little bit (laughter) since I was giving...presenting a bill in another committee and if you've answered this already, just tell me, but how many counties would be affected by this 100,000 limit? [LB425]

BRENT SMOYER: The 100,000 would essentially actually only apply to Douglas, Sarpy and Lancaster Counties. [LB425]

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SENATOR AVERY: That was my guess, too. [LB425]

BRENT SMOYER: Yeah, yeah. The specific hoops...hoop jumping is most associated with those three counties. [LB425]

SENATOR AVERY: So you had not gotten that question yet? [LB425]

BRENT SMOYER: No, actually had not. [LB425]

SENATOR AVERY: Okay. I did read the bill, by the way. (Laughter) Senator Schumacher. [LB425]

SENATOR SCHUMACHER: Thank you, Senator Avery. One follow-up question then. This really affects all counties though, at least all counties that have an industrial tract above the old \$286,000 figure? [LB425]

BRENT SMOYER: Right. It's the extended annexation provisions that only affect the 100,000 and that's to keep it from being an excessive land grab for the larger communities. [LB425]

SENATOR SCHUMACHER: So...but this may have a very dramatic affect on a community that say, has an industrial tract worth \$3 million because whereas it couldn't before, particularly if it consented to the original designation, it can now. [LB425]

BRENT SMOYER: Yes, and that was, like I said, that was kind of the intent was to help communities like Blair and Crete and Columbus, actually, I believe. There will be a gentleman from Columbus coming in to testify as a proponent and they...and, of course, the League will also be here and they can explain how it will affect the smaller communities. But basically, that was kind of the intent was narrow it to the smaller communities and make it...if the larger communities like Omaha and Lincoln did want to make that kind of a change, they had a few more hoops. That way we're not...we're not letting them operate willy-nilly, so to speak. [LB425]

SENATOR SCHUMACHER: I have no further questions. [LB425]

SENATOR AVERY: Any more questions from the committee? I don't see any. Thank you, Mr. Smoyer. [LB425]

BRENT SMOYER: Thank you. [LB425]

SENATOR AVERY: Are you going to stay around to close? [LB425]

BRENT SMOYER: I don't believe...yeah, we'll leave closing open, yes. Well, actually,

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you know what, the Senator would just as soon we waive closing, I believe. [LB425]

SENATOR AVERY: Yeah, I think that's probably what we have to do anyway. [LB425]

BRENT SMOYER: Thank you. [LB425]

SENATOR AVERY: All right. Proponent testimony. Welcome, sir. [LB425]

PHIL GREEN: (Exhibit 1) Thank you. Thank you, Mr. Chairman and committee members. My name is Phil Green, P-h-i-l G-r-e-e-n. I'm the assistant city administrator for the city of Blair. I have a prepared statement that's being passed out to you, so I'll read part of it. I will try to incorporate some of the answers to some of the questions that you've asked in order to try to keep this as efficient as possible at all the time. Again even as Brent had mentioned some of the background, this initial law was enacted back in 1957. At that time it was pretty much about the only economic development tool that municipalities had to try to entice large industries to come and locate close to their municipality. And, of course, the enticement was that you would be guaranteed then that you would not be annexed. Of course, they would continue to pay property taxes to the other entities such as the county and school systems and other taxing authorities. Since then, LB775, Nebraska Advantage, the LB840 which allows the local monies, obviously, to be used for economic development have all been implemented. Each of these incentives have been used numerous times throughout the state, including for the city of Blair. And as a brief example, we have an industry that's in the hiring process right now. Novozymes, a Danish company, investing over \$100 million just outside the Blair city limits, in the process of hiring over 100 employees. And again, the Nebraska Advantage Program was used to entice them there. The city of Blair has kicked in \$800,000 of our own local monies, so we're in this very heavily and very committed to that. And I can guarantee you that county industrial tract designation never came up at all as an incentive for them and, in fact, they aren't even located in Blair's county industrial tract. Our concern with the current legislation really is twofold. First, the current definitions describe an enterprise whose primary function is to manufacture, process, assemble, or blend any agricultural, manufactured, mineral, or chemical product as qualifying to be located in this area. Again the problem is that primary function is undefined. LB425 would define primary function as based on total annual gross receipts. We have had some entities when the county board has asked them to come and represent themselves on why they still qualify, have used one reason or another. Many reasons that the city of Blair, though, believes are not their primary function, and that might show itself if they had to show a total annual gross receipts. Second, an enterprise whose primary business is storage or research are undefined and are currently not required to be involved with the same things that the manufacturers are involved with, either being agricultural, manufactured, mineral, or chemical products. And again, the city of Blair believes that that was not the intent of the original statute. Number two, and please understand this point, and I think this really



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gets back into several of the questions that you had, these county industrial tracts are the only economic development incentive that is perpetual and never ends. As long as the property is used for industrial purposes, the benefit continues. Nebraska Advantage Program, most businesses have five to seven years to accumulate credits and another seven to ten years then to utilize those credits, roughly about a 15-year period. TIF districts, again roughly a 15-year period. Blair's industrial tracts have existed for 30 years. Other cities have industrial tracts which have existed even longer than that. Again nothing in LB425 changes that perpetual status for industrial tracts which qualify based on the definition. What we are looking at doing is changing that dollar amount for some of the smaller parcels that then would be open for annexation. Again LB425 is a fairly long, complicated bill. There's 12 sections, nine of these sections are only change with minor wordings such as changing from city or village to municipality, other minor changes such as that. The remaining three sections, though, of LB425 have important changes, which I believe you should be aware of. First, is Section 1 on pages 2 and 3, and again the changing of the definition of industry which I had already mentioned. Both adding the requirement then that it be based on total annual gross receipts for the manufacturer, and then in the specific two issues of storage and research and development, time goes more closely to the need for them to be again based on agricultural, manufactured, mineral or chemical products. As an example, in the city of Blair, we had a situation where one company does software developments. It's located out in that particular area and they've said, well, research and development on our software is a key part of what we do. Again, that business could be located anywhere within the city of Blair. Therefore, I believe it would be, on the fairness issue, important for us to have the ability to take that away. Well, within my last minute, Section 5 again deals with then the valuation change. Again all I can state is that when the original statute was written in 1957, again it did use the \$286,000 limits. CPR has gone up about 675 percent since then. Obviously, it's a multimillion dollar figure. The question is, what dollar amount would be appropriate. I believe that the original statute was written so that some of those smaller parcels could be incorporated even though they're in the industrial tract. Again my time is up. I just want to state that I'll answer any questions, but I do believe that LB425 is a fair bill which addresses needed reforms in the definition of industry and which allows for fair competition with the smaller manufacturers in our communities. [LB425]

SENATOR AVERY: Thank you, sir. We do have your written testimony here too. We could get the tail end of it that you might have gone a little faster that...any questions from the committee? Senator Schumacher. [LB425]

SENATOR SCHUMACHER: Thank you, Senator Avery. Several questions here. First of all, if the city chooses to annex the industrial tract, is it an all or none or can they whittle...? [LB425]

PHIL GREEN: Our understanding and at least the procedure that we've gone through

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both with the Washington County board of supervisors is that we've taken the original footprint of what the original designation was, and I would say it's fairly true that all of these tracts were undeveloped tracts when they're first laid out and many of them would be one solid contiguous parcel. And since that time have been broken up time after time after time and re-parceled out. So the way we've always approached it is that the taxable valuation is based on the parcel as exists today and being utilized today. [LB425]

SENATOR SCHUMACHER: So if there is an industrial tract and the city say, well, we want to take the west half of the industrial tract and leave the east half in...and leave the east half alone or do they have to take it all? [LB425]

PHIL GREEN: We've looked at it parcel by parcel, so it would depend upon if the parcel has been subdivided. But if it's still one large continuous parcel, never been broken up, that \$286,000 value would be the key indicator of whether you could take it all or take none of it. [LB425]

SENATOR SCHUMACHER: So they could pick away at one parcel on the edge constantly or...? [LB425]

PHIL GREEN: Right. Right. And the city of Blair already has. We've had...and again one of the challenges and I know this is what led the statute change back in '79, and Columbus kind of helped lead the way at that point in time, that they had many businesses that were locating in there because the zoning allowed them to. And yet they really weren't industries, they were contractor's offices, they were small other shops that wouldn't normally be located in industry. And all of a sudden, they had now an unfair advantage of not having to pay property taxes where others did. So the \$286,000 limit has allowed even us today to kind of pick and choose and go ahead and annex a few of those parcels that are valued at that level. Our frustration is, that's an old, old number and... [LB425]

SENATOR SCHUMACHER: Now can they be annexed even though they still qualify as an industrial business? [LB425]

PHIL GREEN: That's the way the statute reads today. [LB425]

SENATOR SCHUMACHER: So, basically, this...if we pass this, it kind of passes or makes it optional with the city whether or not they want to end the industrial tract designation. [LB425]

PHIL GREEN: Really the issue there is more on the annexation side than the industrial tract side because the ones that meet the \$286,000 right now could be annexed even though they're in the industrial tract. And that industrial tract designation doesn't go away, it's kind of separate. [LB425]

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SENATOR SCHUMACHER: When they're annexed, their taxes go up. [LB425]

PHIL GREEN: That would be true. [LB425]

SENATOR SCHUMACHER: Okay. So from that perspective it ends the benefit of it. Now the tax base, for example, for school districts, when the city annexes it, does that tax base go from the old school district to the new district if there's a district difference? [LB425]

PHIL GREEN: If there's a district difference and that's the way the rules are played in that particular locale, yes, that would be the case. In fact, we've had some long conversations with individuals from Columbus and the Lakeview School system and the challenge is twofold. Number one, realizing that annexation does have an impact on their bottom dollar line, but the biggest challenge is actually knowing if a real, true county industrial tract has actually been established in that particular area or if it's just zoned for industry, because zoning is a very different issue. That's kind of what everybody assumes we're talking about here, but it's really not. [LB425]

SENATOR SCHUMACHER: Okay. And finally, electrical service. If you have one electrical company serving in the city and one out of the city, does that transfer those customers particularly if they're industrial, heavy users, take that revenue away from one power company and give it to another? [LB425]

PHIL GREEN: Theoretically, it might, if their annexation rules are written that way. [LB425]

SENATOR SCHUMACHER: So this is a fairly significant thing we're dealing with here. If you have the situations of multiple power companies, multiple school districts... [LB425]

PHIL GREEN: Right. [LB425]

SENATOR SCHUMACHER: ...tax raises on business. [LB425]

PHIL GREEN: And again if they're in those actual designated industrial tracts. What we found out, and again working through the League of Municipalities as well as just one to one with other communities around the state, many cities don't even know if they actually have any of these. They know they have industrial areas. They maybe even have industrial parks that they've set aside. You ask them, based on this section of statute, did you go through this process? Oh, we don't know. [LB425]

SENATOR SCHUMACHER: Why do you treat somebody whose...or a tract...maybe, I should ask this. Is this \$15 million figure per lot or per whole big tract that might have a

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bunch of lots in it? [LB425]

PHIL GREEN: Again we would treat it as per parcel based on what the assessor...how the assessor is looking at each individual tract or parcel. [LB425]

SENATOR SCHUMACHER: Why would a \$15 million guy be treated differently from a billion dollar guy? [LB425]

PHIL GREEN: Right. Obviously the original statute had a dollar amount in there. So whatever the intent was at that point in time they clearly felt like a certain size parcel still should be able to be brought within the corporate limits of the municipality. We still feel that way as well. We have a lot more tools in our economic development tool chest that we can use today, and we use them readily. This seems to be kind of an antiquated tool. If our local city council feels strongly about in giving economic development incentives to a business, we'd like to be able to do that based on our decisions, not based on maybe a, you know, a tract that was established 20, 30 years ago. [LB425]

SENATOR SCHUMACHER: Well, then we really don't have a real good reason for the \$15 million figure. Why are we drawing a distinction between counties with 100,000 and below 100,000? I mean, wouldn't the philosophy be the same regardless? [LB425]

PHIL GREEN: Right. And again that was in the original statute, so. [LB425]

SENATOR SCHUMACHER: Well, I mean...I mean, if we're rewriting this, why shouldn't we be thinking instead of, you know, just doing because it always has been. I mean, what's...there has to be reasoning here. Somebody actually went through and underlined stuff and struck out stuff so there had to be some thinking. [LB425]

PHIL GREEN: Yeah. Well, and again if you carefully look at that particular section, I think the 100,000 population gives other abilities to annex than what the smaller counties would have. And so... [LB425]

SENATOR SCHUMACHER: What are the restrictions on the smaller counties annexation? [LB425]

PHIL GREEN: Just the dollar amount. That's the only opportunities, the dollar amount. Above 100,000 if you didn't agree to it in the first place, and again there's a few other stipulations which I haven't spent a lot of detail on because we're not over 100,000. [LB425]

SENATOR SCHUMACHER: Well, didn't agree to in the first place, we're striking that out in this version according to this, at least the text that I have here. So I...I mean if it's good for...why does a person with a \$15 million tract in a county of more than 100,000

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get treated differently than one in less than 100,000? [LB425]

PHIL GREEN: Yeah. [LB425]

SENATOR SCHUMACHER: I have no further questions. [LB425]

SENATOR AVERY: I take it, that was I don't know. [LB425]

PHIL GREEN: That's an I don't know, yeah. [LB425]

SENATOR AVERY: Okay. Any more... [LB425]

PHIL GREEN: I mean, obviously, if you're asking my opinion from a municipal standpoint, we've love to see no restrictions whatsoever and that the economic decisions on who we're going to help with incentives could be handled at the local level and with the State Department of Economic Development with the tools that are in the chest already. [LB425]

SENATOR AVERY: Any more questions? I don't see any. Thank you, Mr. Green. [LB425]

PHIL GREEN: Thank you. [LB425]

SENATOR AVERY: Any more proponents? Welcome. [LB425]

JERRY WILCOX: Good afternoon. Thank you for having me and thank you to Senator Lautenbaugh's office for introducing this bill. My name is Jerry Wilcox, J-e-r-r-y W-i-i-c-o-x and I'm the city clerk from Crete and Mayor Foster couldn't be here today so he asked that I come and represent the city of Crete. We have a little different situation, of course, than Blair. Our industrial tract is surrounded by the city of Crete on all sides. We already serve them electricity, so there wouldn't be any change in electricity, there wouldn't be any change in school districts. And so it's a little bit different there. We already serve them with water and sewer. Basically, we're providing them with the public safety services which are over 50 percent of our annual budget, so it does kind of make a difference on us with the property tax. The county industrial act has been a good tool for the state over the years and it's real good for the rural areas. We don't want to repeal it, we just want to change it so that it works better for some certain cases. And I think the changes that we're asking for won't affect those rural places, that it will still work for us, so. Basically, I guess that's all I had to say. Phil covered all the technicalities. [LB425]

SENATOR AVERY: Do you think there are other communities similar to Crete where your town actually surrounds an industrial tract? [LB425]

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JERRY WILCOX: I believe there are, yeah. I think Columbus probably surrounds partials. [LB425]

SENATOR AVERY: So when was your industrial tract actually created? [LB425]

JERRY WILCOX: I believe it was passed in 1965. [LB425]

SENATOR AVERY: Oh, yeah, and the city grew around it. [LB425]

JERRY WILCOX: And there's just one tract and there's just one owner. And the city has grown out around it and it's just a... [LB425]

SENATOR AVERY: And you provide the services but you can't get the property tax on your books, right? [LB425]

JERRY WILCOX: Right. [LB425]

SENATOR AVERY: Right. Okay. [LB425]

JERRY WILCOX: So if, you know, if there's some changes, some amendments that could be made, you know, to address those kind of situations that would, you know, if some of these other changes...we'd be more than happy to address those. [LB425]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you, Mr. Wilcox. [LB425]

JERRY WILCOX: Thank you. [LB425]

SENATOR AVERY: Any other proponent testimony? Good afternoon. [LB425]

JOE MANGIAMELLI: (Exhibit 2) Good afternoon, Senator Avery and members of the Government, Military and Veterans Affairs Committee. My name is Joe Mangiamelli, J-o-e M-a-n-g-i-a-m-e-l-l-i. I'm the city administrator for Columbus, and I think Columbus is here today to confuse you because you're going to hear from me in support of this bill. You're probably going to hear testimony from the Columbus area in opposition to the bill. I don't want to repeat what you've heard before, but Columbus is probably unique in that we are the most industrialized city in the state on a per capita basis. We have more industry in our town than most other communities. We have two school districts. We have two power districts. With regard to the question that Senator Schumacher asked about the school districts, I think that when we look at the school district limits, Senator, we're going to find that there is not a significant change from what is already in place from our various industries. The power districts may be something, but from our

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perspective in dealing with economic development recruitment, we find that industries that are looking in our community or our area, they want an incentive that's available to them now. You know, what can you do to defer my moving costs? What can you do to help me get over purchasing equipment or infrastructure? So they want those incentives that are currently available from LB...excuse me, not LB775 anymore, but that was past legislation, but the Advantage Act and our own LB840 plan. We can provide the incentives for that. So looking at property tax relief in the long term is not something that we're seeing from industry when they're looking at our community as something they're interested in. It is that immediate return on their investment dollar in our community. So again from a Columbus perspective, for the orderly growth of our community, we would like to see these changes enacted. The second page of the handout that I provided shows you right in the middle of the page a crosshatched area, which is our primary defined industrial tract. Again that is a tract that is outside the city, but for school tax purposes, Senator, is in the Columbus Public School district, so that wouldn't change. And we do have, obviously, as you well know, a lot of industry around town that is in property that is developed as industrial but not zoned as an industrial tract. So from our local perspective, we don't see the change impacting, obviously, the school districts. We would have to do the research on the power districts. [LB425]

SENATOR AVERY: Thank you, sir. [LB425]

JOE MANGIAMELLI: Thank you. [LB425]

SENATOR AVERY: Questions from the committee? Senator Schumacher. [LB425]

SENATOR SCHUMACHER: Thank you, Senator Avery. Mr. Mangiamelli, how about the west industrial tract? Is that impacted at all by this? [LB425]

JOE MANGIAMELLI: You know that is one that we will have to check. I think it, again as it develops we will have to see which school district it is in. It's in the Cornhusker Power District. I'm assuming it would probably be in the Lakeview School District, but we'd have to verify that. [LB425]

SENATOR SCHUMACHER: Thank you. [LB425]

SENATOR AVERY: Any more questions? I don't see any. Thank you for your testimony. [LB425]

JOE MANGIAMELLI: Thank you. [LB425]

SENATOR AVERY: Additional proponent testimony? Good afternoon. [LB425]

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a

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staff member at the League of Nebraska Municipalities. First, I'd like to thank Senator Lautenbaugh for bringing this issue forward. This is an important issue that's been around the League for a number of years now and it is something that deserves attention at this point. I know there will be opponents to this bill. And before I get too far into my testimony, I'd like to offer our staff, through Senator Lautenbaugh, would be more than happy to sit down if some opponents have some legitimate middle ground on some of these issues, we would like to move forward and we'd be happy to sit down with them and see if we can work on some of these issues. A couple things to remember, the industrial tract in question is a very narrow, legal tool that not every industrial plat you drive by used this particular tool. Actually, as near as we can tell, it was a very narrowly used tool in four or five cities. So not every...even every publicly sponsored industrial area you drive by used this tool. So this bill only applies to those cities and counties that used this tool in that area...that time frame between 1957 and prior to the more modern Advantage Act, LB775, LB840, type of proposals. So a lot of cities and a lot of REAs and a lot of school districts aren't even affected by this. And sometimes it's a little difficult to even find if this tool was ever designated in the first place. And we know in the case of Columbus, we know in the case of Blair, we know in the case of Schuyler, and we know in the case of a couple of other cities, Crete, this was a tool that was used in the early '60s. Other cities, we're finding out, no, they can't find any record. Even though they've got an industrial area, they've got a publicly sponsored industrial area, they never used this particular tool. And this tool has become a little archaic in many ways in today's modern world of economic development. With response to some of your questions, Senator, the effect...again this will not affect all 93...well, all 90 counties minus the three, because the tool was never used. So yes, I don't want to diminish the effect on the electric service territory changes, because particularly in the Columbus area, the Cornhusker loop changes could potentially be dramatic. In the case of Crete where it was used, Crete already serves those electric customers in the area. In the case of Blair, it's an OPPD swap. So there are some REAs affected, but it's not all 30-plus REAs would be affected, and similarly with the school districts. And if we could isolate those school districts and REAs that are affected, we would be more than happy to sit down with those areas. With respect to the \$15 million, interesting question. And I think that it's a very good question. And I think there was a threshold in the existing law and we...I think, more than anything, the amount was arbitrary. And should there be a threshold? I don't know, it's a good question. I mean, the question goes down to, do you want to perform surgery or do you want to rewrite the entire law? The staff, to be honest, I mean, some days we've sat and stared at this and wondered, why don't we rewrite the whole law? Sometimes that's the hard way to pass legislation so I think we tried to minimize the affect on the language by working with existing language and just changing what was there. But this is important to those cities. Again it's not an issue that affects every city but the cities that it does affect, it affects in a pretty profound way. So we would like to see this issue move forward. And again, if the opponents have a desire to sit down and talk, we'd be more than willing to try to find some middle ground on some of these issues. [LB425]



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SENATOR AVERY: Thank you for your testimony, Mr. Chaffin, right, Chaffin. [LB425]

LASH CHAFFIN: Correct. [LB425]

SENATOR AVERY: Any questions from the committee? I don't see any. Thank you. [LB425]

LASH CHAFFIN: Thank you. [LB425]

SENATOR AVERY: Any other proponent testimony? Okay, we'll now go to opponent testimony. Anyone wish to testify in opposition? Good afternoon. [LB425]

TOM MAUL: (Exhibit 3) Good afternoon. My name is Tom Maul, T-o-m M-a-u-l. I'm a lawyer from Columbus, Nebraska. I represent Cornhusker Public Power District and I also appear this afternoon before you to express the opposition of the Nebraska Rural Electric Association to this proposed legislation. As Mr. Smoyer indicated when he first started, this is deja vu in the sense that we sat here two years ago on LB350. Some of the same arguments, obviously, made then, you've heard today. From the power districts point of view, clearly when a piece of property in a current law is annexed, whoever is serving the electrical needs for that municipality then serves that newly annexed area. That has a direct and immediate impact on Cornhusker Public Power. Cornhusker operates in six different counties. We have over 2,200 square miles is our service area. We have 3,200 miles of line. We have a customer about every...we have a customer, 2.9 customers every line mile. The revenue for Cornhusker are 20 percent of it comes from the industrial customers. So if because of an annexation which this new legislation will allow, that if it's under the \$15 million in value, the city can annex it. And as result of that, Cornhusker loses. And in addition, as Senator Schumacher has indicated, those businesses, the whole...one of the incentives that we got them to Columbus to do in the '50s and the '60s was because of the lower taxation, lower fees. We go out now and we take that away from them, I mean, when we talk about fairness, and I'm not sure that we go to the existing business and say, oh, by the way, I hope it was a great ride but now we're going to take away your designation, we're going to annex you, and make you now subject to all of these fees. You're going to hear from the school district. Obviously, that's a concern, because Nebraska unlike many states, the city limits, you know, the boundaries, the municipalities does affect oftentimes the schools districts, and clearly it affects the...is the...the delivery of the electric power, so. Again, I mean, what I see this as, this is an ability for municipalities to increase their tax base. I mean, I think that's fairly clear and as a result of that I think you need to realize all the other ripple affects that it has certainly in the areas that you've heard here testify today. [LB425]

SENATOR AVERY: Thank you. Any questions from the committee? I don't see any.

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Thank you, Mr. Maul. [LB425]

TOM MAUL: Thank you. [LB425]

SENATOR AVERY: Any other opponent testimony? Good afternoon, sir. [LB425]

RUSS FREEMAN: Good afternoon. My name is Russ Freeman, R-u-s-s F-r-e-e-m-a-n. I'm the superintendent of Lakeview Community Schools which is located in Columbus. We had a meeting prior to this meeting which helped me learn a little bit more about this bill, and also I've learned a little more from what I've heard so far. Columbus is a unique city. We have a great diversity in our businesses and we have a great amount of industry. Obviously, some of it is located in an industrial tract and some of it is in a zoned industry area. Basically, our district has been here before, except it wasn't me. So part of this I'm going to attempt to read to you and hopefully that won't bore you. Basically our concern is LB425 will affect our school district in some manner, and will open the door for possibly more annexation that would greatly affect our school district. Many of the statements that I will read to you today reflect words of my predecessors when addressing bills that were considered such as LB350. My initial review of the bill and its potential impact on our school district and industry in our county, an industrial tract would include the following. And if you could see my paper you would see scratches all over because, obviously, it's changed a little. It is my understanding that LB425 would affect very few school districts. I'm not aware of another school district other than Columbus Public and Lakeview that would be directly affected by this bill. The Lakeview School District could stand to lose valuation as a result of this bill. Laws are already in place that allow the industrial tract land to be annexed into municipalities primarily when they no longer fit the description of an industry. The rural taxpayers would be required to increase their portion of taxes significantly should the school district lose valuation. Just as, common in surrounding states, if boundary lines were frozen as a result of such legislation, this would be less significant and harmful to school districts that come out on the losing end of such legislation. This particular bill and its predecessor, I believe, puts one school district as a winner and another as a loser as a result of such legislation. This comes at a time when we're working at improving communication and cooperation between all three schools and an industry in Columbus. I do not believe that this...I do believe that this would negatively influence this effort. The incentives for industry to grow within our community could be compromised by this bill. Industry in the county and industrial tract areas would pay significantly higher taxes upon being annexed by the municipality to pleading incentives for further growth of industry in our area. I would ask your committee to proceed cautiously when considering LB425 as it may have a negative affect on our school district and the growth of industry in our area and other entities that have not yet been identified. Thank you for allowing me to voice my concerns. I would be glad to try to answer any questions if anyone had any. [LB425]

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SENATOR AVERY: Thank you, Mr. Freeman. Senator Schumacher. [LB425]

SENATOR SCHUMACHER: Thank you. If...are you reading this the same way I am that the city of Columbus could annex the entire, I guess for the lack of a better word, east industrial area, around...I think it's around Ag Park in there, even if there were industrial activities going on there? [LB425]

RUSS FREEMAN: That is my understanding and that's, I guess, my fear. [LB425]

SENATOR SCHUMACHER: And that basically whatever...now do you get a lot of tax money out of that, that cluster? [LB425]

RUSS FREEMAN: When we worked with the assessor on coming up with this, it isn't a clear distinction to us which are in the industrial tract and which are in the industry zoned areas. We get a great deal of revenue from the industry in the Columbus area, whether that's all in the industrial tract, which it's not, because I heard that from testimony there, anything was significant. Basically, I took the \$15 million to mean something different than what I had heard here today when I looked at the bill, but obviously I need to learn how to read it a little better. But I took it to mean by the individual business, not the tract itself, but we would be affected. [LB425]

SENATOR SCHUMACHER: But I guess, so I get my head clear, when we talked about a shift of tax money from Lakeview to possibly into the Columbus school district, and let's focus on the industrial tract which I think is kind of around the Ag Park area, the old Behlen building, old Fleischer building and those things, how much revenue does....does Lakeview get money out of that now? [LB425]

RUSS FREEMAN: My understanding is, no, but that's not a firm one. [LB425]

SENATOR SCHUMACHER: So that tract really doesn't affect your finances. [LB425]

RUSS FREEMAN: That's my understanding. [LB425]

SENATOR SCHUMACHER: Right. Now the west one out by Blazer Manufacturing now as you're heading out on 81 west out of town, you do get...that's in your district. [LB425]

RUSS FREEMAN: Yes, sir. [LB425]

SENATOR SCHUMACHER: Okay. I don't have any further questions. [LB425]

SENATOR AVERY: Any other questions? Senator Pahls. [LB425]

SENATOR PAHLS: Since we're speaking solely right now of the school issue, it's my

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assumption if you would lose that property tax, the state formula, you would get...should receive more state aid? [LB425]

RUSS FREEMAN: In the next couple of years I'm not sure anybody is going to get a whole lot of state aid but we would not qualify because of our tax asking would have to go up from that standpoint. [LB425]

SENATOR PAHLS: So you get no state aid right now? [LB425]

RUSS FREEMAN: We received \$40,000 last year and I'm assuming we'll get zero this year. [LB425]

SENATOR PAHLS: Okay. Thank you. [LB425]

SENATOR AVERY: And that's because you're... [LB425]

RUSS FREEMAN: Nonequalized. [LB425]

SENATOR AVERY: Yeah, you're nonequalized, so your needs don't exceed your resources. [LB425]

RUSS FREEMAN: Right. Yes, sir. [LB425]

SENATOR AVERY: Okay. Any other questions? All right. Don't see any. Thank you very much, Mr. Freeman. [LB425]

RUSS FREEMAN: Thank you. [LB425]

SENATOR AVERY: Any other opponent testimony? Anybody wish to testify in a neutral position? All right, that will end the hearing on LB425. We'll now move to LB443 and I will pass the Chair over to the Vice Chair for this particular part of the hearing. [LB425]

SENATOR PRICE: Senator Avery knows how to clear a room. Welcome, Senator Avery. We open on LB443. [LB443]

SENATOR AVERY: (Exhibit 1) Thank you, Mr. Vice Chair. I am Bill Avery, B-i-l-l A-v-e-r-y, representing District 28 here in the heart of Lincoln. I am bringing to you LB443. You may find this bill a bit similar to one that we discussed earlier in this committee about fees administered by the Secretary of State. This, you may remember, came about as part of our discussions in the LR542 process where we were trying to come up with ways and ideas to make agencies less dependent on General Funds. Unlike the earlier bill in dealing with the Secretary of State's fees, this bill specifies the amount of each fee that the Fire Marshal can levy on the cost of administering services.

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This is not a tax. This is a user fee or a service fee that the State Fire Marshal's Office charges. You remember when we talked about the Secretary of State's fees, those were fees that were charged to administer certifications and things of that sort. Some of the fees have not been increased in decades for the Fire Marshal's Office. For example, the fees they charge for above ground storage tank registrations and inspections were last increased in 1985. Fees for installation and registration of underground storage tanks and for reviewing plans haven't been increased in over a decade. I have a handout here that I want you to look at, if the pages will come forward. You will see that the state of Iowa charges significantly higher fees in reviewing plans for storage...for tank storage. And I have some fee structures here for the state of Nebraska that show that for the most part we don't charge more than \$150 for any particular inspection. The fee increases outlined in this bill are very modest. Most fees will be increased by \$5 or less. Some of the fees that are proposed here would be fees for fire safety inspections of liquor establishments, foster care facilities, hospitals, and other healthcare facilities in mobile home parks. Right now we charge \$75 to inspect a mobile home park. That would go up by, I think, \$5. Fees also for providing inspection reports to insurance companies, the fees for reviewing plans, blueprints, and shop drawings, as well as the additional fee to review plans, blueprints, and shop drawings to determine in compliance with accessibility standards, registration fees for above ground storage tanks, and fees for a permit to install a registered underground storage tank. This is...expected if we were to get this enacted into law, and were to succeed in overriding a veto, this would generate by 2012-13 just over \$55,000 in additional revenue for the Fire Marshal's Office. Again the purpose here is to bring fees more in line with the actual cost of the service provided and to help agencies become less dependent on General Funds. We...that is part of what we were charged with in the LR542 process and that is what is the intent of this bill. Thank you. [LB443]

SENATOR PRICE: Thank you very much, Senator Avery. Are there any questions?  
Senator Sullivan. [LB443]

SENATOR SULLIVAN: Thank you, Senator Price. Senator Avery, why wouldn't we then just give the State Fire Marshal's Office the flexibility of setting their own fees to cover costs? [LB443]

SENATOR AVERY: That's a good question. That's what we were doing with the Secretary of State. [LB443]

SENATOR SULLIVAN: Right. [LB443]

SENATOR AVERY: In this case, I believe the fees have always been set in statute. And we didn't even discuss that as I recall, just giving them the authority to change them whenever they needed to. [LB443]

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SENATOR SULLIVAN: But that would be a possibility? [LB443]

SENATOR AVERY: It would be. It would be, and might be something we could amend in committee. [LB443]

SENATOR SULLIVAN: Okay. Thank you. [LB443]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions? Well, it looks like you got off easy today. Seeing no further questions, we'll move on to proponent testimony. [LB443]

SENATOR AVERY: I'm going to stay around because...until I get called out, I have to go to Natural Resources after a while. [LB443]

SENATOR PRICE: I understand. Thank you. Do we have any proponents for LB443? No proponents. Do we have any opponents? [LB443]

PAT PTACEK: Yes, good afternoon. My name is Pat Ptacek, that's P-t-a-c-e-k. I'm executive vice president of the Grain and Feed Association appearing in opposition today to LB443. First of all, let me point out the outstanding relationship that we do have with our inspectors for the elevator and ethanol divisions. Those guys are Johnny-on-the-spot. When we have emergencies in Gothenburg, it was like a SWAT team showing up to assist them when the elevator blew up there. And on many occasions we, as an association, perform entrapment, grain entrapment, engulfment training and extraction, and they're invaluable resources and very inexpensive, I might say. The fact of the matter is, we're opposed primarily because of when so many other agencies are suffering and going through cuts, at this point in time we oppose any other fee increases. To answer one of the questions that you had about establishing a ceiling, I'll give you a for instance why we don't think maybe that would be a good idea. We've been fighting a fight with the Department of Agriculture's Cash Administrative Cash Fund for feed inspection. The director has a ceiling of 10 cents per ton that he can levy. And in that time, it has just spiraled where it got into the millions of a surplus, and the state had the discretion and did take about \$1,500,000 out of that fund over the past four years. We and the Nebraska Co-op Council were successful in regulatorily reducing that fee to 6 cents per ton and we're trying to get it down to 5 cents per ton to make it even less attractive because there's another \$200,000 raid on that fund going for a completely unrelated program. So we would just, I guess, we would just caution you on giving that discretion to...or at least to watch it and maybe put some triggers in there that would lower it automatically as opposed to the industry coming in and trying to do that. In respect, we're opposed to the fee increases and I will take any questions if you have any. [LB443]

SENATOR PRICE: Great. We're still in questions, and Senator Sullivan, please. [LB443]

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SENATOR SULLIVAN: Thank you, Senator Price. Well, Pat, to clarify it though, my comment was just allow them the flexibility to assess fees to cover their cost. That wouldn't mean that they could just keep increasing it. [LB443]

PAT PTACEK: Well, I guess, I'm curious why isn't there statutory fees in place in the first place and not a mixture of maybe, you know, some sort of a discretionary where he could call the industry? And actually what the Feed Administrative Cash Fund, when the director sees that there might be adjustment made he has to come out and he has to get those interested parties to come in and to explain either why they should be increased or why they should be decreased. [LB443]

SENATOR SULLIVAN: Right. That seems to be logical. [LB443]

SENATOR PRICE: Thank you, Senator Sullivan. Are there any other questions from the committee? I just ask, perhaps maybe we could tie it to a CPI type of thing. That way we could have something that would relate it, you know, every few years tied to a percentage of the CPI. We do that in other areas. So that way we wouldn't get that runaway fee maybe tied to something that you have to substantiate. Sound good? [LB443]

PAT PTACEK: We could certainly discuss it, absolutely. [LB443]

SENATOR PRICE: Great. Thank you. Well, seeing no other questions...oh, we have a latecomer here? Senator Schumacher. [LB443]

SENATOR SCHUMACHER: Latecomer question here. Thank you, Senator Price. In real money, how much money would an average elevator have to pay extra under the change in fees? Are we talking about anything.... [LB443]

PAT PTACEK: I think primarily the fees that would affect us is for new construction or...and correct me if I'm wrong, Senator, for new construction or for remodeling when they review those plans and they look at the specifics to make sure that they're as safe as possible and that they're up to standard. And I think the standard that's normally used by the Fire Marshal's Office is the NFPA, which basically the Legislature kind of just automatically takes and rolls into their code. So...and we have a little bit of a...you know, a little bit of an issue with some of the NFPA standards as well because we think as a local industry we could be probably more engaged on a local level with the Fire Marshal's agency as opposed to having a national bureaucracy established standards that may not be really practical when we're looking at new construction, especially when we're looking at new ways and new types of grain handling facilities to what we are handling many more bushels of grains these years. [LB443]

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SENATOR SCHUMACHER: Well, back to then the question, are we talking about thousands of dollars, hundreds of dollars or...? [LB443]

PAT PTACEK: You're talking hundreds of dollars. [LB443]

SENATOR SCHUMACHER: So is what's approximated in the statute very far off from actually the increase inflation and is it close enough for government work to call it inflation? (Laughter) [LB443]

PAT PTACEK: I would probably leave that to the hands of the Fire Marshal to explain or to answer. [LB443]

SENATOR SCHUMACHER: Okay. Thank you. [LB443]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Karpisek. [LB443]

SENATOR KARPISEK: Thank you, Senator Price. Mr. Ptacek, you're here for the co-ops, but we could... [LB443]

PAT PTACEK: We represent grain, privates, public, cooperatives, and ethanol facilities. [LB443]

SENATOR KARPISEK: Okay. But we could plug in any other industry or business into what you're saying. [LB443]

PAT PTACEK: Sure. Sure. [LB443]

SENATOR KARPISEK: So I guess in my head, you're speaking for about...for any business because it could be a restaurant, a bar, anything. So I just wanted to bring that up that although we're hearing from you, it's not only your segment of the... [LB443]

PAT PTACEK: Sure. Sure. And as I said, we have an outstanding and a wonderful working relationship with the guys on the ground. As a matter of fact, in 19...in 2006, we produced a ten-minute safety video with Mike Peters, one of the Fire Marshal inspectors. We paid for it, underwrote it, and made it available to our grain elevators for no fee or very little fee along with basically a workbook, a question and answer as you looked at the video. Here are some of the code problems that you may or may not have in your facility. And as I said, they're really awesome to work with, so. [LB443]

SENATOR KARPISEK: Very good. Thank you. [LB443]

PAT PTACEK: Any maybe in another year, when we're through this, we can look at maybe even a more upward increase in those fees at that time. [LB443]



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SENATOR KARPISEK: Thank you, Senator Price. [LB443]

SENATOR PRICE: Thank you very much, Senator Karpisek. Seeing no other questions, thank you for your testimony. [LB443]

PAT PTACEK: Thank you very much. [LB443]

SENATOR PRICE: (Exhibits 2-4) Do we have any further opposition? I would like to take the time to read into the record now that we do have letters from the Nebraska Petroleum Marketers and Convenience Store Association, in opposition. We also have one from Nebraska Grocery Industry Association in opposition to LB443. And finally, one from the Nebraska Cooperative Council in opposition. Okay, no one else wants to come down in opposition? Anybody who would like to testify in the neutral? Seeing no one in the neutral, Senator Avery, would you like to close on your bill? [LB443]

SENATOR AVERY: I do have a better answer for Senator Sullivan's question about, why don't we just do with this what we propose to do with the Secretary of State? That is, put language in that would allow the Fire Marshal to raise fees as he or she deemed necessary to cover costs. We did talk about that. I had forgotten that we had. The Fire Marshal did not want that particular provision in the law because there was concern that the variance in travel to greater distances or shorter distances throughout the state would perhaps put an unfair, higher fee burden on some of those inspections that would take place at greater distances from the...I presume Lincoln. And they didn't want to have that kind of variation in the fees. Now I would point out that the fees are not being raised in this proposal very much. If you're...if the Fire Marshal is reviewing plans and blueprints and shop drawings on a structure or an improvement under \$5,000, the fee goes from \$5 to \$10. And you're working your way all the way up to if the improvement or structure is over \$200,000, the fee goes from \$50 to \$55 for the first \$200,000 and then \$2 for each additional \$10,000. You're not talking about a lot of money here. So I don't think that the grain elevators are going to be unfairly burdened by this proposal nor do I think that the storage tank petroleum producers will be either. [LB443]

SENATOR PRICE: Thank you, Senator Avery. Are there any questions for Senator Avery? Seeing none, that will close the hearing on LB443. [LB443]

SENATOR AVERY: Thank you. Welcome, Senator Fulton. We're going to now take up LB337 next on our agenda. Senator Fulton, were you getting sleepy back there? [LB443]

SENATOR FULTON: No, Senator, it's riveting. (Laughter) Thank you, Mr. Chairman and members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 here in the Legislature. I am pleased to bring to you LB337.

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LB337 is a result of this committee's LR542 process as it relates to the Auditor of Public Accounts. The bill makes changes regarding the timing and frequency of certain audits in an effort to streamline the number of statutorily required audits. Specifically, LB337 allows the auditor to conduct audits at a time he deems necessary rather than at a statutorily mandated time for audits regarding the following: State aid for law enforcement in counties containing an Indian reservation. That's Section 1 of the bill. The State Highway Commission, which is Section 3 of the bill. The Nebraska Motor Vehicle Industry Licensing Fund in Section 4 of the bill. Appropriations to the Motor Fuel Tax Enforcement and Collection Division within the Department of Revenue, Section 5 of the bill. Investment transactions under the Nebraska State Funds Investment Act in Section 6, and records received by the State Tax Commissioner regarding revenue generated from stamps on cigarettes in Section 7. LB337 also changes the definition of plan year for state and county retirement plans so that beginning July 1 of this year, the plan year will consist of fiscal year 2011. These are in Sections 2 and 8 of the bill and I bring those to your attention last because we have learned, as you can read on the fiscal note, that this would be a burden to the Nebraska Public Employees Retirement...Nebraska Employee Retirement System with accompanying costs. And so, there will be an amendment to strike state and county retirement plans from the bill so as to avoid that hardship. That will be introduced later by the auditor who will follow. I should take this opportunity to thank the committee for your work on the LR542 process. It's going to be very useful in putting together this budget. These...the measures put forward in this bill are prudent and should allow for some cost savings in government. Auditor Foley will follow me with more specific answers to any questions you may have as well as the amendment which I referred to earlier, and with another amendment also. So I'll close there, if there are any questions. [LB337]

SENATOR AVERY: Thank you, Senator. Any questions from the committee? We recall that discussion this summer and I'm pleased that you picked this up. Thank you. [LB337]

SENATOR FULTON: Thank you, Mr. Chairman. [LB337]

SENATOR AVERY: Proponent testimony. Welcome, Mr. Foley. How are you? [LB337]

MIKE FOLEY: (Exhibits 1 and 2) Very well, thank you, Mr. Chairman. Good to see you again. For the record, my name is Mike Foley, F-o-l-e-y, Auditor of Public Accounts. I want to begin by thanking Senator Fulton for picking up LB337 and to you, Senator Avery, for cosponsoring the bill. As Senator Fulton noted, this bill is actually produced by your committee at my recommendation this past fall when the committee convened LR542 process. We naturally took that process very seriously as I know you did as well. And we participated in that process knowing full well that budget cuts were on the horizon. And my goal then, as it is now, is to try to absorb whatever level of budget reduction I might have to endure as a result of the appropriations process, and still

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minimize the damage to my agency. We provided this past fall suggested legislative language that's now been incorporated into LB337. Most agencies of state government are audited roughly every four to five years. Now University of Nebraska given its size and its importance, they're audited annually. They need an annual audit for a number of reasons. Health and Human Services, because of its size and complexity, I've got auditors there every day throughout the year. But most agencies get audited about every four or five years. However, over the years as legislation has been enacted, a handful of peculiar programs, for whatever reason that nobody could probably even remember today, had language inserted in their authorizing statutes which required them to be audited annually. We see no reason to audit them annually. They need to be audited like everybody else but not every year. And I won't read all those, Senator Fulton already walked you through those, which saves some time there. In addition, LB337 has some language regarding the retirement system. Our original intent was to try to collapse two audits down into one audit. That saves my office money but it imposes some costs on the retirement system. So the first amendment that we're offering to you is AM275. That would take the retirement system completely out of the bill and you may have some opposition testimony from the retirement system on that bill but that amendment addresses all their concerns because they're simply removed from the bill. The other amendment I'm offering is AM278 and this is an additional thought that we had after the bill was drafted. There are 2,500 political subdivisions in the state, cities, towns, villages, fire districts, counties, and so forth. By statute, all of those political subdivisions file audit reports and budget reports with my office and again by statute, we prepare a written review of every single one of those filings. It's really not necessary that we do that. It's important that they make that filing with our office because then we have ready access to it as questions arise, but it's really not necessary that we do an annual written review of every single one of those 2,500 political subdivision reports. It would be far more prudent for my auditors to work on those where we have specific issues. And that's what this amendment would do. It would just give us the discretion to do a written review when we think it's necessary on those political subdivisions. In sum, this bill would probably save my office about 5 percent of our General Funds. The Appropriations Committee tentatively has me slated for something between 8 and 9 percent so I'd have to absorb the rest with...the rest of that cut with perhaps some other reductions in frequency of audits. But it would minimize, to a great extent, the damage that would occur if I did incur a budget cut of that amount. So I'd ask for your passage of LB337. Thank you very much, Mr. Chairman. [LB337]

SENATOR AVERY: Thank you for your testimony. Questions from the committee?  
Senator Sullivan. [LB337]

SENATOR SULLIVAN: Thank you, and thank you, Mr. Foley. So any speculation on past history as to why these were singled out for annual audits? [LB337]

MIKE FOLEY: You know, I don't know if there's anybody alive today who could answer

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that question. I certainly cannot. I have no idea. [LB337]

SENATOR SULLIVAN: No records that give any indication. [LB337]

MIKE FOLEY: No, there's no records, no recollection by anybody why these would be picked up. There are others like the state lottery that by statute, it must be audited every year. And we're not suggesting that we do that but there's certain sensitivity obviously with the state lottery, but we don't have that same sensitivity with these others. [LB337]

SENATOR SULLIVAN: So these would go into...okay, as determined by you, but do you as auditor have a regular cycle for all the agencies that you audit on a four-year cycle? [LB337]

MIKE FOLEY: It's not a predictable cycle because we don't really want to give the agencies...we don't want to become too predictable to the agencies. We want to come in, not on a surprise basis, but you know, we give them reasonable notice. But if an issue comes to our attention, instead of putting them off until next year we might do them this year. And phone calls come in every day with suggestions from people who are seeing things in state government that make them uncomfortable and they suggest that we audit a certain agency. If we think that allegation is warranted, we will just go right in and do it. [LB337]

SENATOR SULLIVAN: And you indicated that all the local political subdivisions are required to do audits and they submit them to you. [LB337]

MIKE FOLEY: Yes. [LB337]

SENATOR SULLIVAN: I don't question the annual audit, but why would they have to submit it to you if you don't look at it? [LB337]

MIKE FOLEY: Well, we do look at it. [LB337]

SENATOR SULLIVAN: Well, but you just said earlier you look at it if need be. [LB337]

MIKE FOLEY: Well, no, under statute we're looking at every one of them today. Every one of those files gets looked at, the audit reports and the budget reports are looked at and given a review. [LB337]

SENATOR SULLIVAN: Okay. I misunderstood you. I just thought that... [LB337]

MIKE FOLEY: Yeah, no under the amendment, under the amendment we would do that as needed. They would still make the filing...my office would be the... [LB337]

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SENATOR SULLIVAN: Okay. That's my point. Why do they have to... [LB337]

MIKE FOLEY: My office would be the central repository for the filing but we wouldn't do a written review every single year of every single one of those filings. [LB337]

SENATOR SULLIVAN: Okay. Well, I guess that's my point then is that I don't quibble with the fact that they need to do an audit that they might keep, but why do they have to file it when you don't look at it? [LB337]

MIKE FOLEY: Well, it's very important that that audit be readily available to us. We get calls literally every day regarding a political subdivision somewhere in the state of Nebraska where someone has a question about why certain expenses are being incurred by a county or city or town, village, whatever it is, we need to have ready, immediate access to the audit report and the budget reports so we can respond to those questions. And dispatch auditors to that subdivision if we think it's necessary and it often is. [LB337]

SENATOR AVERY: Any more questions? I don't see any. Thank you for your testimony. [LB337]

MIKE FOLEY: Thank you very much, Senators. [LB337]

SENATOR AVERY: Any other proponent testimony? We're on LB337. All right. Seeing no more proponents, any opponent testimony? Anyone wish to testify in a neutral position? Good afternoon. [LB337]

PHYLLIS CHAMBERS: Good afternoon, Chairman Avery and committee members. My name is Phyllis Chambers, P-h-y-l-l-i-s C-h-a-m-b-e-r-s, and I am the director of the Nebraska Public Employee's Retirement Systems. I'm here today to testify neutral on LB337 with the understanding that AM275 will be made a part of the bill. The Nebraska Retirement Systems administers six different retirement plans, the school, judges, state patrol, counties, state employees, and a deferred compensation plan. The schools, judges and patrol plans are defined benefit plans operated on a fiscal year basis. The county, the state, and the deferred compensation plan are operated on a calendar year basis. LB337 in its present form would require that the county and state retirement plan change its fiscal year to be the same as the school, judges, and patrol. Although this change would allow the auditor to complete his audits all at the same time, it would cause more than just a temporary inconvenience for the retirement systems to change our state and county plan years. NPERS' mission is to serve its 110,000 members of our various retirement plans. Administering half the plans on a fiscal year basis and half of them on a calendar basis allows us to balance our workload throughout the entire year for the agency. This helps create efficiencies in staffing and reporting. The busiest time of the year for our agency occurs in the summer months and early fall when the

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majority of our school employees retire and the agency begins processing those benefit calculations and payments. This is also the time when the state auditors begin the schools, judges, and patrol audits in our office. By changing the state and county plan audit, which normally occurs in the spring to the late summer months and early fall, this would be shifting...this would be at the same time that personnel in our office would be at their busiest time. We anticipate that this might cause some overtime and additional delays in processing benefits. Currently, the calendar year and the fiscal year plans offset each other and that allows us to conduct our daily business with the agency and also at the same time conduct these audits that are going on. And basically, the auditors are in our office about eight months out of the year, so we've got them divided between spring and summer and fall. I am concerned the difficulties that it would cause if we compress all the audits into one shorter time frame. There is a valid, commonsense reason why the state and county plans are on a calendar year. These plans were created as defined contribution plans and typically those are operated on a calendar year. Defined contribution plans are very similar to a 401K. These allow individuals to...members to invest in stock and bond funds in their own accounts. Tracking and reporting on these investment funds is generally done on a calendar year basis and annual reporting and comparison of investment performance is done on a calendar year basis. We also are...we're required to do calculations of required minimum distributions and IRS limitations of contributions. Those are all done on a calendar year basis, so it makes sense to keep the state and county plans on a calendar year basis. Also the recordkeeper for our state and county plans is Ameritas and they do their daily asset values tracking and reporting on a calendar year basis. Changes to this would require Ameritas to make changes in their programming and reporting and would be at a substantial cost which would be passed on to our agency and the members. In addition, NPERS would need to requalify the state and county retirement plans with the IRS, make relevant statutory and regulatory changes, and modify existing forms, retirement booklets, and educational materials. And also our actuary reports. We require an actuary report on all of our retirement plans, the state and county cash balance plan, and the school, judges, and patrol. Right now the actuary is able to spread his time among those doing part of them in the spring and part of them in the fall, so. And I see the red light is on, so I understand that an amendment has been brought forward to remove the sections affecting the retirement agency from this bill, and I appreciate Senator Fulton and Auditor Foley's understanding of our position and their willingness to amend the bill. And I want to thank you for your time and be happy to answer any questions you have. [LB337]

SENATOR PRICE: Well, thank you very much, Mrs. Chambers. Are there any questions from the committee? Seeing none, thank you very much for your testimony today. [LB337]

PHYLLIS CHAMBERS: Thank you. [LB337]

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SENATOR PRICE: Are there any other individuals who would like to testify in the neutral? Seeing none, we will close the hearing then on...or, no, actually, Senator Fulton, do you waive? Thank you. Senator Fulton does waive the closing, and we will close the hearing on LB337. And we will move forward now to LB577. Senator Wightman, welcome to the committee. [LB337]

SENATOR WIGHTMAN: (Exhibit 1) Good afternoon, Vice Chairman Price, members of the Government, Military and Veterans Affairs Committee. For the record, I'm John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n. I represent District 36. LB577 would provide for an application fee for a tower permit issued by the Department of Aeronautics. Nebraska law recognizes that the public health, safety, and welfare require that the erection and maintenance of obstruction to air navigation must be regulated. Nebraska law requires that before any structure or tower is built in the state of Nebraska, the height of which will exceed 150 feet above the surface of the ground at the point of installation, a written permit must be obtained from the Nebraska Department of Aeronautics. Before issuing a permit, an investigation and aeronautical study is required in which the director shall consider the following items: the character of flying operations expected to be conducted in the area of concern; the nature of the terrain; the character of the neighborhood; the uses to which the property concerned is devoted or adaptable; the proximity to existing airports, airways, control areas, and control zones; the height of existing adjacent structures and lastly, all of the facts and circumstances that are relevant. LB577 would amend Nebraska law to require a user to submit an application fee of \$75 for this investigation and study. This fee will compensate the department for the time and materials, overhead, required for reviewing applications and issuing a permit or denying a permit for the structure or tower. The handout that the pages have provided you...and I think they've done that, sets out a breakout of the staff time necessary, the estimated processing time, the hourly rate of each of the staff necessary to review the applications. The cost of the service is approximately \$73.17. That's maybe a little more than approximate. This department has a critical need for additional funding. The commission must be self-sustaining. Its major source of funding are taxes on fuels, both aviation and jet. This revenue source has not kept pace with the rate of inflation and this is shown in the second graph of the handout. At the same time, the workload of the department has increased dramatically. The workload of the Department of Engineer is the third chart on the handout. An unanticipated impact of LB1048, last year's legislation that opens Nebraska to development of the state's wind resources, has seen a proliferation of wind towers and is going to see substantially more. The impact on the department is a surge in applications for towers to measure wind flows, and gather other meteorological data. These towers gather data to determine the best location for a windfarm. The department has reviewed 50 applications in the last six months and expects the trend to continue. And if you'll look at the graphs that you have before you, you'll see that that's more than it's ever been submitted before. And when you look back in the history of this, some years there were five or six applications, were all that were filed. Many of the applications for permits for

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meteorological towers or for a structure that presents a clear and present danger to light aircraft, aerial applicators, and medical helicopters. The towers are less than 200 feet tall, in which case they would require a federal approval. The county government has no expertise to review these applications for permits of structure that may interfere with aircraft. The department has a statutory duty to keep the air traffic ways safe. Many of the applications are for towers that are gray in color and have no night lighting. As submitted, the proposed towers are fatal accidents waiting to happen. You will learn more about the hazards these towers present from the testifiers that will follow me. As wind generating structures are built, even more applications will be submitted. Each tower much be separately approved. The department proposes to use its existing staff, but desperately needs the resources to pay the overtime that will be necessary to process the applications that it projects that it will receive. The department must have the resources necessary to carry out its statutory duties and keep the airways safe. I would urge you to advance LB577 to General File. If you have any questions, I would be happy to try to answer those questions although many of them will be, maybe, technical in nature and could best be answered by testifiers that will follow me. [LB577]

SENATOR PRICE: Well, thank you, Senator Wightman. Do we have questions?  
Senator Sullivan. [LB577]

SENATOR SULLIVAN: Thank you, Senator Price. Just to clarify. So there hasn't been a charge for this fee in the past? [LB577]

SENATOR WIGHTMAN: That's correct, I think. If there was, it's a \$5 or...there any fee. You'll have to ask them. [LB577]

SENATOR SULLIVAN: If you want I can...and then so, right now, this department is funded out of the General Fund. [LB577]

SENATOR WIGHTMAN: Well, it was funded out of cash funds on the fuel, aeronautics fuels that were used. [LB577]

SENATOR SULLIVAN: Oh, that's right. That's right. That's right. Okay. Gotcha. Okay. [LB577]

SENATOR WIGHTMAN: But as you can see from your graph, those have gone down rather than gone up. [LB577]

SENATOR SULLIVAN: Right. Okay. Thank you. [LB577]

SENATOR PRICE: I would ask one question of you, Senator Wightman, and you could help me out. In one area here on page 3, I guess, it would be Section 2, page 3, line 6, where it talks about, if the director, upon such investigation, determines, we struck out



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"shall determine." So I'm wondering if we've gotten permissive in the language there and say, and where we started, if a director upon investigation determines such proposed structure is a hazard. It looks like it's very permissive there. I'm wondering what the rationale was behind that because before we were saying, shall go and make a determination. Now it says, if he determines. And I didn't know...if you don't want to address it, but it seemed permissive. [LB577]

SENATOR WIGHTMAN: But I think that it's saying the same thing. If the director...except that upon such investigation shall determine and determines, I don't know that with the word "shall" in there it would be a lot different in nature. [LB577]

SENATOR PRICE: Okay. I'm fine. I just wanted to make sure and call attention to that. And if you say it's good, and it would be the same way. [LB577]

SENATOR WIGHTMAN: I think it was just determined that would be better language by the Bill Drafter, but. [LB577]

SENATOR PRICE: Okay. That's fine, then. I'm satiated for my inquisitive nature. [LB577]

SENATOR WIGHTMAN: Okay. [LB577]

SENATOR PRICE: Any other questions? Seeing none, thank you, Senator Wightman. [LB577]

SENATOR WIGHTMAN: Thank you. [LB577]

SENATOR PRICE: And we'll move on to the first proponent. [LB577]

DOUG VAP: (Exhibits 2 and 3) Mr. Chairman, Senators, my name is Doug Vap, spelled D-o-u-g V-a-p. And I represent the Nebraska Commission for Aeronautics today. And I want to bring first your attention to the page with the graphs. The top graph indicates that, with the red line, if we were allowed to adjust our income for inflation is where it would be today. The bottom line indicates where we are. The Department of Aeronautics is a self-funded department. We receive income from projects within the department that we generate and from the fuel tax. The fuel tax was established when the department was chartered in 1945. We received the same income for all these years. On aviation fuel we get five cents a gallon. On jet fuel we get three cents. So you can see, we're basically running on a downhill run. It's hard for us to keep up. When we had our bimonthly meeting last week, we were informed that we will have...if you look at the bottom chart where we were at last year, we had less than 45 applications for funding. This year we've got 62, which indicates that, yes, we do need the money to make this thing work for not only the General Aviation Air Force but for the department.

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We can't provide the services that would be needed based on what we have. Even though \$75 for a met tower doesn't sound like much, but it's...out there where we're at, it's something we really need. We haven't had any increases since the chartering of the department, like I said, 1945. The increased cost of maintaining these airports every year is basically funded by the federal government. The Obama administration has indicated this year that they're going to fund the FAA with much more money than what they had anticipated. So when the word got out that the FAA is going to have money to spend, obviously, the consultants come out of the woodwork and go out to these little airports and convince these people to apply for these projects, some of which are necessary, some of them may not be. Some may be a little frivolous, you know, for the airports of their size. So another reason for wanting to establish a fee on this is so that we can identify who these people are that are putting up these towers. As subsequent witnesses will tell you, these things go up willy-nilly all over the state, up until this last year. We have had since in the last six months, we have had 50 applications for towers. Prior to that we probably may have five a year and this includes radio towers as well as cell phone towers. And they usually try to keep these things just a few feet under 200 foot so they don't have to be registered, they don't have to be lit, and they don't have to be painted, as Senator Wightman had indicated. So based on that, what we're wanting to do is to follow through with pressure on the FAA to make sure that these towers will be painted in the future and possibly lit. Another thing that subsequent witnesses will tell you about is the safety factor. That it goes along with towers that, one, you can't see from the air at 150 miles per hour, that you probably well know. I did my homework. So based on that, I'm willing...oh, I guess I'm about out of time here. I'm willing to take any questions from me before we go on to the technical experts. [LB577]

SENATOR PRICE: Thank you very much, Mr. Vap. Are there questions from the committee? Senator Sullivan. [LB577]

SENATOR SULLIVAN: Thank you, Senator Price. So thank you for your testimony and information. It's been helpful. Has the staffing held steady, for how long? Have you always had the five engineers and one project accountant? [LB577]

DOUG VAP: The staff has been steady for at least ten years that I've been there. Whenever nontechnical personnel retires or leaves, we leave it at attrition and don't replace them. We do have a couple of people there now, one nontechnical, and one being a pilot, which we have to maintain a pilot pool for the state of Nebraska so that we have two pilots available for every flight that goes out. But in the last few years, the use of the state aircraft has dwindled, not dramatically, but middle staff have been forced to drive as opposed to use state aircraft when they go outstate to visit whatever department they represent. [LB577]

SENATOR SULLIVAN: And did I understand you correctly, the two...as far as attributing the increase in applications, one is for the windfarm development putting up their

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diagnostic equipment and... [LB577]

DOUG VAP: Yes. Yeah, these met towers are strictly for the development of wind power. What the owners of the towers do is collect this data and then they turn around and sell it to the wind energy people. [LB577]

SENATOR SULLIVAN: Okay. [LB577]

DOUG VAP: And there's some...you know, I'll give you a couple examples why it's attractive to farmers to utilize and provide ground for these people. At our meeting last week we had a county commissioner from Cass County there and he provided us with the information that he has in that tower on his property. It's been there for two years, which means it came in unauthorized and he is deriving a \$11,000 a year income from that on a three-year contract. At the end of the three years...this is kind of like oil well leases. At the end of three years if these people elect not to develop the windfarm, are they responsible for taking that tower down? We don't know. If that thing just goes abandoned...there's abandoned towers all over the state when you start looking for them. My brother over in Public Service Commission called me...oh, it's been about six, eight months ago, and the county commissioners from Harlan County had gotten a request to take a tower down, or...because the light had burned out on the top of it. And it turned out that the person who owned the property wouldn't allow them to go out there and fix it...from the county standpoint, wouldn't tell them who owned the tower so they could chase it down, and then that's when he called me. And, of course, towers in Nebraska, once they're established, are a local issue. And we as a commission or a department, either one, could not do anything with it. It's a safety factor. [LB577]

SENATOR SULLIVAN: So with this application fee, do you have the statutory authority to deny an application? [LB577]

DOUG VAP: We do. [LB577]

SENATOR SULLIVAN: Okay. All right. [LB577]

DOUG VAP: We do. Even though, you know, if they come and go through the application process and give us substantiation that they are a really a legitimate company interested in doing that, you know, for whatever reason, then, yeah, we can take...or the department will take a second look at it. We have one engineer there that just specializes in towers. [LB577]

SENATOR SULLIVAN: Do you anticipate what this new activity, and also maybe even because of what you said with the FAA additional funds that might become available, do you anticipate coming to us with a need for additional statutory authority to manage some of these things? [LB577]

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DOUG VAP: Well, hopefully, we'll exist with what we have since...well, last year we were forced to give up...I can't quote you the exact amount of money the Governor requested from our department, even though we're not generally funded, it was \$160,000. So what we ended up with at the end of the year for distribution to airports requesting additional funds, other than what they were getting from the federal government, it was \$60,000, and this was divided between eight or nine airports. So, you know, we didn't do anybody any favors, but we had nothing to work with. [LB577]

SENATOR SULLIVAN: Thank you. [LB577]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Pahls. [LB577]

SENATOR PAHLS: Thank you. I have a question. Just a couple of them. You are cash funded? [LB577]

DOUG VAP: We are cash funded. [LB577]

SENATOR PAHLS: Okay. So you don't cost the...and you're seeking, simply seeking \$75 every time you make an assessment. [LB577]

DOUG VAP: Yes. This is just basically just for the cost of filling out the application so that we can cover ourselves to a certain degree financially on it, because with this increase in the amount of projects for this coming year, you know, that's a lot of projects. [LB577]

SENATOR PAHLS: No, I'm not questioning it, I'm just trying to get right to the chase. You're cash funded, you're saying that this is causing you some additional cash issues, \$75 every time you make an analysis of each...I'm just, use each pole. [LB577]

DOUG VAP: Yes. [LB577]

SENATOR PAHLS: That's what you're asking for. [LB577]

DOUG VAP: Yes. [LB577]

SENATOR PAHLS: And that's it? [LB577]

DOUG VAP: Yeah. [LB577]

SENATOR PAHLS: Okay. [LB577]

DOUG VAP: Now some states charge a lot more. [LB577]

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SENATOR PAHLS: No, I'm just saying, is all you're requesting as I'm reading this, so we have to make a judgment, is \$75 is appropriate. I understand the safety factor and all that. I'm not...I'm just trying... [LB577]

DOUG VAP: Well, when the \$75 come up, it was basically just to cover the cost. [LB577]

SENATOR PAHLS: Yeah, okay. Thank you. [LB577]

SENATOR PRICE: Senator Brasch. [LB577]

SENATOR BRASCH: And that cost is just for the paperwork, not for site inspections or anything like that, just...? [LB577]

DOUG VAP: No, not for the site inspection. But, however, this does give us a better handle on where these towers are being put in at and we can put them into our database and Web site so that the aerial applicators will have some way of knowing if there's something new has come up since last week. [LB577]

SENATOR BRASCH: How many pages are to this application? Is it a one-page form, a four-page form...? [LB577]

DOUG VAP: You know, I can't answer that. [LB577]

SENATOR BRASCH: Okay. I'm just curious how much time is involved. [LB577]

DOUG VAP: I thought I had most of the questions covered before I came in, but... [LB577]

SENATOR BRASCH: That's okay, Mr. Vap. I appreciate it. Thank you. [LB577]

SENATOR PRICE: Thank you. Senator Schumacher. [LB577]

SENATOR SCHUMACHER: Thank you, Senator Price. Mr. Vap, just a couple general questions so I can get kind of my bearings in here. How many people are employed by the department? [LB577]

DOUG VAP: Do I have that information here with me? I could do a quick head count for you, the director, the assistant director, who is also our lawyer. We have two people in accounting, one in logistics, five engineers, and then we have...and I'm not sure how many people we have out at those state airports or airfields, at least two people employed at each one of those and there's four of those. We have three people

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employed at our Kearney office for avionics. And there again was, last year when the director in Kearney retired, we eliminated the position. [LB577]

SENATOR SCHUMACHER: And just in rough count there, it looks like about 22 or 23 people. [LB577]

DOUG VAP: Yeah, and as I remember, I'm thinking there's 24, plus pilots. There's... [LB577]

SENATOR SCHUMACHER: You got a couple of pilots? [LB577]

DOUG VAP: Oh, we got more than that. I think there's five pilots. So we've got about 30 employees. [LB577]

SENATOR SCHUMACHER: So we've got five pilots, 23 or so other people, and what does the State Department of Aeronautics do that the FAA doesn't do? [LB577]

DOUG VAP: Well, the first thing that we do is we spend their money. Any projects that's on any airport in the state of Nebraska, once it's approved by the FAA, they will set up a pool to pay for those projects and those projects are administered through our department. So when one of them is complete, we contact the FAA, they deposit money into our cash account, and then we, in turn, reimburse the airports that are involved. [LB577]

SENATOR SCHUMACHER: Is that your principal function? [LB577]

DOUG VAP: Yes. The commission itself...our charge is strictly to administer...not administer, that's not the right word, is to provide advice and consent to the department as far as which projects that we feel are necessary, unnecessary. And, of course, the engineering departments they go out and work with the airports as well as with the consultants that are involved in this. It's actually a very complex operation for no bigger than what we are and for no more money than what...thank God that we do get federal funds for most airports, not all airports in the state. [LB577]

SENATOR SCHUMACHER: So it takes 23 people and 5 pilots to spend the FAA's money? [LB577]

DOUG VAP: Well, you have to have an engineering staff to go out and inspect these airports, corroborate the information that they really need this. At this point in time, we're still maintaining 82 airports in the state. [LB577]

SENATOR SCHUMACHER: How much money do you get off this tax to pay these 23 people and 5 pilots? [LB577]

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DOUG VAP: That should be in your handout there. This last year...this year, we're anticipating a million four. [LB577]

SENATOR SCHUMACHER: That's your total revenue? [LB577]

DOUG VAP: Well, not including the federal funds that we get to reimburse the airports. [LB577]

SENATOR SCHUMACHER: Okay. So some of your...also the money to pay these 23 people and 5 pilots also is coming from the feds? [LB577]

DOUG VAP: Not all of it comes in...none of the administrative money comes in from the feds. [LB577]

SENATOR SCHUMACHER: So the million two covers the 23 people and... [LB577]

DOUG VAP: And the pilot pool, essentially is supposedly to pay for itself flying state officials and university officials. [LB577]

SENATOR SCHUMACHER: So the million two covers the 23 people? [LB577]

DOUG VAP: Yeah. [LB577]

SENATOR SCHUMACHER: Without the pilots? [LB577]

DOUG VAP: No, the pilots will be included. [LB577]

SENATOR SCHUMACHER: Are not in that. Okay. Now are...do you then...do you or the FAA then post the locations of these towers to the GPS maps that are provided to the pilots? [LB577]

DOUG VAP: No, we do. [LB577]

SENATOR SCHUMACHER: You do. [LB577]

DOUG VAP: The process is that the LLC, which is the way most of them are set up, somebody outside the state actually owns the towers but they set up a local corporation to administer them. They come in and apply for permission to put that tower up. [LB577]

SENATOR SCHUMACHER: But the pilots on their GPS system have got...when they're flying, they can see where various obstacles and towers are because those are logged into a map that the GPS has in its app. [LB577]

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DOUG VAP: Not a hundred percent. There's a lot of aerial applicators out there. They're getting GPS's. As a matter of fact, one of the people that are with me today is an aerial applicator and he can answer probably those questions better than I could. [LB577]

SENATOR SCHUMACHER: I don't have any further questions. [LB577]

SENATOR PRICE: Thank you, Senator Schumacher. I notice Senator Brasch, do you have a question? [LB577]

SENATOR BRASCH: Just a very quick question. Thank you, Senator Price and thank you again, Mr. Vap. Does the Department of Energy, when you're talking about wind towers, they don't do any type of interaction with the new wind tower in this? I'm just wondering... [LB577]

DOUG VAP: This particular request of...under this bill affects only met towers or the meteorological towers. [LB577]

SENATOR BRASCH: I see. [LB577]

DOUG VAP: So a wind turbine up there, no, we don't have any control over those. [LB577]

SENATOR BRASCH: You don't. Or any interest in a wind tower, but only the meteorological... [LB577]

DOUG VAP: Yeah, the met tower. [LB577]

SENATOR BRASCH: Okay, the met towers. [LB577]

DOUG VAP: That's all we have to go over. [LB577]

SENATOR BRASCH: Okay. That's...thank you very much. Thank you, Senator Price. [LB577]

SENATOR PRICE: Thank you, Senator Brasch. I just say, Mr. Vap, as you said, I obviously have a fond place in my heart for met towers. I think they're the most important thing we could possibly have in the state. No, but the thing I think we try to get our head around a little bit maybe, and help with Senator Schumacher, back in the day we used to call them NOTAMs, notice to airmen. [LB577]

DOUG VAP: Yeah. [LB577]



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SENATOR PRICE: That's where you would publish and then it's incumbent upon a pilot to go read the NOTAMs for any new hazards in the area, any new notice to airmen that would be put by FAA, correct? [LB577]

DOUG VAP: That's all handled on the Web site now. [LB577]

SENATOR PRICE: Right. But they would have a Web interface but...either way. So the only other question I would have and when we look at this later on when we talk about towers being abandoned and towers being in different places, have we...when we make...do you collect a report...let me collect my thoughts. Do you collect any reports from pilots, from the aviation community that would talk to hazards that they encountered? [LB577]

DOUG VAP: Okay. Sure. [LB577]

SENATOR PRICE: All right. Great. [LB577]

DOUG VAP: But not on a routine basis. You know, some of those guys out there on those little grass strips and, you know, they could care less about that as long as they get in the air and get it back down, that's the main thing. [LB577]

SENATOR PRICE: Well, I appreciate your testimony today, sir. Do we have the next proponent? Welcome, sir. [LB577]

LARRY SCHULZE: (Exhibit 4) Thank you and good afternoon. My name is Larry Schulze and I'm speaking on behalf of the Nebraska Aviation Trades Association. My name is spelled L-a-r-r-y S-c-h-u-l-z-e. I am going to address and have a focal point of met towers as you heard reference by Doug Vap. And the importance of a role that the Nebraska Department of Aeronautics has in which Doug referred to as a database of the locations of these met towers, that database is the key that I'm going to emphasize in how valuable it is for the safety of flight issue that we're discussing today. I'll be accompanied with some information here by Brian Wilcox, an ag pilot from also here from Nebraska, who is also vice president of the Nebraska Aviation Trades Association. Now let me distinguish, please, between two different types of obstructions that move into the air space. Met towers as one, and wind turbines as the other. Now met towers...I'll go into a little bit more detail in a moment here, but they analyze wind data for the potential development of a wind turbine farm. A wind turbine will be up there beyond 200 feet in height and by FAA requirements, it will then be lighted and properly identified and, therefore, a pilot would recognize them. The key difference with a met tower is that they typically are installed with a weather instrumentation to measure wind data of velocity, direction, and duration for then an assessment is made whether or not it's economically feasible for a wind turbine farm to then take place based upon the data collected by the met tower. MET is an acronym standing for meteorological evaluation

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tower. That's what met tower happens to be. Now visualize this, if I may, please. I'm going to draw a mental picture. A met tower is a slender, single, tapering metal, galvanized column, going up in the air. Perhaps about a foot in diameter at the base tapering to a small diameter at the top. Typically, they are easily erected in about 24 hours. Shoom. They're up in the air. They are in height of about 194 feet up to about 198 feet. It is 200 feet that triggers lighting by the FAA. It is intentionally these towers are built just underneath that requirement. A big concern right there. They are temporarily built up for about one to two years and then a decision is made whether or not to follow with a wind turbine farm if the data supports that. Now the online tower database, that is maintained and ongoing by the Nebraska Department of Aeronautics, today contains about 70 met towers across the state of Nebraska. And the most populous county for met towers happens to be Boone County. That's the Albion area. And there are nine towers in that county. Now why is it a concern to ag pilots about met towers? I'm going to refer you to points that I've issued to you in my handout on point number 5. First of all, these are gray metal towers. They blend into the background, background sky conditions, background landscape conditions. And in some gray skies, they come close to be nearly impossible. If you've seen that before, you've been scared out of your wits when you come across them. And because they're constructed within a period of hours, you may have a pilot that will know his or her territory and one day the tower goes up, and the next day he or she is just caught completely off guard. So at this point, there's no federal requirement by the FAA to mark and identify these towers. There's proposed guidance that the FAA is moving in that direction. Our organization has provided federal comment to the docket about that and we hope that comes into being. But in some states...I'd like to refer to you that California and Idaho have nighttime agricultural spray operations that are occurring. So if you don't have even lights on a met tower, any type of paint striping or marker balls, have no value at nighttime at all. It's the lights that are crucial. So the online database that the Department of Aeronautics has that identifies the location of these met towers is absolutely crucial. That...and their support of their \$75 is what they're asking here is to go toward the placement of this information online to support the cost of staff and engineers to evaluate the application and a Web master to follow on through. Point number 6 in my handout talks about the 15 different types of aviation parameters that are affected by met towers. You can take a look at everything from ag pilots to life flight crews, USDA APHIS, animal damage control, aerial law enforcement, aerial wildlife game surveys, and many of them are there that would do that. So we have had deaths in the states. We had a death in Alberta, Canada, last January or last July that it was. And we know, according to the Nebraska Energy Office, that tower development will continue in the state of Nebraska and met towers are coming stronger than ever before. We support the database that the Nebraska Department of Aeronautics has to identify the location of these met towers and from that point on, ag pilots can take that Lat and Lon, latitude and longitude, and place it into the GPS units so that they can know where those towers are and not be surprised by them. Thank you. Any questions? [LB577]

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SENATOR PRICE: Thank you very much for your testimony, Mr. Schulze. Comments, questions? Senator Sullivan. [LB577]

SENATOR SULLIVAN: Thank you, Senator Price. Thank you, Larry. [LB577]

LARRY SCHULZE: Thank you. [LB577]

SENATOR SULLIVAN: Nice to see you again. Yes, I live in Boone County and I have seen some of those met towers. (Laugh) [LB577]

LARRY SCHULZE: Yes, you have. [LB577]

SENATOR SULLIVAN: But are we then perhaps talking about two different things. This suggested legislation will allow for a fee for an application for one going forward. [LB577]

LARRY SCHULZE: That's right. [LB577]

SENATOR SULLIVAN: But my question earlier about potentially and particularly in line of the FAA proposed guidelines for managing these met towers, you currently...there currently is no oversight for the met towers that exist nor will there be even with this application fee being assessed. [LB577]

LARRY SCHULZE: LB1048 passed last year by our Unicameral did have some requirements for some marking of these towers and they listed painting and/or marker balls, about 51 centimeters in diameter. About like that. However, we have a lot of towers that are up prior to that. They're not necessarily grandfathered in. Registration is being issued here and, hopefully, required and that's the means of getting caught up. We are hopeful that maybe the FAA in the long run may look backwards also to require marking and/or lighting of these towers to support the safety of flight issue that we have here in the future. So I hope... [LB577]

SENATOR SULLIVAN: And then this perhaps doesn't have anything to do with aeronautics except, Doug mentioned it, that these met towers, once the wind farm goes in, maybe there's no need for the met tower and there's no condition for managing them after they're no longer used. [LB577]

LARRY SCHULZE: That's the tricky part. They go up from one to two years to evaluate wind conditions and to determine whether or not a wind turbine farm will follow. We're so new in the industry in Nebraska and the United States that there are a lot of question marks right now of whether or not, what happens to a met tower after it is no longer collecting data. Who owns it? Who maintains it? Who is responsible for it? And that is a deep concern in the long run. So we do want to make sure that we're registered...having

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these towers registered by the Nebraska Department of Aeronautics and that their locations are known by Lat and by Lon so that those GPS units as used by the ag pilots can identify them and they avoid them when it comes to potential collision time. [LB577]

SENATOR SULLIVAN: So in addition to this fee being assessed for an application, and if the application is approved, then it becomes part of the database? [LB577]

LARRY SCHULZE: Yes. Matter of fact, that database is new and existing now on line, but this has been added responsibilities have been laid upon the Department of Aeronautics, as my understanding is, and they have not had additional staff and they're using existing staff to support the registration of that online database, plus the review of the applications, plus a Web master to enter the data on line for availability of downloading by ag pilots. [LB577]

SENATOR SULLIVAN: Okay. [LB577]

SENATOR PRICE: Thank you, Senator Sullivan. Senator Schumacher. [LB577]

SENATOR SCHUMACHER: Thank you, Senator Price. What is the cost construction of one of these met towers, if you know? [LB577]

LARRY SCHULZE: I do not know. I could speculate if you want me to. [LB577]

SENATOR SCHUMACHER: A little bit. [LB577]

LARRY SCHULZE: I think it's in the neighborhood of \$12,000 to \$15,000. [LB577]

SENATOR SCHUMACHER: Okay. Are they guide or they all... [LB577]

LARRY SCHULZE: Typically, they're 198 feet in a vertical column and you have guy wires going in four different directions, quite commonly three or four guy wires underneath each other in each of the four directions. [LB577]

SENATOR SCHUMACHER: And they...how far apart are they spaced? [LB577]

LARRY SCHULZE: Oh, from one met tower to the other? [LB577]

SENATOR SCHUMACHER: Yeah. [LB577]

LARRY SCHULZE: Typically, you may have only one or two met towers per proposed potential wind turbine farm itself. Now there's...you may be aware in the Albion area that there were some met towers that went up early and they were just assessing the conditions. And as a result of the data collected, you have the wind turbine farms

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coming in now. I think I made reference in my handout. Would you believe that the decision has been made in Banner County that 1,000 turbines will be going in. The landscape will be changing. [LB577]

SENATOR SCHUMACHER: When do these towers get posted or what criteria to the FCCs data, because the FCC maintains a database of towers? I mean not FCC, FAA. The FCC may also but the FAA does. [LB577]

LARRY SCHULZE: Well, if they're communication towers that they may so, that would be the case. I'm not aware of the extent of the jurisdiction of the FAA and what level or size of a database that they have or to what extent that they maintain an inventory of these (inaudible) towers. I don't know that. [LB577]

SENATOR SCHUMACHER: So are we duplicating the FAA here? If they are, are they duplicating you or...? [LB577]

LARRY SCHULZE: No, I'm understanding though that this effort is not a duplication of the FAA. Matter of fact, in a letter written by legal counsel, the gentleman by the name of Whitman, in FAA to the South Dakota Department of Transportation last April 16th, the FAA in that letter by the legal counsel stated that the FAA holds jurisdiction in air space 200 feet and below, but they are not allowing any type of...any state to issue a state law to mark met towers that are within or underneath 200 feet. So here we have an FAA, a federal agency that is indicating they hold jurisdiction underneath, air space under 200 feet, and that marking of the towers by any given state is not allowed, but then the FAA right now is not doing anything to mark met towers underneath 200 feet. [LB577]

SENATOR SCHUMACHER: Besides posting these to your Web site, it's my understanding that there's automatic updates to GPS systems that... [LB577]

LARRY SCHULZE: No, sir. [LB577]

SENATOR SCHUMACHER: There's no automatic updates. [LB577]

LARRY SCHULZ: If you wish...if you want to, I can show you the actual forms that you can drop...that you can download off of the Internet off...from the database to the Nebraska Department of Aeronautics and they...each single page here happens to be a met tower identification and it shows Lat and Lon. It is...the pilot needs to go to this online database, search by county, find the towers in that county, in other words one sheet per tower, and then take latitude and longitude and punch it into his or her own GPS units in their own aircraft. That's not done automatically. [LB577]

SENATOR SCHUMACHER: That isn't done by Garmin, or the producer of the GPS

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system doesn't have an update service? [LB577]

LARRY SCHULZE: Oh, I would...at some point the technology should be there to do that. I'll ask my colleague, who is a pilot, to see if that...to what extent he happens to be able to perform that function right now. He manually...do I understand that right Brian, you manually take Lat and Lon and punch it into your GPS systems? He's nodding yes, sir. [LB577]

SENATOR SCHUMACHER: I don't have any further questions. [LB577]

SENATOR PRICE: Thank you, Senator Schumacher. Senator Karpisek. [LB577]

SENATOR KARPISEK: Thank you, Senator Price. Thank you, and I happened to be gone for a little bit so...and it's a whole different bill, but should we lower our standards to maybe a 150 feet to get a light on them? [LB577]

LARRY SCHULZE: Right now the FAA would not allow you to do that because of the letter by legal counsel, Whitman, that I referred to written to the South Dakota Department of Transportation. Right now the FAA would not allow that and they would preempt any type of state legislation that would mark met towers or any tower underneath 200 feet in height. [LB577]

SENATOR KARPISEK: Just my understanding is that state law can usually be equal to or greater than federal law so that was my question. [LB577]

LARRY SCHULZE: True. That has been posed...an adjustment of that question has been posed to Joe Miniace, who is the Central Region FAA director responsible for four states in the Midwest. And he has responded that any state legislation that would be enacted and passed would only be able to duplicate any potential future FAA regulation on the marking of met towers. It would not be able to have anything less. It would not be able to enact anything more. It would only be able to enact the...and duplicate what the FAA would be doing on a federal basis. I'm more familiar with FIFRA, the Federal Pesticide, Insecticide and Fungicide Act, and typically a state can be more restrictive than the feds. [LB577]

SENATOR KARPISEK: Yes. [LB577]

LARRY SCHULZE: That's not the case in this situation. You either duplicate what the fed has said, you do nothing less, you do nothing more. [LB577]

SENATOR KARPISEK: That's very interesting because it just doesn't seem like we hear that anywhere else, but thank you. [LB577]

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LARRY SCHULZE: Senator, Senator, I agree with you. [LB577]

SENATOR KARPISEK: Great. Thank you. Thank you, Senator Price. [LB577]

SENATOR PRICE: Thank you. Welcome to the FAA. (Laughter) Anyway, thank you very much, Mr. Schulze for your testimony. [LB577]

LARRY SCHULZE: Thank you. [LB577]

SENATOR PRICE: Can we have the next proponent? Welcome, sir. [LB577]

BRIAN WILCOX: (Exhibit 5) Thank you. Thank you, Senator Price and committee. I'll warn you right now, I'm a professional pilot, not a speaker, so...(laughter) You asked a lot of questions of Larry. [LB577]

SENATOR PRICE: We'll need your name. [LB577]

BRIAN WILCOX: Oh, I'm sorry. Shows my inexperience. Brian Wilcox, B-r-i-a-n W-i-i-c-o-x. I represent the Nebraska Aviation Trade Association and I'm the vice president. We are in support of LB577 to allow the \$75 fee for the posting of the permits. The process of posting of the met towers is especially important to us as ag pilots. We rely on the listing of towers of less than 200 feet and above 150, because the structures are not listed on sectional maps that aviation uses for navigation. Therefore, they are not on our GPS navigation equipment. But what the info the Department of Aeronautics supplies and the developing technology in our aircraft, GPS, we are able to download those hazards and be warned of imminent impacts with towers. There are a lot of questions of Larry that I could answer. [LB577]

SENATOR PRICE: Well, thank you very much, Mr. Wilcox. I'm sure the committee will give you an opportunity to answer questions. (Laughter) Senator Sullivan. [LB577]

SENATOR SULLIVAN: Thank you, Senator Price. Well, based on what Mr. Schulze said, but then maybe alleviated to a certain extent to what you said, but are we waiting for an accident to happen? [LB577]

BRIAN WILCOX: We are and we already had them. I have personally...my application business is in Neligh. I make applications from Albion, all the way to the South Dakota border. I cover a lot of ground. I personally have had a near impact with one of the Boone County towers, so it is an issue. And we've had one of our colleagues killed in California this winter. [LB577]

SENATOR SULLIVAN: But that's my point and concern that while this legislation helps to a certain extent going forward, it doesn't do anything with the existing met towers that

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are up nor does it address what obviously the FAA is doing nothing about and that's managing them. [LB577]

BRIAN WILCOX: It does help. When we get these...when we look up...like if I look up Boone County or I look up Antelope County, I'll see if there was four and now there's five. I know where the four were, I find one more. Okay, now I look up to see where it's at. I don't know how it all shakes out if the existing ones have to report. I know on last year's bill they had to update and mark the towers within a...I believe, the next time they serviced them, because they take them down and service them like every 12 months. It is an asset to us. And especially when I know where my towers are at for the most part unless they've added one, if I bring in new pilots I can show them where they're at on our maps, and also the emerging technology that I referred to on our GPS, they're being overlaid by sectional maps. I understand you're a pilot. They're being overlaid with sectional maps in them, and we can actually enter in points of interest or hazard and we'll be warned. They're not already on the sectional maps because they're less than 200 feet, so they do not get posted. With Department of Aeronautics information we can personally enter them into the information in our GPS, which we refer to as Garmin. Garmin doesn't have access to those towers because they're not published by the FAA, because the FAA has no interest in regulating these towers at this point. [LB577]

SENATOR SULLIVAN: Even though they...excuse me. Even though they say they're supposed...I mean, it's under their jurisdiction. I don't quite... [LB577]

BRIAN WILCOX: They say they're under their jurisdiction, but there is guidance...there is legislation...or not legislation, the FAA doesn't have legislation, I suppose. But there is some rules coming down, we hope, that will start making them mark these towers. The biggest thing we'd want, and this is unrelated to this, we'd just as soon they were painted and marked, not hidden. They're actually hidden right now so competitors can't see them in the wind industry. That's why they are the way they are. So competitive edge is worth more than one of my colleagues getting killed. So, you know, that's why we are in support of this. We need it. And it's partly responsible because some of these towers are responsible because the legislation we had last year go through, so. [LB577]

SENATOR PRICE: Thank you. Are we good, Senator Sullivan? [LB577]

SENATOR SULLIVAN: For now. [LB577]

SENATOR PRICE: Okay, thank you. And Senator Brasch. [LB577]

SENATOR BRASCH: Thank you, Senator Price and thank you, Mr. Wilcox. I sincerely believe that what you're saying here in your whole group, this is very important. I have no question about that. My only question that I'll go back to is, and I understand it's to build or erect these structures to make them visible, to make them documented. Do you



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know what the application form looks like, because I'm looking at it and it will take an engineer three-quarters of an hour plus at \$33.62 for three-quarters of an hour, it will also take an engineer technician, and I don't know the credentials for a total of...an additional hour and a half, so we're looking at an application that's coming close to \$73. And we are in the economic times of, what do you really need? Does this division really need to get \$7,500 to look at these papers? I mean, is it technical? Is it...or is it a matter of documenting registration? Will it take, you know, over two hours of an engineer plus...you know, have you seen the application? [LB577]

BRIAN WILCOX: I couldn't answer that. You know, I don't work for them. [LB577]

SENATOR BRASCH: That's my only question. I agree this is very frightening to believe that...you know, I live on a farm. The applicator...you know, I know they have a very important job. They're very important. I don't want to see any accidents. But in tough economic times, how much do we really need to spend? And is this a guesstimate? You know, can that million dollar budget not absorb the \$7,500? I... [LB577]

BRIAN WILCOX: The \$75 fee is being paid for by the contractor putting them up, the investor. [LB577]

SENATOR BRASCH: It says here...oh, I don't know. Do you want an... [LB577]

BRIAN WILCOX: Okay, it is. The wind tower investor or erector is the one paying this. It's not the government. [LB577]

SENATOR BRASCH: Whoever...right. A private person. [LB577]

BRIAN WILCOX: Right. [LB577]

SENATOR BRASCH: It's coming out of...say, I'm in the business, it will come out of my pocket. [LB577]

BRIAN WILCOX: Right. [LB577]

SENATOR BRASCH: And it's going to take, you know, again, you know... [LB577]

SENATOR PRICE: Two hours. [LB577]

SENATOR BRASCH: ...two hours plus for someone. You know, we are in times of knowing, you know, competitively, you know. We've outcome...our country...everything costs a lot of money anymore. Does it really have to? [LB577]

BRIAN WILCOX: So you're questioning whether... [LB577]

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SENATOR BRASCH: My question is, can you get this accomplished without charging a \$75 application fee? What determines this? You know, you haven't seen the application. [LB577]

BRIAN WILCOX: It wasn't my...I'm not with the Department of Aeronautics. I don't know. [LB577]

SENATOR BRASCH: Okay. But you'll probably...I guess, anybody erecting the tower will need to do but somebody at Aeronautics will need to sit down and justify that it's going to take an engineer three-quarters of an hour and a tech...plus, the tech an hour and a half. [LB577]

BRIAN WILCOX: I imagine over the number of towers they've processed this year, that, you know, they keep track...they probably keep track of hours per tower on per job, I assume. I assume they're accountable per job and that's probably what they came up with. [LB577]

SENATOR BRASCH: Maybe I'm not...okay. Thank you. That's my only question, but I can see it's important. Thank you, Mr. Wilcox. Thank you, Senator Price. [LB577]

SENATOR PRICE: Senator Schumacher. Thank you. [LB577]

SENATOR SCHUMACHER: Thank you, Senator Price. So all this is really doing is asking somebody out there to register a coordinant of a windfarm and then somebody putting it on a Web page for somebody else like you to pull off? That's what we're talking about doing? [LB577]

BRIAN WILCOX: Basically. [LB577]

SENATOR SCHUMACHER: Nobody is going out there and inspecting, nobody is going out there with a GPS and taking the readings. A volunteer or the windfarm guy, he fills out a form, sends it into Lincoln, they put it on a Web page that I take it is not a graphical Web page or not something that simply uploaded to Google Earth, but actual coordinates on a graph and then you put that into your machine. [LB577]

BRIAN WILCOX: Right. [LB577]

SENATOR SCHUMACHER: And for that there's \$75. So why don't we just have a Web page where the guy out in the field can go in and enter the coordinates and skip everything in between and save us \$75? [LB577]

BRIAN WILCOX: I don't know. That would be...I think there's some verification of what's

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being inputted. [LB577]

SENATOR SCHUMACHER: If nobody goes out there and checks, how do you know? Give them a pin number and an ability to enter the thing and way they go. [LB577]

BRIAN WILCOX: Could be, I guess. I guess that places the liability on the company erecting it. I guess the liability is already on. The Department of Aeronautics does not assume any liability for where these are at. [LB577]

SENATOR SCHUMACHER: So if they put garbage in now, they get garbage out, and if they put garbage in there, they get garbage out. [LB577]

BRIAN WILCOX: They have to process...they have to process. I'll back up. What I do know about them, they have to process every tower. They have to be issued a permit. It's state law. They have to be issued a permit for every tower between 150 and 200. So they're mandated, they have to process these permits. [LB577]

SENATOR SCHUMACHER: And they're doing that already. [LB577]

BRIAN WILCOX: Yeah. [LB577]

SENATOR SCHUMACHER: Okay. [LB577]

BRIAN WILCOX: They're just processing so many permits right now. We might have lost sight of some of the bill here. It's not just about processing met towers and putting it on the Web site. It's them processing all the wind energy stuff coming along. It's going to be overwhelming for them. They've asked me to come and talk in support because they've helped us out and some of this workload is because of us asking them to put a few of these on the Web site, the MAT tower is on Web site. The Web site does not contain every tower below 200 and 150. That would include grain elevators, radio towers. We don't got that. All we got is met towers because those were in areas of concern to us because they're actually placed in agricultural settings. That's the only part that I represent, but the whole scope of what they're covering here is every structure 150 to 200 in the state, every structure. No matter what it is, I believe. You can't quote me, but I assume it's every structure. And they also have to get these permits. On some of these they verify they're not in a federal airway or on state airports to make sure they're not on approach lines or within...there's a radius of the airport they protect. So they are processing these to make sure they're not within the airport's vicinity, whatever requirements they have. [LB577]

SENATOR SCHUMACHER: Okay. One final question. What's the URL of this Web site that has the coordinates on it? [LB577]

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BRIAN WILCOX: It's on the Department of Aeronautics Web site. At the bottom of the page you click on it. And it's got per county. You click on the letter for the county. So it's not just a fund putting it on that Web site. It's for everything in the state that comes in that is already mandated by prior legislation that has to be permitted. [LB577]

SENATOR SCHUMACHER: I don't have any further questions. Thank you. [LB577]

SENATOR PRICE: Thank you, Senator Schumacher. I just would say, you know, Mr. Wilcox, thank you for your testimony. I understand the difficulties of doing any job, and the public safety is what we're after here and that we get all the data points put in there so to whomever is flying, whether it's our active duty or guard out there doing a low level training or helicopters throughout there, we have a hazard. The federal government has decided to say, we own everything, but we're not going to make you do anything below 200 feet. And we're trying to find some way to protect ourselves, our people, and I'm sure no one wants to have gas all over their crops, and water, or anything else. There's a lot of different hazards here. And for yourself, I can understand your concern. So again thank you for your testimony today, sir. [LB577]

BRIAN WILCOX: Thank you. [LB577]

SENATOR PRICE: Do we have any other proponents? Do we have any opponents? Do we have anyone who would like to testify in the neutral? Seeing none, Senator Wightman, you are free and clear to close on LB577. [LB577]

SENATOR WIGHTMAN: Hello, again. Obviously, I'm not going to be able to answer some of the technical questions as to what goes into the filling out of one of these applications because I don't know. I'm assuming that they have made a correct estimate of their time and their work in filling it out. I think it's very important for public safety. As you heard from one of the testifiers, many of these they haven't even been getting applications. So if we do no more than require that they get the application and enough money to enforce that, I think it becomes very important so that we can have locations of all of these within any given county. So just enforcement of what's already on the books is going to require considerably more work than they have now. And, you know, again, I can't tell you what goes into the filing of this application. Senator Schumacher may well be right that there's not a lot of time expended. I don't know that. So with that, I do urge you to advance it. If we can get you further information we would certainly try to do that. [LB577]

SENATOR PRICE: Well, thank you very much, Senator Wightman. I'm sure that there will be questions from the committee in asking for more supplemental information on this. Senator Schumacher, do you have a... [LB577]

SENATOR SCHUMACHER: Just one quick question. Thank you, Senator Price.

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Senator Wightman, we probably do have authority to require GPS units sold for use in aircraft in Nebraska to have an update service sold with them. [LB577]

SENATOR WIGHTMAN: I can't answer that for sure. [LB577]

SENATOR SCHUMACHER: Because that would...you know, we're not regulating the airways. We're just regulating a service. [LB577]

SENATOR WIGHTMAN: Right. [LB577]

SENATOR SCHUMACHER: That may be something we want to look at. [LB577]

SENATOR WIGHTMAN: Okay. And if any member of the committee has information they want, we'll try to get you a little more budget information as to where we are right now. [LB577]

SENATOR PRICE: All righty. [LB577]

SENATOR WIGHTMAN: But, obviously, the work load has been dramatically increased. Thank you. [LB577]

SENATOR PRICE: Are there any other questions from the committee? Seeing no further questions, thank you, Senator Wightman. That will close the hearing on LB577 and the agenda for today for the Government, Military and Veterans Affairs. Thank you for participating in your government. [LB577]