[LB43 LB110 LB237 LB348]

The Committee on Revenue met at 1:30 p.m. on Friday, March 1, 2013, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB237, LB348, LB43, and LB110. Senators present: Galen Hadley, Chairperson; Paul Schumacher, Vice Chairperson; Tom Hansen; Burke Harr; Charlie Janssen; and Pete Pirsch. Senators absent: Beau McCoy and Kate Sullivan.

SENATOR SCHUMACHER: Ladies and gentlemen, we've been in a holding pattern because of the failure of the white mouse and we're going to try to do it without the mouse. Welcome to the Committee on Revenue. My name is Paul Schumacher. I'm Vice Chair of the committee and acting Chair while Senator Hadley is away this afternoon for a bit. To my left is Senator Pirsch; to my extreme right is Senator Harr and Senator Janssen; Senator McCoy may be joining us later; Senator Hansen; and then committee counsel, Mary Jane Egr Edson; Bill Lock is the research analyst. He's not here today. And Matt Rathje is our committee clerk and he is attempting still to take care of the white mouse, but it's still not working so he's got to do it on the mouse pad. Our pages are Evan Schmeits and Nate Funk. Please remember to turn off your cell phones or put them on tickle while in the hearing room. The sign-in sheets for testifiers are on the tables by both doors and need to be completed by everyone wishing to testify. If you are testifying on more than one bill, you'll need to submit a separate sheet for each bill. Please print and complete the form prior to your testimony. When you come up to testify, hand your testifier's sheet to the committee clerk. And remember, when you begin your testimony, to state and spell your name for the record. There are also clipboards in the back of the room to sign in if you do not wish to testify but would like to indicate your support or opposition to a bill. These sheets will be included in the official record. We'll follow the agenda that's posted on the door. The introducer or representative will present the bill, followed by the proponents, then the opponents, and then the neutral. Only the introducer will have the ability to deliver closing remarks. As you begin your testimony, again please state and spell your name for the record. If you have any handouts, please bring ten copies for the committee and staff. If you only have the original, we will make copies and then just give the handouts to the page; we'll circulate it to the committee members. First item up on the agenda today is LB237, Senator Karpisek. Welcome to Revenue.

SENATOR KARPISEK: Thank you, Senator Schumacher and members of the Revenue Committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB237, typically we think of nonprofits as being tax exempt. Churches, schools, nursing homes, community hospitals and other 501(c)(3) organizations all benefit a sector of the public and therefore are typically property and sales tax exempt. Recently, however, local boards of equalization have changed their interpretation of this qualification for some residential facilities. Several low-income senior independent living facilities have received notice that all or portions of these facilities will now be subject to a property tax due to a newly perceived lack of service or change of interpretation of status. This bill is an attempt to reinstate that exemption to these facilities. To clarify, this is a tax that has not been previously paid but is being assessed for 2013 and beyond. Those following me will be better equipped to illustrate their situation and help you answer more technical questions, but I'd be glad to try to answer any, if I can, now. [LB237]

SENATOR SCHUMACHER: Thank you, Senator Karpisek. Any questions? Senator Pirsch. [LB237]

SENATOR PIRSCH: Thank you. And is it...it's an interpretation...a recent reinterpretation, so to speak. And what year did this reinterpretation go into effect? [LB237]

SENATOR KARPISEK: I think they're just going to start assessing it for the 2013 year. [LB237]

SENATOR PIRSCH: And is it a statewide interpretation... [LB237]

SENATOR KARPISEK: Yes. [LB237]

SENATOR PIRSCH: ...or just a county, on a county by county? [LB237]

SENATOR KARPISEK: No, I think it's a statewide, I think. [LB237]

SENATOR PIRSCH: Okay. Thank you. [LB237]

SENATOR SCHUMACHER: Senator Hansen. [LB237]

SENATOR HANSEN: Thank you. Senator Karpisek, is the...you started out your opening with the old ones that you always think of as being exempt from property taxes, 501(c)(3). Is there any different designation than the 501(c)(3) that we're going to be talking about this afternoon? [LB237]

SENATOR KARPISEK: Well, we have some churches, those sort of things. Some maybe are not even...you know, I'm going to let them answer it more. But I guess I don't know what a church... [LB237]

SENATOR HANSEN: I'd like to know if it's a 501(c)(4) or (6) or 1A or whatever, so okay. [LB237]

SENATOR KARPISEK: And I don't know what churches or religious affiliations are. [LB237]

SENATOR HANSEN: Okay. I don't either, thank you. (Laughter) [LB237]

SENATOR KARPISEK Well, I know what they are. I don't know what number they are. (Laughter) [LB237]

SENATOR SCHUMACHER: Any other questions of Senator Karpisek? Senator, will you be closing? [LB237]

SENATOR KARPISEK: Yes, it will keep me from going to Government. (Laughter) Thank you. [LB237]

SENATOR SCHUMACHER: Okay. Any proponents for LB237? How many proponents do we have? And opponents on this one? Neutrals? Okay. We will be using the light system today, so I just wanted to get an idea of what we were dealing with for numbers. Welcome to the Revenue Committee. [LB237]

JULIE KAMINSKI: (Exhibit 1) Thank you. My name is Julie Kaminski, J-u-l-i-e K-a-m-i-n-s-k-i, and I'm the executive director for Leading Age Nebraska and we are a statewide association that represents government and nonprofit nursing homes, assisted living, so all senior health providers; and some of our members are affordable housing. So just, Senator Hansen, it will just be 501(c)(3)s that we're talking about. And then to Senator Pirsch's question, our members received letters in 2012, so they'll be paying property tax in 2013 for 2012. And it is statewide, so it's everything from Omaha all the way to Scottsbluff that we're looking at, so it is statewide. Leading Age Nebraska, we support LB237 which would reinstate property tax exemption. I think a great point that he made is we are not asking for a new exemption. This is an exemption that our members have had since the inception of their properties and it's random. So about 60 percent of our members have received letters and the other 40 percent have not. But a quick overview of what affordable housing is. I worked in this for six years before stepping into this position and it is a unique housing for low-income seniors in the state of Nebraska, so you meet an age requirement and an income requirement in order to live in this. That's based on HUD's guidelines and definitions. So as I mentioned, until recently, it was April of 2012 that about 60 percent of our members received notices from their local county assessor's office saying that they were making a recommendation to the board of equalization for these properties to pay taxes. The reasoning, and one of our members behind will actually give one of the letters so you can see what those stated, but they found that there was no medical care provided in here similar to a nursing home or assisted living. And again, our members will talk about where there oftentimes are many services coming into this building, there could be home healthcare, there could be wellness clinics. The members have appealed those, one as recently as this past week; and all, so far, have been denied, and they would need to start paying property taxes as of April 1, 2013. So what's the impact? How much are we talking about here for our members? And, you know, those who do affordable housing do not do this to turn a profit. It is definitely a mission-based. Again having worked here, our budget and bottom line were tight in order to make it go. Having to come up with, in some instances, $60,000 and $70,000 for property tax could have a very negative effect. The impact ranges from about $12,000 for a small provider with 10 units to anywhere about $32,000 for a provider with 25 units. And on the back of the sheet, I kind of...if you want to see, there's roughly 140 HUD senior living properties across the state. I listed a few of them just so you could see where they were located. There's a Web site link that you can look at for...affordable housing providers, you know, they provide a low-cost opportunity for seniors to live in an environment that really saves them from going to nursing homes or assisted livings. And these individuals, I can guarantee you, would be Medicaid eligible in AL and nursing home. So by having them here in this independent setting and providing services, we're saving these people from going to the assisted living or Medicaid nursing home level. So, again, I'm open for questions. But Leading Age Nebraska, we support LB237 and we ask you to reinstate this property tax exemption for our members. [LB237]

SENATOR SCHUMACHER: Any questions? Seeing none, thank you for your testimony. [LB237]

JOY CONNEALY: (Exhibit 2) Good afternoon. My name is Sister Joy Connealy, J-o-y C-o-n-n-e-a-l-y, and I'm executive director of Seven Oaks at Notre Dame in Omaha. The Notre Dame Sisters developed and sponsor 107 apartments, low-income apartments for seniors on our campus in Omaha. According to the Douglas County Assessor, two of our buildings, which include 45 of these units, are now going to be subject to property tax through no change in our operations. We provide far more than just a safe and warm building for our residents. The needs of frail elderly are great and the services provided at Seven Oaks keep our residents living independent longer and keep them from going to higher levels of care, which are much more costly. During the past year only two of our 45 residents have had to move to a higher level of care. The Notre Dame Sisters are proud of our service to the citizens of Nebraska, but the proposed level of tax on our property will force us to severely limit the amount of services that our residents enjoy and need; services like transportation, a noon meal, wellness programs, and a health clinic, and many educational and recreational programs that keep our seniors active and thriving. Our budget for these two properties is $262,000 a year; and because of the shortfall of expenses, we fund-raise every year about $40,000 to help these residents. These critical programs are really critical for them in order to survive and to be able to stay and live independently. The estimated new tax for our facilities has been assessed at $57,000, which is 22 percent of our operating budget. We presented our request to the board of equalization this week and for a change in the property values, and these were denied. We sincerely are at our fund-raising cap. If this tax is enacted upon, some or all of our services that I mentioned will be cut or need to be severely reduced, all to the real detriment of the residents in our facilities. Please enact this legislation so that the property tax expense will not severely limit our ability to maintain the property and to address the needs of our residents. Thank you for the opportunity to share this testimony. [LB237]

SENATOR SCHUMACHER: Thank you, Sister. Any questions for Sister? I just have a couple. Did your organization finance and build these facilities? [LB237]

JOY CONNEALY: We used HUD 202 Capital Advance Program for the two HUD 202 programs. [LB237]

SENATOR SCHUMACHER: So there was all government money involved in the beginning. [LB237]

JOY CONNEALY: That's right, it's for the... [LB237]

SENATOR SCHUMACHER: No private money. [LB237]

JOY CONNEALY: We did add some private money to be able to link. It's not a campus where we wanted to be able to link the buildings to our major motherhouse and so that the residents could have free flow of the campus. So we did put some private money into it. [LB237]

SENATOR SCHUMACHER: Right. And that was kind of donated to you, that private money? [LB237]

JOY CONNEALY: Yes. [LB237]

SENATOR SCHUMACHER: Okay. And were you told the reason for the change in rules of why you now have to pay taxes? [LB237]

JOY CONNEALY: Interpretation of the law has changed, so. [LB237]

SENATOR SCHUMACHER: Anything else for Sister? Thank you very much for your testimony. [LB237]

KERRY SMITH: Good afternoon. Kerry Smith, K-e-r-r-y S-m-i-t-h. Thanks for allowing me to come here before you this afternoon. I'm an employee of Retirement Housing Foundation, one of the nation's largest nonprofit providers of housing and services for older adults, persons with disabilities, and low-income families. I manage one of the four communities in Nebraska, Cimarron Court, which is a 26-unit community in Kearney, Nebraska, which opened in 1989. Since that time we have helped 154 people to have a safe, clean, affordable place to live. RHF also manages three other communities here in Nebraska: Malone Manor, which is a 50-unit 202-funded community in Lincoln; Pioneer

Manor, a 20-unit 202 project, at Geneva; and Great Plains Housing, a 20-unit community, which is also a 202 project for the chronic mental illness. Malone Manor and Great Plains Housing currently are exempt from paying property taxes. Pioneer Manor had the privilege revoked in 2011. And in the past we've filed for property tax exemptions that were not granted. Consequently, the funds we have saved that would have gone to offer greater resident services have caused us to lower services offered to those low-income tenants. Pioneer Manor had a service coordinator on-site until its property tax exemption was revoked in 2011. In order to pay for this extra expense, the service coordinator was let go. While the amount of rent our residents are required to pay is not affected, the money HUD has to budget is. I know that I'm addressing a state Legislature and HUD is a federal entity, but the funding for the federal budget comes from the taxes paid by working people, business, and state contributions the people of Nebraska pay. Cimarron Court is only one community of many that have paid or are being asked to pay for property taxes that could help sustain new communities. Since the opening of Cimarron Court, we have paid approximately $290,000 in property taxes. This could have funded a new 40-unit property for two years in subsidized payments. According to the economics on-line, August 1, 2011, the state of Nebraska ranked 9 out of 20 in states that received less back than what they have paid into the federal government. That is one indicator that Nebraska is a fiscally sound state. I'm sure the amount paid back to Nebraska in this report does not include the amount the federal government is having to pay for the property taxes on the HUD subsidized communities that are not property exempt. You may ask, why does it matter if the federal government via HUD is paying the property taxes or not? The way I see it, it is taking money away from the people who need it the most, because if HUD is required to sustain current properties by paying more in property taxes, then they cannot sustain new communities that are in desperate need of being built. I'm sure everyone is aware of the aging and upcoming retirement of the baby-boomer generation. A few years ago our HF partnered with several agencies that helped elderly and presented information to the federal government of the impending housing disaster if we don't prepare today for the future. The outcome was not expected. Instead of maintaining or increasing building of new 2002 funding communities, the funding was gradually cut back each year until there was no funding for new 202 housing in 2012, and only enough to build about 350 apartments in 2013. Exempting HUD from paying property taxes on the HUD-assisted communities is one way we can help today to prepare for the future. By allowing HUD to keep this money and use it for the sustaining of current and new properties around the nation, you will be helping the low-income elderly, those with disabilities, and low-income families. Thank you very much for listening to my side of the story. Do you have any questions? [LB237]

SENATOR SCHUMACHER: Any questions for Kerry? Seeing none, thank you for your testimony today. [LB237]

KERRY SMITH: Thank you. [LB237]

SENATOR SCHUMACHER: Next testifier. Welcome to the Revenue Committee. [LB237]

NICK FAUSTMAN: Good afternoon. I'm Nick Faustman, N-i-c-k, F-a-u-s-t-m-a-n. I'm with the Nebraska Health Care Association, the NHCA. We're the parent association of a family of entities, including the Nebraska Nursing Facility Association, which I'll refer to as "Niffa," or NNFA; and the Nebraska Assisted Living Association, which I'll refer to as NALA. Both NNFA and NALA represent nonpropriety, propriety, and governmental long-term care facilities. NNFA and NALA both support LB237. LB237 would change the statutory definition of charitable organization to include low-income retirement housing in order to reestablish previously existing property tax exemption for certain facilities. In 2012, approximately a dozen of our members were notified that they would lose their property tax exemption in 2013 because low-income independent living facilities for the elderly were no longer considered a charitable use of property. However, these facilities do indeed provide preventive healthcare services that keep these residents out of the more expensive healthcare settings, meaning this would also reduce the Medicaid burden. While LB237's fiscal impact to the state is small, having that exemption back would mean a great deal to these businesses that offer services for low-income seniors in Nebraska. The estimated financial impact that LB237 has on our eligible members is approximately $1,250, with the size of the facility ranging from 10 to 160 units. In short, NNFA and NALA both support this bill because it would help these providers continue caring for Nebraska's seniors, the vulnerable aging population. We urge the committee to advance LB237 to General File and thank you for your consideration. [LB237]

SENATOR SCHUMACHER: Any questions for Nick? Seeing none, thank you for your testimony. [LB237]

NICK FAUSTMAN: Thank you. [LB237]

SENATOR SCHUMACHER: Welcome. [LB237]

JAMES FRIEDMAN: Hi. Thank you for allowing me to speak to you today about the subject. I would like to present a different perspective. I also work for Retirement Housing Foundation. My name is Jim Friedman, it's J-i-m F-r-i-e-d-m-a-n. I'm the manager at Malone Manor here in Lincoln, and as I said, it is a Retirement Housing Foundation property and we have four such properties in the state of Nebraska. Our properties are independent living facilities, and those living in our facilities are people whose lives are enhanced every day, thanks to the HUD 202 Housing Program. This program has been under attack for the past decade. First, was the decline in the number of 202-funded communities being built; and now property tax and sales tax exemptions are being denied or revoked for these communities. My community is not one currently that is being attacked. We still are tax exempt, but two of the properties that we do have in Nebraska are. HUD 202 housing adds to cities in a variety of ways, Initially, there are construction jobs, then there are jobs to operate the community, with service coordinators on staff to help residents stay as independent for as long as possible. Because it is a community for the elderly and those with impairments, it brings in nurses, nurses aides, and various doctors on a daily basis. Tenants shop at stores, they eat out at different restaurants, they also need volunteer services such as Meals on Wheels. One 202 community can help a town thrive and continue to be a viable place to live. The people living in these communities are still a very much a part of society and don't mind giving back and sharing what little they have. On an average income of merely $680 per month, which comes out to $8,100 per year, our residents still are making blankets to wrap stillborn babies before they are presented to a grieving family. They distribute decorated bandannas to victims of cancer who have lost their hair. They create blessing bags and donate them to local hospitals to comfort a hurt child in unfamiliar surroundings. And they gather food together for the local food pantry because they know there's always someone worse off than they are. They're all being guided by our on-site service coordinators. A lot of our facilities no longer have these service coordinators. The 202 program is a huge success story. I'm asking for your help to make it better by continuing the tax exemption and not restricting it any further. Thank you. [LB237]

SENATOR SCHUMACHER: Any questions? Senator Hansen. [LB237]

SENATOR HANSEN: I have one. Thank you for coming today. You said sales tax and property tax have both been...in some of your facilities, have been...the exemption has been looked and taken away. Sales tax is a state tax. I assume it's state tax, state sales tax? [LB237]

JAMES FRIEDMAN: Right. [LB237]

SENATOR HANSEN: And then the property tax is a local tax. Why do you think those two would happen at the same time? [LB237]

JAMES FRIEDMAN: Well, I'm speaking on behalf of Retirement Housing Foundation which has over 100 properties across the nation, so that was in general. Our facilities across the nation are being attacked or being cut back further and further. And in some states--I don't think in Nebraska it pertains directly to us, but in some states they are being attacked with sales taxes. [LB237]

SENATOR HANSEN: Do you have any idea of why you would lose your charitable status? I mean, it sounds like you are charitable to the rest of the community, but isn't that part of why you're losing your sales tax and your property tax exemption? [LB237]

JAMES FRIEDMAN: I'm not losing it. I haven't lost it. Some of the others are. I'm not sure I follow your question. [LB237]

SENATOR HANSEN: Okay. Well, someone said earlier that they've lost their charitable status, so that's why the sales tax and property tax (inaudible). [LB237]

JAMES FRIEDMAN: I can't answer for someone else, yeah. Thank you. [LB237]

SENATOR HANSEN: All right. Thank you. [LB237]

SENATOR SCHUMACHER: Any other questions? I just have one. Originally, to build the facilities in your organization, was that private money or was that all government, federal government money? [LB237]

JAMES FRIEDMAN: Well, my facility is a little different because it was originally built by the Malone Center, and then it was turned over to Retirement Housing Foundation which is based out of California that owns the 120 properties across the country. But Retirement Housing Foundation continues to build based on whatever small profit that they get, facilities across the country. But their new buildings have been restricted quite a bit. As I think Kerry mentioned, I think there is only 350 units total that are being built in 2013 that are scheduled to be built. [LB237]

SENATOR SCHUMACHER: And that's because of the federal government... [LB237]

JAMES FRIEDMAN: Nationwide. [LB237]

SENATOR SCHUMACHER: ...is cutting back on funding of the program? [LB237]

JAMES FRIEDMAN: Right. Funding just keeps getting cut on the federal and state level of... [LB237]

SENATOR SCHUMACHER: You guys, to build those, don't go out and hustle any private capital? [LB237]

JAMES FRIEDMAN: I'm sorry? [LB237]

SENATOR SCHUMACHER: In order to build those, is there a private financing element involved or is somebody (inaudible)? [LB237]

JAMES FRIEDMAN: I can't answer because I'm not from the...I mean, I'm not from the home office. I mean, I could certainly get back to you about that, but, I mean, I'm sure that they have all kinds of different fund-raising activities and, you know, sources. [LB237]

SENATOR SCHUMACHER: But not fund-raising for profit. You don't sell shares or anything like that? [LB237]

JAMES FRIEDMAN: No. No, no, no. It's all not-for-profit. [LB237]

SENATOR SCHUMACHER: Okay. Thank you. [LB237]

JAMES FRIEDMAN: Yeah, and there was a...I think we distributed something that has information about Retirement Housing Foundation to everybody too. Okay? [LB237]

SENATOR SCHUMACHER: Any other questions? Thank you for your testimony. [LB237]

JAMES FRIEDMAN: Thank you. [LB237]

SENATOR SCHUMACHER: Next testifier. Done with proponents? Now, opponents. Welcome to the Revenue Committee, again. [LB237]

LARRY DIX: Good afternoon, Senator Schumacher and members of the Revenue Committee. For the record, my name is Larry Dix, spelled L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in opposition to LB237. And let me state, as we start to look at policy, I think a couple of the statements that were made about as our baby boomers as we start to add to those numbers, certainly this is an area probably that needs to have a little bit of a look and see what do we see coming in this area. But let me define right now, sort of what the assessors look at when they make that determination if a property is taxable or not. And that typically is found in Section 77-202. The property must be owned by an organization that is organized and operated exclusively for a charitable, educational, religious, or cemetery purpose, and it must be used exclusively for one or more of those purposes. So that part of it defines it, and that structure has been, over the years, interpreted in the court system that...with respect to the housing for elderly. And the court has determined that licensed assisted-living and nursing facilities will typically qualify for tax exemption, and the rationale for that exemption seems to have been in those court cases, it revolves around the level of care that's provided. But the court has also determined that independent living facilities typically do not qualify for that exemption. And so some of that information is what assessors use in making that determination. And when we look at LB237 and you look on page 5 and get into section (b), really what this bill is doing is simply saying, if you are a retirement community, you become...you fall under a charitable organization. And that is something I think the Revenue Committee probably needs to look at because I don't know by the broad definition of a retirement community if we want just all retirement communities to become charitable organizations. And when we read it, we tend to read it that way. And so most of the folks that have been up here today have been talking about HUD 202 programs as opposed to just retirement communities. So we would ask the committee to take a look at that. And then as we go through it, it does also include qualify for homestead exemption under Section 77-305. And, of course, when you talk about a retirement community when you go back and look at the statutes that talk about retirement communities, they typically talk about ten or more units. And so then we would say, okay, if we have somebody that meets the...if we have one person that meets the homestead requirement under the ten or more units, or do we have to have all ten people that live in a retirement community meet the homestead exemption under 77-305. So we would really have to look at, is it a percentage before it meets that criteria? So those are some of the things that we would ask the Revenue Committee to take a look at, and that pretty well concludes really where our opposition is to this bill, a little bit in the interpretation and the broadness in the fact of bringing all retirement communities under the charitable organization status. I would be happy to answer any questions. [LB237]

SENATOR SCHUMACHER: Questions for Mr. Dix? I've just got a couple of them. "A retirement community as defined in Section 76-1302." What does that define it as? [LB237]

LARRY DIX: Really it...ten or more...I think I...just hold on, Senator. I think I pulled that up right before I came. Retirement subdivision..."For the purposes in 76-1302, retirement subdivision shall mean any land which is divided or proposed to be divided into ten or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan when such subdivision is advertised or represented as a retirement subdivision or as a subdivision primarily for retirees or elderly persons." So it's pretty broad. [LB237]

SENATOR SCHUMACHER: Pretty broad. [LB237]

LARRY DIX: Pretty broad. [LB237]

SENATOR SCHUMACHER: Was there a change in policy or some advisory opinion or something that came out that triggered this? [LB237]

LARRY DIX: You know, there's actually an assessor in the room and I asked, and unfortunately, in her county, she doesn't have any of these properties, and nothing that I'm aware of. So I'm not sure if the Property Tax Administrator had sent something out, or if there was a recent court case that sort of changed this. I had heard...I think it was in the paper in regards to some of the folks that were here from Douglas County. I think I remember reading an article in the paper about that, but I didn't realize that we have people saying this is happening across the state. And it certainly is one thing when we have some people representing multiple properties, in some counties they are, in some counties they're not. So it probably does beg to say that we probably need some clarification either in rules and regulations from the Department of Revenue or somewhere as how we deal with these properties. [LB237]

SENATOR SCHUMACHER: Thank you, Mr. Dix. Any other questions? Thank you for your testimony. [LB237]

LARRY DIX: Thanks. [LB237]

SENATOR SCHUMACHER: Any other opponents to LB237? Anybody in the neutral position? Senator Karpisek. [LB237]

SENATOR KARPISEK: Thank you, Senator Schumacher and members of the committee. Again, this is...I don't know what triggered this, but something did. I guess in my mind it's that the state cut the state aid to counties and so they're looking for ways to generate some revenue and I don't blame them. I wasn't on that side of that argument. Where it talks about a retirement community, as defined in the section you talked about, a low-income resident means a person with a household income that would qualify for homestead exemption in any amount. And I think that is some of the question, would that entail the whole or would it be their living space? Because I know in other situations, part of a building may be exempted but not the whole. So I think that is part of the question on this. Would it be the person's living space that they occupy or would it be the whole thing? Would it be if everyone there is low-income or not? So, again, I think since it's been interpreted a little different than it has been along the way, that there probably does need to be some discussion on it. Thank you. [LB237]

SENATOR SCHUMACHER: Any questions for Senator Karpisek before he's made to go back to work in Government? (Laughter) [LB237]

SENATOR KARPISEK: I see a couple of you in here that used to be there, so you know. (Laughter) [LB237]

SENATOR SCHUMACHER: We know. Thank you, Senator. [LB237]

SENATOR KARPISEK: Thank you. [LB237]

SENATOR SCHUMACHER: That would close the hearing on LB237. Next up, LB348, Senator Harr. [LB237 LB348]

SENATOR HARR: Vice Chairman Schumacher, fellow members of the Revenue Committee, I am Burke Harr; I represent Legislative District 8; and, for the record, it's spelled H-a-r-r. This bill as drafted provides a new procedure for determining the taxable property value of certain types of housing developments. The procedure would allow the Nebraska Investment Finance Authority, NIFA, to determine a capitalization rate to be used in the income capitalization approach to determining taxable value. The unpredictability of the current property tax system hinders economic development in the state of Nebraska. Existing affordable housing developments now face higher foreclosure risk, resulting in tenants facing increased eviction risk, with homelessness increasing. Additional investment development is unlikely because investors cannot accurately predict annual property tax expenses, making it darn-near impossible to accurately underwrite new developments. LB348 reduces the risk of foreclosure on existing projects. It encourages investment in the state of Nebraska, reduces the housing burden placed on the state government, resulting in additional jobs and income, and also helps fulfill Nebraska's need for a affordable work force and senior and special-needs housing. LB348 charges the county assessor, when utilizing the income approach calculation, to utilize the capitalization rate provided by NIFA. The NIFA shall determine the capitalization rate on an annual basis and provide the same to the county assessor. LB348 is modeled after an Iowa approach to property taxation of affordable housing developments. If LB348 shall not become law, Nebraska faces an increased risk of foreclosure on existing properties. Investment dollars, again, will leave the state, which I've already stated. Housing is a major component of the economic recovery. Failure to act will damage the recovery by creating uncertainty and unpredictability in the multifamily residential market. An additional burden will be placed on the state government and taxpayers to provide this affordable housing for seniors and those with special needs. Folks, we're helping the Orphan Annies, not the Daddy Warbucks, as Senator Chambers would say. With that, I would ask you to advance LB348 out of the committee with this caveat, that we receive an Opinion from the Attorney General; we need to clarify a little bit of the language on here to make sure that we properly delegate the authority to NIFA, so they know what they can and can't do, and then some other little cleanup language. But...and I am working, and will work, with the parties involved to clarify that language. But with that, I would entertain any questions, with the additional caveat that those coming after me know a heck of a lot more than I do. Thank you. [LB348]

SENATOR SCHUMACHER: Is there any questions for Senator Harr? So the test we should use is whether or not Daddy Warbucks is in the room? [LB348]

SENATOR HARR: That's what I've learned in the last two days, isn't it. [LB348]

SENATOR SCHUMACHER: (Laugh) Thank you. [LB348]

SENATOR HARR: Thanks. [LB348]

SENATOR SCHUMACHER: Proponents for LB348. Come on up. Welcome to the Revenue Committee. [LB348]

JOHN WIECHMANN: (Exhibit 5) Thank you, sir. Good afternoon, members of the Revenue Committee. My name is John Wiechmann, that's J-o-h-n W-i-e-c-h-m-a-n-n. I am the president and CEO of Midwest Housing Equity Group. Midwest Housing Equity Group is a Nebraska nonprofit corporation. It was organized in 1993 to support the financing and development of affordable housing. Since inception, Midwest Housing has helped develop almost 10,000 units of affordable housing. I'm here today to testify in support of LB348 introduced by Senator Burke Harr. LB348 addresses the assessment of rent-restricted affordable housing developments. I want to thank Senator Harr for introducing this legislation and for recognizing that the current statutory framework needs to be fixed. As I continue, I want to introduce two pieces of written evidence into the record, both a PowerPoint presentation and then a brief summary of what 30 other states have done when valuing affordable housing developments or restricted developments. With that, I'd like to frame the issue for you, if I might. As a general matter, when valuing any property in the state of Nebraska, the assessor's job is to determine actual value. Under Nebraska law, actual value means the market value of real property in the ordinary course of trade. Current law provides that county assessors, when valuing low-income housing tax credit properties, are required to perform an income approach valuation. But existing law does not require them to use that income approach valuation. Instead assessors are permitted to use any other generally accepted mass appraisal technique. That typically would be comparable sales or replacement cost approach. The result is that we get unpredictable and inconsistent taxation of affordable housing developments. One county may vary its methodologies from year to year. Different counties may use different methodologies in the same year. This unpredictability and inconsistency has many negative implications for our state and our citizens. With respect to existing properties, we face an increased risk of foreclosure resulting in increased homeless rate. It makes it very difficult to underwrite new developments. Job creation is stymied and the burden on the state will increase. The ability to leverage existing resources will be reduced resulting in fewer units of affordable housing. So how do we fix the problem? How do we eliminate this unpredictability and this inconsistency? How do we avoid the negative implications? By requiring the use of the income approach when valuing affordable housing developments. And that's exactly what LB348 does. What's great about LB348 is that it's a win-win for all involved. It does not impose any additional work on the assessors. Existing law already requires them to perform the income approach valuation. And it saves county governments money. It reduces the time spent on appeals and it helps create new tax revenues via the development of otherwise vacant land. It should also reduce the burden on state governments by maximizing existing resources to create more affordable housing. And as per a study from the National Association of Home Builders, this construction should create more jobs and pump more money into both the general economy and government coffers by enabling more of this affordable housing development. But not only is LB348 a great win, a win-win for all of Nebraskans, but it actually conforms with the definition of actual value under state law. Again, the assessor's job is to determine actual value. And under the law, actual value means a market value of real property in the ordinary course of trade. As other witnesses will likely attest, the income approach best reflects the market value of rent-restricted properties in the ordinary course of business. In reality, all income-producing property is best valued using the income approach. Would you buy a business based on the value of the building in which it was located, or would you buy the business based on the net income generated from operations? Of course, it's a rhetorical question. Business people operating in the ordinary course of trade buy and sell businesses, income producing properties, based on net income and future earning potential. I also want to point out that LB348 is not a one size fits all approach. The neat thing about the income approach is that it captures the uniqueness of each county. Are rents higher in one county? Are expenses lower in another county? If so, that additional value will be captured by looking at the net operating income. LB348 does not introduce any new philosophy to our state. This Legislature has previously recognized a legitimate state interest in providing affordable housing to Nebraskans. Specifically, the Nebraska Affordable Housing Act provides that. It is in the public interest to assist in the provision of safe, decent, affordable housing in all areas of the state. I also want to point out that LB348 is not revolutionized in the valuation process of rent-restricted properties. The Department of Revenue's own regulations recognize that the income approach may be the best approach. Those regulations provide that absent sufficient comparable sales, the income approach may be the best approach to assess the impact of the restrictions on affordable housing developments, thereby most closely resulting in the determination of actual value for affordable housing developments. Beyond Nebraska, 30 other states also indicate that the income approach best represents the actual value of rent-restricted property. In fact, LB348 closely mirrors Iowa's process. Senators, I thank you for your time and consideration of my testimony. I'd defer to any questions. [LB348]

SENATOR SCHUMACHER: Any questions? I just have a couple. Is this funded just like the former people testified that it's HUD money and there's no private investment involved? [LB348]

JOHN WIECHMANN: No, no, there is private investment in these properties. There may be some HUD money in some of these properties, but there's absolutely private dollars going into these properties. [LB348]

SENATOR SCHUMACHER: Why was...and these properties just aren't making it? [LB348]

JOHN WIECHMANN: That's correct because of the rent restrictions. Just because expenses change, well, the rents are set by federal law. We can't increase the rents. And generally you can't increase the rents just because the expenses go up. [LB348]

SENATOR SCHUMACHER: So the investors got themselves in a deal where they agreed with the federal government they would not...they would have restricted rents. [LB348]

JOHN WIECHMANN: Absolutely, that's right, to further the purpose of affordable housing. [LB348]

SENATOR SCHUMACHER: Why would anybody get themselves in such a dumb deal? [LB348]

JOHN WIECHMANN: Well, I think you would do it, one, for the public good because, you know, you're serving a public need, but two, you're doing it in exchange for, right, the federal tax credits, the low-income housing tax credits. [LB348]

SENATOR SCHUMACHER: Okay. So they get some money that's as good as cash or credit that's as good as cash... [LB348]

JOHN WIECHMANN: Sure. [LB348]

SENATOR SCHUMACHER: ...against their taxes. [LB348]

JOHN WIECHMANN: Yes, absolutely. [LB348]

SENATOR SCHUMACHER: And they get that in the head end of the deal rather than percolating throughout the time of the restrictions. [LB348]

JOHN WIECHMANN: Right. So the federal government grants tax credits in exchange for us giving up...for owners giving up property rights. [LB348]

SENATOR SCHUMACHER: Okay. And so when you're figuring the loss on these properties that Little Orphan Annie is having it so tough, are you figuring in the tax credits that Daddy Warbucks got on the head end? [LB348]

JOHN WIECHMANN: I guess I don't understand. Are you talking for purposes of assessment? [LB348]

SENATOR SCHUMACHER: The investors...the investors got...as part of this deal, the investors got a big chunk of tax credits. [LB348]

JOHN WIECHMANN: Absolutely. It goes over a ten-year stream. Yep. [LB348]

SENATOR SCHUMACHER: Right. And it's a nice chunk because otherwise they wouldn't be messing with this. [LB348]

JOHN WIECHMANN: Absolutely. [LB348]

SENATOR SCHUMACHER: They're not charitable folks. [LB348]

JOHN WIECHMANN: No, no, it yields a positive economic investment, yes, sir. [LB348]

SENATOR SCHUMACHER: Okay. So we have a positive economic investment that because the way the deal is structured is not so hot after you cash in those tax credits and it doesn't cash-flow really well. [LB348]

JOHN WIECHMANN: That's right. Cash is, I mean, you're not going to get any cash out of these deals. They're rent restricted. I think we've got a national study from CohnReznick that talks about on average these things kick off, I believe, $30 a unit a year of positive cash flow. [LB348]

SENATOR SCHUMACHER: And, but the investor got a sweet deal up-front. [LB348]

JOHN WIECHMANN: Over a period of ten years actually. The credits don't vest all in year one. [LB348]

SENATOR SCHUMACHER: So when you go sell these particular investments to an investor, is there a prospectus? [LB348]

JOHN WIECHMANN: Oh, there is, yes. [LB348]

SENATOR SCHUMACHER: Does it tell them it's a good deal? [LB348]

JOHN WIECHMANN: It says that there's a risk of foreclosure. [LB348]

SENATOR SCHUMACHER: Right, but does it tell them that you're going to get a really sweet deal on tax credits up-front but it's going to kind of be touch and go down the road because you're rent restricted? [LB348]

JOHN WIECHMANN: It absolutely discloses the...it's not a sales piece, right. An offering document is just a disclosure, it's not a sales piece. But, yeah, again I think it's important to distinguish, the credits don't all flow in year one. The credits flow over ten years and they only flow if the property remains rent restricted and if the tenants that are in the property are low income. [LB348]

SENATOR SCHUMACHER: Now is the value of those credits coming from the federal government and offsetting the federal tax, good as cash, are they figured into the economics when you say this is a losing proposition down the road? [LB348]

JOHN WIECHMANN: What do you mean, it's...are they figured into the economics? They're figured into the investors' return but I can't pay the state property taxes with the federal tax credits. [LB348]

SENATOR SCHUMACHER: No, but you can pay it with the money that the investor saved on his federal taxes. [LB348]

JOHN WIECHMANN: Right. The money raised on the front end, though, goes for the financing of the construction of the affordable housing development. That pays the hard costs associated with the construction. It doesn't provide an ongoing operating subsidy. [LB348]

SENATOR SCHUMACHER: I think I see how it works. Any other questions? Thank you for your testimony. [LB348]

JOHN WIECHMANN: Thank you. [LB348]

SENATOR SCHUMACHER: Next proponent. [LB348]

KEITH MAY: Hello. My name is Keith May, K-e-i-t-h M-a-y. I'm wearing two hats today. I'm representing Union Bank and Trust Company, which is domiciled here in Lincoln, and I'm also representing the Nebraska Bankers Association of which we are a member. As you probably are well aware, the Nebraska Bankers Association represents 99 percent of the member banks in Nebraska. One of their stated purposes of the Nebraska Bankers Association is in direct alignment with all of their other purposes in supporting banking and is to promote legislation supportive of our member financial institutions. We really feel that LB348 does just that, that our banks are looking strictly at, from our perspective at Union Bank and most of the banks in Nebraska, loaning on these various projects are very good for the communities. As you are well aware of, many Nebraska communities are really struggling to maintain populations to keep their communities economically viable. We have, at Union Bank, locations in 14 different communities in Nebraska. In over 80 percent of those communities, there is a low-income housing project not all financed by us and/or our affiliates, but regardless of where they're financed, we feel strongly about the need for these projects to help sustain these communities. If the valuation isn't consistent, it makes it extremely difficult for banks to underwrite these credits. And, obviously, there's different methodologies, but the income approach, whether it's one of these projects or a for-profit project, the cash flow of the project really determines repayment ability. And so as a banking industry, what we want is a consistent methodology so when we're analyzing those credits we can determine what we think the cash flow will be. Even on a for-profit, there's always changes. Expenses go up, revenues can go down, but the uniqueness here is the owners cannot pass that increased cost on to their tenants because they're restricted. So based on that, we do typically look at the income approach on these projects as well as for projects as the most viable in determining the underwriting standard for the banking industry. Based on that, Union Bank and the Nebraska Bankers Association strongly support LB348, and thank you for consideration. Any questions? [LB348]

SENATOR SCHUMACHER: Any questions? I just have a couple then. Do the owners who put these projects together and come to the bankers for financing of them, do they cosign on the bank loans? [LB348]

KEITH MAY: The loans that we are making on these projects are based on the strength of the project and the cash flow of the project. So they're not...have any personal guarantees on the projects. [LB348]

SENATOR SCHUMACHER: Okay. So the folks that get the rather nice federal tax credits up-front are...have protected them against...themselves against liability on the bank loans that you're making. [LB348]

KEITH MAY: Yes. [LB348]

SENATOR SCHUMACHER: Thank you. I don't have any other questions. Thank you for your testimony. [LB348]

JANET LATIMER: (Exhibit 6) Hello. My name is Janet Latimer and I am with Horizon Bank. My name is spelled J-a-n-e-t, last name, L-a-t-i-m-e-r. Today, I'm testifying in support of LB348. Horizon Bank has kind of a unique history and story with low-income housing tax credits. We have been working in this arena since 1992, and we've financed approximately 400 projects, including 166 projects in Nebraska. Last year we closed eight developments in affordable housing that provided 392 housing units in Nebraska. Our financing throughout the state has included communities as small as 1,500 or less, up to Omaha, and some of the biggest cities in the state. We've done all types of loans, including construction financing and term financing. And during our...oh, I wanted to say, too, that these projects range from our smallest one in Nebraska I think is 12 units, and our largest is 200 units, which we are now doing in Omaha. In their 21 years of experience in this tax credit arena, we have not had a foreclosure nor have we had a loss on any of these projects. But financing for these kind of...I don't want to repeat what Keith said, but typically they have a term loan. It might not be a real big one, but they do have a term loan and it is for the entire 15 years of the tax credit compliance period. These loans are made with the understanding they must remain in compliance. And as Keith said, this is all controlled by a land use restriction agreement that runs with that property. It's also controlled by limitations on the rents and also income limitations for those tenants. So with these items, we understand this very well and it's important to us, as Keith mentioned, that we understand the cash flow of these projects. We definitely anticipate various years and various things happening. For instance, if we have tons of snow one year, we know that that cost is going to go up for snow removal. And some of those things are in our underwriting. But the one thing that we just really can't prepare for is significant changes in expenses because we have limited revenues. I think that as we look at this, I would like to tell you a little bit about where my bank is in Waverly. And I know some of you are familiar with Waverly and probably a lot of you drive by it as you go down Interstate 80. We have...I feel that in Waverly we definitely have some good ideas on what the housing and business development and economic development have been. In the last...we've grown significantly in the last five years, adding jobs and businesses. I think it's an extremely good example of a community thriving with economic development. And we are very fortunate in that we were...when I say we, the community of Nebraska in two projects, were allocated tax credits, low-income housing tax credits by the Nebraska Finance Investment Authority, NIFA. These two projects, one of them is 12 duplexes providing housing for 24 individuals or families at age 55 or better. And we have a second project that has 15 three-bedroom homes. These three-bedroom homes are obviously for a family. And when we look at both of these, Horizon Bank did provide term financing on both of these loans. I think the really important thing I wanted to say today is in these two projects in the low-income housing tax credit program, that the one for the elderly, the 12 duplexes or 24 homes, their tax assessment this year went up 180 percent from last year--an incredible raise. And that one is in the booklet that Mr. Wiechmann handed out, that is Liberty Estates. The second one on the 15 single-family residences, their taxes went up 80 percent in one year. We really struggle with the thought that, are they going to be able to provide and pay for this tax increase? If they cannot, it puts Horizon Bank in a very awkward and difficult position. But that's really not my main concern because I'm not here advocating for my bank or for other banks. What I'm here to suggest is that the residents in these homes need a good clean place to live. The people that are going to be suffering from any type of unpredictable taxation of these homes are going to not have a place to live. Towns like Waverly are not going to have a place to house their work force housing for jobs that most of my tellers could qualify for the project here. Oh, I'm sorry, I see the red light is on. I was just getting too involved. [LB348]

SENATOR SCHUMACHER: Finish your thoughts. [LB348]

JANET LATIMER: Anyway, I would just ask that you give great consideration to LB348 for the benefit of our low-income housing tax credit residents and for our communities across Nebraska. Thank you. Questions? [LB348]

SENATOR SCHUMACHER: Any questions? Just got a couple. Does your bank require the folks who get the rather generous tax credits on this to cosign on a loan so that the local banker doesn't get burned? [LB348]

JANET LATIMER: Okay. The way that the tax program works is, in my opinion, and John Wiechmann can probably expand on this, but investors invest into a fund. They are in a 99...they have a 99.99 percent ownership but they are in this fund. The project and who I loan money to is...on the term loans, is the project itself. Typically, the project is a one entity LLC. So as far as calling on investors, in a lot of tax credit financing across the United States, people don't even...the lenders don't even know who the investors in these funds are. So the investors would never be asked to provide a guarantee. [LB348]

SENATOR SCHUMACHER: But most folks set up a company to do a business function or something and they go to the bank and they say, would you loan my company money? The banker says, let me see your financials. Be happy to. Would you please sign here and guarantee it, if the banker feels they're on soft ground. So if these things are the kind of deals that suggest they may be on soft ground, why wouldn't you require a guarantee? [LB348]

JANET LATIMER: Okay. I don't think...I would think our history of over 400 projects in the last 20 years with no failures indicates that they aren't hard loans to make or with a lot of risk. But the risk of nonconsistent taxation in this case, it can immediately kill a project and it's something that was totally unexpected to banks and to those developers. So I don't feel that there's been huge risks because we've had projects where they've...yeah, they've gotten very skinny because of some other type of big change in the expenses. But something like this with the change, and I don't have the figures right in front of me, but when you look at one that went from $32,000 in taxes to $87,000 in taxes in one year, we can't absorb that and it was never thought that any increase in expense would be that, in that amount. [LB348]

SENATOR SCHUMACHER: We heard much the same discussion the last few days from farmers. And they say, look, we've had a dramatic increase in the amount of taxes because folks are bidding up the price of farmland and the assessors getting out there reevaluating our farms, and it's gone up on a par, in fact, maybe even higher than what you're describing here. Should...you're kind of asking...or the proponents are kind of asking for us to create a special class where we restrict valuation to income rather than looking at all three market income and construction costs for these kind of properties, but then, arbitrarily, not applying them to all properties in the state like the farm income. Is that kind of...we're just singling out this single class of property? [LB348]

JANET LATIMER: Yes. Senator Schumacher and other members of the Revenue Committee, I was expecting that question actually and I don't think...I think the huge difference on that is the low-income housing tax credit program is one that has been in existence since 1986. It has provided thousands and thousands of homes. It's given communities places to have homes where they wouldn't be built if you didn't have investors saying, I'll put up my money and risk noncompliance and risk perhaps other things such as foreclosures and things like that to help this community and to help the people that we serve in these communities. So I don't believe we're asking for any...we're not asking for, oh, we should be treated differently or special. My request, which I think is supported by LB348, states that these projects because of the land use restriction agreement which requires them to remain as low-income properties for sometimes up to 45 years but always almost 30 years, I think that the taxation on these should be uniform between all the counties and looked at definitely at the income approach. [LB348]

SENATOR SCHUMACHER: But our constitution does not permit us to create a separate class of properties just based upon... [LB348]

JANET LATIMER: It's not a separate...excuse me, I interrupted. It's not a separate class of properties. It's just one of the methods that assessors have to evaluate what that property, again as John said--I don't have the words as well as he does--but what a willing buyer will pay a willing seller for this property. And the lack of sales of these properties, number one, and the value that would be to anyone else, such as a typical investor in rental property, it's not there. The value is just not there. [LB348]

SENATOR SCHUMACHER: Any other questions? Thank you for your testimony. [LB348]

JANET LATIMER Yeah, thank you very much. I appreciate it. [LB348]

SENATOR SCHUMACHER Next proponent. [LB348]

FRED HOPPE: My name is Fred Hoppe. I'm a lawyer in Lincoln. Fred Hoppe is spelled F-r-e-d H-o-p-p-e. I have a law office. I represent the Nebraska Realtors Association. It's one of my principal clients. I'm also a home builder. I'm very actively involved in the National Home Builders Association. I'm on the National Steering Committee for the low-income housing tax credit of the National Association of Home Builders. I have built and managed approximately 400 low-income housing tax credit units across the state in two counties, Lancaster and Hall. The taxation of my housing projects, the ones in Hall County are valued, the taxation of those; the tax paid per unit is approximately $900 a unit. In Lancaster County, between 2011 and 2012, all my units were reevaluated. And as an average, I'm paying about $2,400 a unit after revaluation, not using the methodology of actual cost and expense. That changes my rent scheme. The situation is set up so that we limit our rents and restrict them. My units are all targeted to rent to persons that have incomes between 40 and 50 percent of median income. My increases in Lancaster County went from approximately one month's worth of rent to three months' worth of rent for taxes alone. In Lancaster County, what that means is based on the thin margins we have on those units anyway, margin meaning the difference between the income received and the expenses against those units, now force me to be depleting the reserves that are kept to keep those units in good shape. And it's all based on the methodology change between 2011 and 2012 because of a Supreme Court case that allowed assessors to use any valuations they want. Prior to that time they'd been using actual expense and actual income which kept the units at consistently valued. Hall County didn't make that change. So I've got units in one county that are valued one way and in another county that are valued another way, and the difference is what I can provide to my customers, the families that live in my units. And my units are almost all family units; so I want to point that out. In response to a question that was asked earlier, there aren't sales of these units. The restrictions of the land use restrictions agreements limit the market. That would be if you were talking about farm ground. That would be like putting a big strip in the middle of the field that couldn't be planted. That destroys the value of the land for farming. Okay. Well, so do the restriction agreements. The only thing these properties can be used for is low-income housing at restricted rents. So they don't compare. A house that I have on South 12th Street doesn't compare to its neighbor even though they may have the same floor plan. Why? Because one is restricted and one isn't. Another question that came up earlier is, what is this big fat investment? The investment is like a CD. It's cashed in through tax credits. They're normally based on a percentage of the investment over the life of the investment. And that percentage is not...it's...usually, I have varied ones, but I would guess the average is 7 percent based on the investment over the life of the investment, a 15-year period of time. So I don't call that, that fat, but that's what it takes to get income invested, get money invested to be able to put people in housing targeted for 40 to 50 percent median income, and rents that are commensurate with that. I can't raise my rents, but the taxes went up on all my Lancaster County properties by a couple months' worth of rents. We need this bill to go through to mandate a methodology that respects the economics of those low-income tax credit units. I would answer any questions. [LB348]

SENATOR SCHUMACHER: Any questions today? Senator Hansen. [LB348]

SENATOR HANSEN: I have one. It may be a follow-up of Senator Schumacher's, but I think that was a great explanation of the difference between farm ground and these low-income housing units. So Hall County stayed at $900 a unit, Lancaster went to $2,200 a unit. [LB348]

FRED HOPPE: Yeah. [LB348]

SENATOR HANSEN: How are you...how do you read LB348 in saying that Hall County is going to stay that low and Lancaster County is going to come down a little bit? [LB348]

FRED HOPPE: Hall County's assessor has the option to stick with the actual valuation method, with the actual income, actual expenses. When you capitalize that, that produces the tax, that produces the valuation that leads to a tax at approximately $900 a unit. [LB348]

SENATOR HANSEN: Hall County is doing it like they used to. [LB348]

FRED HOPPE: In Lancaster County, if you take the actual income and the actual expenses, in Lancaster County that will drop the valuations on the properties I have in Lancaster County by approximately one-third. Mine went from...one group of properties I had, average increase about 240 percent. One property...another set, actual...or increase in valuations in Lancaster County--these are all Lancaster County--increases in valuation, approximately 235 percent. Another section went--these are single family homes--about 280 percent increase between '11 and '12. Old Mill Crown Limited, roughly 300 percent increase in taxes between '11 and '12, using...comparing nice units to units next door instead of using the actual income and receipt values of those properties. So, I have a property out on Soukup Drive and it's built fairly similar to the house next door. The house next door may be paying a $1,200-a-month P&I, a mortgage payment of $1,200 a month. My tenants next door pay $750 a month rent. And their house...I try and build a house just as nice as that house next door and put my tenants in it so that they'll be seamless in that community. Okay? And I'm renting it to them for $750. And now on that unit, my tax...the tax is $2,800 a year. Now count that in. That's three months, three and a half months of income I'm paying to the county for the tax. [LB348]

SENATOR HANSEN: How do you respond to Senator Schumacher's earlier comments about being a restricted or a separate class? [LB348]

FRED HOPPE: I say we're dealing with a methodology of determining actual value. That's all we're dealing with. It's not a separate class because it is one of the methodologies that are already in the playbook for the assessors to use in assessing value. And in this specific situation when you're dealing with low-income housing tax credit, there aren't comparable sales. It's not the same thing as taking a comparative sale of building the building. You're taking a comparative sale of restricted building and there aren't comparisons of restrictive building to restricted building. And you cannot look at the real estate with the restriction the same as one without the restriction. That's like the empty belt in the middle of the farm ground that can't be used. Okay? [LB348]

SENATOR HANSEN: Thank you. [LB348]

FRED HOPPE: Does that answer your question? [LB348]

SENATOR HANSEN: Yep, it does and you did great. Whenever you get over your shyness, you're going to be a great testifier. (Laughter) [LB348]

FRED HOPPE: I'm also here to represent the Metro Omaha Builders Association and the Home Builders Association of Lincoln. The realtors and the home builders are all in support of this bill. We need affordable housing for Nebraskans. [LB348]

SENATOR HANSEN: We do. [LB348]

FRED HOPPE: Thank you. Any other questions? [LB348]

SENATOR SCHUMACHER: Any further questions? Thank you for your testimony. Next proponent. Welcome to the Revenue Committee. [LB348]

KATHRYN MESNER: (Exhibit 7) Thank you. My name is Kathryn Mesner, K-a-t-h-r-y-n M-e-s-n-e-r. I'm an attorney and real estate developer from Central City. I also currently serve as chairperson of the Nebraska Commission on Housing and Homelessness. This commission was formed in 1998 by executive order as an advisory body to give policy and program recommendations on affordable housing and homelessness issues, including the efficient use of the Nebraska Affordable Housing Trust Fund and other state-administered housing dollars. I appear today on behalf of the commission in support of LB348. This bill impacts only rent-restricted properties developed under the federal low-income housing tax credit program. And this program allows Nebraska to build millions of dollars' worth of new housing every year. In fact, I looked at the NIFA Web site this morning, and in 2012 alone, the tax credit program stimulated awards that will result in over $97 million of investment in Nebraska's housing industry. Now, in order to leverage these important federal housing funds, our state must provide gap financing for some of the projects. And we do provide that gap financing through the state's allocation of home funds, or in some cases, the Nebraska Affordable Housing Trust Fund. The amount of money needed from the state of Nebraska is directly related to the cost of operating these projects over a 15-year period. The more it cost for things like taxes and insurance, the more the state must put in to make a project work. Now, for tax credit housing projects, we know that the property tax assessments based on the cost approach are higher than those based on the income approach, because as you've heard over and over again, the income for these projects is restricted by law. So the higher the assessments, the higher the tax is and then the higher the need for funding from the state to make the projects viable. The commission feels that this is a waste of state housing dollars. It doesn't make sense for the state to pay more just to cover higher property taxes. By law, the role of the county assessor is to find the actual value. And for these projects, what that means, as you've heard, is that the actual value is what a willing buyer would pay a willing seller for a property with these specific legally binding rent restrictions. We know that this actual value isn't being found under the current system because of the widely divergent values seen across the state on identical properties with the same construction costs and the same rents. These differing assessments means that it costs the state of Nebraska more to build tax credit housing in some counties than in others. Unfortunately, in many circumstances, we're forced to decide where to build new housing based on how the assessor sets the property value rather than how much the new housing is needed. This is bad housing policy. We believe that adopting LB348 will be beneficial to the state in two very important ways. First, taxes will a predictable and uniform part of the funding equation, giving all Nebraska counties an equal chance of competing for these housing projects. And second, the cost of funding will be reduced using the income approach and the state will be able to stretch its limited housing dollars farther. More homes will be built for more Nebraska families. On behalf of the Commission on Housing and Homelessness, we urge your support for LB348. Thank you. [LB348]

SENATOR SCHUMACHER: Any questions? I just have one. Under the rules, if the developer who got the tax credits and who would have to make up any shortage in the event it doesn't cash flow in order to keep operational, if they just walk away from it and there's a foreclosure, how long is the property under rent restriction? [LB348]

KATHRYN MESNER: The rent restrictions are actually filed as a lien against the property and they will stay against the property. You know, this is a federal program. The federal commitment to it is...the initial commitment is 15 years, but most of the projects are actually in the program for 40 years. [LB348]

SENATOR SCHUMACHER: So the restrictions survive a legal foreclosure? [LB348]

KATHRYN MESNER: They may not, but I can't answer that question for you. [LB348]

SENATOR SCHUMACHER: Thank you. [LB348]

KATHRYN MESNER: Okay. [LB348]

SENATOR SCHUMACHER: Next proponent. Welcome to the Revenue Committee. [LB348]

CHRIS LAMBERTY: (Exhibit 8) Thanks for having me. Good afternoon. My name is Chris Lamberty, C-h-r-i-s L-a-m-b-e-r-t-y. I'm the assistant director for the Lincoln Housing Authority and I'm also here representing Nebraska NAHRO, which is a professional organization of public housing authorities and community development nonprofits from across the state. I've provided you a letter from Nebraska NAHRO in support of LB348 for the record signed by our president, Nancy Bentley from Scottsbluff. I come here today to offer the perspective of community organizations who are trying to address local affordable housing needs. In fact, Nebraska public housing authorities, I think, are uniquely...understand the challenges of providing affordable housing in our communities. We are operating currently in an era of declining federal resources, but in a situation where the demand in our growing cities is continuing to grow for affordable housing in particular. For example, in Lincoln we are experiencing a very tight rental market right now, increasing rents, decreasing affordability, and in fact, situations where people who even have housing subsidy currently are having trouble finding anywhere to rent to use their subsidy. Meanwhile, we have over...in Lincoln, over 6,000 families on our waiting list for housing services. And that funding is due to be cut, in fact, today, further. The low-income housing tax credit program is really one of the few vehicles left to develop and redevelop and sustain affordable housing in our communities. It allows local organizations, such as mine and others, to leverage federal tax credits to bring private investment so that we can get affordable housing built in these places. It is imperative, in my opinion, for Nebraska to maintain an environment where this investment will continue and that will allow communities to sustain the properties that are already in operation. As you've heard, the current state law has resulted in a level of unpredictability that's threatening the program currently. Under the current law, local community agencies can't be certain that we can sustain these properties over the long term, and as a result, we're going to see decreased development, increased costs for the housing that does get developed, and the potential for foreclosures on existing developments, further straining our homeless services and our state and local resources. LB348 solves that problem by providing a fair, equitable, and uniform assessment system for low-income housing tax credit properties across the state. I thank Senator Harr for introducing this bill and I urge the committee's support of it. Thank you. [LB348]

SENATOR SCHUMACHER: Any questions? Seeing none, thank you for your testimony today. [LB348]

TOM HUSTON: Senator Schumacher and members of the committee, my name is Tom Huston, H-u-s-t-o-n. I'm an attorney with Cline Williams law firm here in Lincoln. I've been involved with the affordable housing industry for the last 20-plus years since the late 1980s. I've been representing for-profit and nonprofit developers over that time period and I've seen the industry evolve as it has in the state of Nebraska. I've been involved with the legislative efforts to try to address this precise issue that is being addressed by LB348. Our initial foray into the arena was to try to address it with adding some language into the definition of actual value, really talking about the restrictions that can be applicable to the fee interest in the real estate. Probably about eight years ago, we were successful in achieving the approval of Section 77-1333 which makes it optional really to address the issue on which methodology to use in valuing low-income housing tax credit properties. It does requires the counties to at least perform an income approach, but then the regulations under Chapter 51 of the Department of Revenue really explain why the income approach is the only methodology that accurately values affordable housing. And my purpose today here is...oh, I guess the other thing I was going to mention, last year we were here, where we were proposing a centralized assessment for these properties which was not well received and I can understand that. It was probably a bad idea, but we were trying to get ahead of the curve in addressing the problem. In my involvement in representing this kind of development across the state and other states over the last 20 years, I have been involved in the front end in the development side but also the operational side, and I have been assisting my clients in addressing this tax valuation inconsistency in that treatment across the state. From the last four years...over the last four years, my office has filed approximately 400 appeals through the Tax Equalization and Review Commission process. I checked today and the numbers that I was given, the current caseload through TERC, in 2008 it was about

1,600 cases. I think that was true and pretty consistent through about 2011. In 2011, there was 1,675 cases in TERC. In 2012, that number increased by almost 50 percent; so the number of cases being processed by TERC is 2,317 appeals. Now, all those are obviously not affordable housing projects, but that is the total caseload that is being processed by TERC; and if you do some math, I mean, that's multiple cases per day that has to be resolved by TERC. I can tell you for 2012, I am aware of approximately 160 TERC appeals from Lancaster County alone. Why did that happen? It happened for one simple reason is that Lancaster County changed the methodology that it was using. It interpreted the statute saying that, yeah, that we performed the income approach but we're going to ignore the income approach and we're going to ignore the regulations and we're just going to value these properties on a fair market value basis. And I guess I would submit to you that LB348 removes that inefficiency. It can eliminate that inefficiency of using the TERC process to resolve this issue that we can resolve legislatively. I think it's inefficient for not only my clients, the property owners, but I think it's very inefficient for the counties and it's undoubtedly inefficient for TERC. I mean, that's approximately 10 percent of their caseload that are coming out of these properties. Based on my understanding, TERC is now completing some of the appeals from 2010. That's significant in my mind. That's a three-year waiting period. If we can eliminate some of the caseload in TERC, which I think this bill will help us do, I think it's time to do so. And with that, I'd be happy to answer any questions that you may have. I did want to address one thing. I understand today that there was an Attorney General's Opinion, that I think was mentioned. And I think it does address whether or not a separate classification of property is being introduced here, and I think it concludes to the negative, that is not treating these properties as a separate classification of property. I haven't read it but that's what I was told. With that, I'd be happy to answer any questions that you may have. [LB348]

SENATOR SCHUMACHER: Questions? I just have one question. The original investors, the guys that put up the initial money and then get a tax credit extending over whatever, ten, fifteen years, and then refinance that with a bank loan that they don't secure, how much skin are they really left in the game with? [LB348]

TOM HUSTON: The...can I back up and give one context...well, put that in context. Because prior to 1986 the way affordable housing is really encouraged by the tax code, and the tax code is obviously used by the federal government in frequent circumstances with a carrot and stick approach, right, trying to encourage certain behavior. And before 1986, the carrot that was used by the tax code was really the allowance of passive depreciation deductions against income tax. Those depreciation deductions were removed in 1986. In lieu thereof, Congress adopted Section 42 to really incorporate the low-income housing tax credit as the incentive to bring capital, private capital, to this market to encourage and incentivize the development of affordable housing. Now, the investors...to be honest with you, the investors, their risk is really from the operational side. If the project does not comply with the restrictions on both income compliance and rent restrictions, they will not get their tax credits. So they have to make sure the project complies with those requirements. [LB348]

SENATOR SCHUMACHER: So they have to...and if they walk away from the project, do they have to cough up the tax credits they've already received? [LB348]

TOM HUSTON: Yes. There's a recapture, for the full 15 years. [LB348]

SENATOR SCHUMACHER: Okay. So in exchange for the tax credit, they're more or less guaranteeing the solvency of the project? [LB348]

TOM HUSTON: Their ability to enjoy the tax credits is certainly based upon the solvency of the project, I agree. [LB348]

SENATOR SCHUMACHER: Okay. And then why shouldn't those tax credits be considered as part of the income stream to the property? [LB348]

TOM HUSTON: It adds nothing to the operational budget of the project. [LB348]

SENATOR SCHUMACHER: But isn't that an artificial...I mean, in the real business world, that's an artificial distinction. [LB348]

TOM HUSTON: You know, from a policy perspective you may be right, but I think that policy question has already been answered by Congress' adoption of Section 42 as a way to entice private capital to enter this market. [LB348]

SENATOR SCHUMACHER: But we have a policy decision here to be made when we say how we're going to tax that. [LB348]

TOM HUSTON: Sure. I agree. [LB348]

SENATOR SCHUMACHER: Thank you. [LB348]

TOM HUSTON: Yep, thank you. [LB348]

SENATOR SCHUMACHER: Next proponent. [LB348]

BILL MUELLER: Senator Schumacher, members of the Revenue Committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today in support of LB348 on behalf of the Nebraska Association of Commercial Property Owners and the Eastern Nebraska Development Council. Our clients are investors in some of the projects...or not investors, developers of the projects that you've heard about today. The people who preceded me know much, much more about this than I do and I'm just going to say that our clients support this bill as well. Be happy to answer any questions you may have. [LB348]

SENATOR SCHUMACHER: Anybody got some really tough questions for Mr. Mueller? (Laughter) [LB348]

BILL MUELLER: Please don't. I'll refer to Mr. Hoppe or Mr. Huston. [LB348]

SENATOR SCHUMACHER: Seeing none, you luck out. [LB348]

BILL MUELLER: Thank you. [LB348]

SENATOR SCHUMACHER: Any other proponents? Seeing none, opponents. [LB348]

LARRY DIX: Good afternoon, Senator Schumacher, members of the Revenue Committee. For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials appearing today in opposition to LB348. And I would...I sort of get...bring a smile to my face. Mr. Huston had stated he'd been here for eight years and I know I think I've been rumbling around with these cases for about ten years. And Mr. Huston and I have known each other for all those years and it always seems like we get to see each other once a year anymore and it happens to be on this issue. One of the things that, you know, I think has been stated and I just want to clarify really for the record, I don't believe any of our assessors are doing anything wrong here. I think they are following mass appraisal standards. I think they're doing whatever the law allows them to do. And the law allows the assessor, and requires, actually, the assessor to perform an income approach, which was mentioned. No question about this. But it allows them to consider other methods of determining value. And so, and those methods must be consistent with mass appraisal standards and those standards are that you can look at certainly the income approach, but there are also other approaches that can be used. And earlier today there was a reference to a court case in 2010, and that case, a Supreme Court case, really did state that even though the assessor looked at the income approach but actually used the cost approach, that case said that was valid. And so certainly the assessors are within their right to do that. We've heard today, and I believe Senator Schumacher has brought up the constitution in Article VIII, Section 1, that requires that taxes be levied by valuation, uniformly and proportionately, on all real estate. Now, we know that the constitution allows for, and we heard yesterday some discussion on, agricultural and horticultural land, and it truly does set them out as a different class. Mr. Huston, I think mentioned an Attorney General's Opinion which when Senator Harr made his opening that he was going to have the Attorney General look at a couple of things, that was one of the things that I would have said should have been on the list, is are we treating this, are we trying to create a separate class of property here? And I think that really becomes part of the hurdle in this whole discussion. Is it a separate and distinct class? Because the assessors have the...it's their job by law that they have to value uniformly and proportionately within their county. So those are some things that I think, from a policy point of view, we have to look at. I, too, would be interested in seeing what the Attorney General's...what specifically the question was to the Attorney General, what that response was. I think that would be very, very interesting to see. Lastly, when we talk about a part of the bill that really hasn't had much discussion, but, in here, LB348 would mandate one approach. And that somewhat flies in the face of mass appraisal standards. And so you're getting a mandate that says this is the only approach that you shall use. Now, that certainly is a policy decision by the Legislature. I understand that. But that is contrary to mass appraisal standards. The other item that is brought up in LB348 is where it specifically says that NIFA would set the capitalization rate. And I, quite honestly, have some concerns with a federal agency setting the capitalization rate when that federal agency really is not known for...it really doesn't do appraisals. That isn't its area of expertise. And so I would ask that we take a look at that. And is that something that our Department of Revenue should look at? Should they be the ones setting the capitalization for our state versus a federal agency setting a capitalization rate for our state? I don't know if that is right or wrong. Certainly, a concern when I read the bill that is something that I would ask the Revenue Committee to take a good hard look at. So with that, I'm out of time. I'll be happy to answer any questions anyone would have. [LB348]

SENATOR SCHUMACHER: Any questions for Mr. Dix? I just have one. In the event that the taxes are reduced by this mechanism on this particular kind of property, who picks up the loss? [LB348]

LARRY DIX: In...like anytime we...and even like when we talked about agricultural land yesterday, fundamentally it creates a shift to all the other taxpayers within that county. [LB348]

SENATOR SCHUMACHER: Thank you. Any other opponents? Seeing none, any folks in the neutral position? Welcome to the Revenue Committee. [LB348]

BRIAN WILSON: Thank you. My name is Brian Wilson, B-r-i-a-n W-i-l-s-o-n. I'm from Omaha, Nebraska. I'm a real estate appraiser with a speciality in appraising and valuing Section 42 low-income housing tax credit properties. I'm here...I was requested to be here simply to add any insight that I may be able to provide as to the valuation techniques and the unique complications that these properties have in valuing them. I'll start by just simply laying out, there are three methods of valuation: the cost approach, the sales comparison approach, and the income approach. But that does not mean that each approach is applicable or equal in weight to every property. With respect to Section 42 property, these are multifamily income producing properties. Their value is 100 percent driven by the income they produce. So the income approach is the paramount approach to value the property, and to ignore it or to not significantly weight it against the other approaches would be ignoring the significant valuation aspects that drive its value. It would be virtually impossible for an assessor to come up with their mandated actual value and not heavily consider or 100 percent consider the income approach. The cost approach has significant disadvantages in that a lot of these properties suffer from obsolescence which is kind of a technical term, but it basically suggests that cost does not equal value in all cases. Just because you can build something for $1 million in construction costs does not mean that it is worth $1 million if you actually tried to sell it. And the difference in that actual value and cost is measured, that difference is called obsolescence. And virtually all low-income housing tax credit properties would suffer this form of obsolescence on an operational basis. The sales comparison approach would lend itself to similar obsolescence adjustments, as the sales of these properties are very few, if any, statewide and even nationwide. So to compare it to a non-Section 42, a nonrestricted property, would require these exact same adjustments. These adjustments would be measured by a loss in income. So, in essence, you are using the income approach to justify your adjustments that you would need to make to the other approaches. So even when doing the other approaches appropriately, you would need to...the income approach is the driving force in any adjustments that you would make to the other approaches in order to accurately reflect their value. With that, I don't want to get too technical, but I'll just rest on that and answer any questions that you guys may have. [LB348]

SENATOR SCHUMACHER: Any questions? I just have a couple. Now in looking at the income approach, we've got kind of a unique situation here because we've got the owner of this property that is operating these units under an economically unfavorable rent restriction. Is that fair for step one? [LB348]

BRIAN WILSON: Yes. [LB348]

SENATOR SCHUMACHER: And we're being asked to say, well, you can't compare this building which looks just like this building because the first building has got this really restrictive set of rules applying to it. At the same time, that building, that ownership entity, has got something the building next door doesn't have. And it's got a guarantee, because if they don't do it, they lose their tax credits and actually have to cough up past tax credits, from what the testimony is, a guarantee that these investors are going to have to make a cash flow. They're going to have to infuse money into the system and it's a beneficiary of that side of the equation. When you do your income analysis, would one take into consideration that it has got these people on the hook who are basically obligated to guarantee its cash flow? [LB348]

BRIAN WILSON: Well, I guess...I don't know if I fully understand the question, but, in theory, any owner of any property is on the hook to fulfill their expense obligations, no matter what they are. [LB348]

SENATOR SCHUMACHER: But these guys are especially on the hook because they have to cough up tax credits and they lose an income stream in tax credits if they don't guarantee it. They can't just walk away without having some dire consequences. So it's like a banker who has signed a letter of credit saying, I'm on the line for this much money. [LB348]

BRIAN WILSON: I guess, let me back up. Let me think of how best to answer this. The ownership group which has partners has...they...you're right, they agreed to this long-term restriction of tenant income requirements and rent restrictions. And in exchange they get a tax credit allocation. And this whole purpose is to...basically in reference to the earlier bill, this is to alleviate the federal government from having to actually write a check to fund these properties up-front. This allows private money to fund the property so that the government's responsibility is minimized and is spread out over a period of time. In exchange for that, they want a contractual agreement to keep these properties as they are intended as low-income properties. The fact that they are tied by the LURA agreement, the tax credits, is more of an enforcement mechanism. They are tied there so the tax credits cannot be separated and parsed out individually because otherwise the federal government has to have a way of enforcing the property to maintain compliance through the whole compliance period. With regards to assessment purposes, the tax credits should not have any bearing on their assessment value. I guess an analogy I would use, it would be like filing your personal taxes, getting an income tax return, and then being liable for...you know, having to claim that income tax return on your income taxes the next year. You know, the idea of taxing a tax credit sort of flies in the face of the intent of the program. [LB348]

SENATOR SCHUMACHER: But we wouldn't be taxing the tax credit. We're only taxing the fact that they're...this central entity that owns these properties that is crying that they're not getting enough rent because of this special arrangement, also has another source of finance that it's...another source of money inflow of income, and that is, these investors have got to put money into it. They're obligated to (inaudible) this money. [LB348]

BRIAN WILSON: Well, you're suggesting that the ownership group is well-capitalized and they can afford to pay the taxes. [LB348]

SENATOR SCHUMACHER: No, they either have to or they lose their tax credit. They're behind the gun. That's a source of revenue, source of income. Why shouldn't that be considered as part of the income stream as well as the rents for this entity because they're going to make this thing cash flow. They may not like the way they have to do it, but they got themselves into a deal where they've got to make the cash flow. [LB348]

BRIAN WILSON: Well, they are explicitly excluded from the income stream by regulation now. [LB348]

SENATOR SCHUMACHER: We're not talking...we're talking the central entity. We're looking at it from that point of view because that's the guy who has got to write the property tax check, so...and that middle limited partnership entity thing has got two people on the hook for the operational revenue. It's got the people who are paying the rent, and it has got the people who have got themselves into a fix by grabbing these tax credits, and now have got to put it into the pot or they lose their tax credits. [LB348]

BRIAN WILSON: I guess the issue that I would see is what is the appropriate assessment, not if the owner can afford to pay it or not, or if they have to pay it because they're going to suffer a financial penalty if they don't pay it. I mean, just because they have a strict financial obligation to keep funding higher and higher and higher operating expenses, that doesn't mean that...I guess, in my opinion, that wouldn't mean that the assessment and the methodology that they use in the assessment process is appropriate. They're sort of...they don't really have anything to do with each other. The fact that an owner may be wealthy, or maybe not wealthy at all, really has nothing to do with the fact the assessor's job is to assess an actual value and use appropriate methodology, which in this case would be...in virtually every case would be the income approach. [LB348]

SENATOR SCHUMACHER: Thank you for your testimony. Any other questions? Seeing none, thank you. Any more neutral? [LB348]

TIMOTHY KENNY: Senator Schumacher and members of the committee, my name is Timothy Kenny and I'm the executive director of the Nebraska Investment Finance Authority and I administer the tax credit program on your behalf, on behalf of the state of Nebraska. I wanted to clarify one point that I heard earlier that NIFA was a federal institution. NIFA is, in fact, a quasi-governmental, state-chartered institution. We have a board member of nine members, three are from the state of Nebraska, the director of the Department of Economic Development, the director of the Nebraska Investment Council, and the director of the Department of Agriculture. Then we have six other board members who are appointed by the Governor from around the state in various capacities, two from each congressional district. We administer the low-income housing tax credit program on behalf of the state of Nebraska. It serves the bottom half of the bottom half of the income strata. We have, over the last...since 1986, I think produced almost 19,000 units in the state for that income group. And with that piece of information, I wanted to clarify the fact that we are a state instrumentality. [LB348]

SENATOR SCHUMACHER: Spell your name, please. [LB348]

TIMOTHY KENNY: I'm sorry. Timothy, T-i-m-o-t-h-y, Kenny, K-e-n-n-y. [LB348]

SENATOR SCHUMACHER: Any questions? Thank you for your testimony today. Any other neutral capacity on LB348? Senator Harr. [LB348]

SENATOR HARR: Senator Schumacher, member of the Revenue Committee. (Laughter) I just want to clarify the record a little bit and I appreciate Mr. Kenny coming...that was one of my notes on NIFA. I also...the AG, it's a memorandum, it's not an opinion. But in that opinion he brings up that issue, Senator, that you just brought up about whether the tax credit should be treated as income or not. The argument is that that tax credit is payment for the lien put on the property, so it's not income from the property. But that is a policy issue that you and I will definitely have to approach and you are as wise as your years, so good job. Number two, there was a question about whether the rent restrictions survives foreclosure, and the answer is, I don't think it does. And as a result we lose that affordable housing forever. So we've outlaid all this money and we've done all this work, and then if it's foreclosed on, we lose it. And that's...let's look at what the big policy if that's not what we want. So this bill, it's a...at the end of the day, it's a very simple bill. Because what we're looking at is, what is the proper methodology to determine actual value when it comes to low-income housing? And there are really three--as we've heard over and over by people much wiser than I am--there are three generally accepted assessments, methodologies, and that's comparable sales, cost, and income approach. So then the question becomes, do we want to as policymakers decide that in this situation we should use one over another? So let's look at what the big picture is. And the big picture is we want affordable housing. And to have affordable housing, we have to have these federal tax credits. And the federal tax credits, in return, to get that money, you have to put, as we stated, the LURAs on there, the land use restriction agreements, and that places a cap on how much income that property can therefore earn. So with that cap on there, in order to get investors, you need to have predictability, because otherwise if it goes above that, they're losing money and they have no way of gaining that money because they can't raise the rent. Not only could the person probably not afford it, they're restricted. And so then it goes into foreclosure. If it goes to foreclosure, again we lose that. But more importantly, we want these types of investments to be low-risk. We want high level predictability because the higher the predictability and the less risk there is, the less we need a requirement for return on investment. It's just basic market. If there's predictability and then it's cheaper. The return investment can be lower and then the cost is cheaper and we can use that money to create more public housing instead of expanding it on one place. Your question about whether you have two units that look just exactly alike, two identical twins. They aren't identical, though, because one has that restriction on there. They could look exactly the same, but because there is that lien against it at the assessors, they aren't the same. So we can't treat them the same and that's why we have to look at the totality of the circumstances. And at some point we as policymakers have to step in and say, here is the proper way or methodology to look at. As I said, I promised I had people wiser than myself afterwards and I think that was definitely true, but I would be willing to entertain any questions you may possibly have. [LB348]

SENATOR SCHUMACHER: Any questions? How would you know about twins? [LB348]

SENATOR HARR: What's that? [LB348]

SENATOR SCHUMACHER: How would you know about twins? (Laughter) [LB348]

SENATOR HARR: Yeah. Not identical twins, though. (Laughter) [LB348]

SENATOR SCHUMACHER: Thank you, Senator Harr. [LB348]

SENATOR HARR: Thank you. [LB348]

SENATOR SCHUMACHER: All right. That closes the hearing on LB348. LB43, Senator Cook, are you here? There she is. [LB348]

SENATOR COOK: Here I am. [LB43]

SENATOR SCHUMACHER: Welcome to the Revenue Committee. [LB348]

SENATOR COOK: Thank you. It's my first time this session. Honorable members of the Revenue Committee, I am Senator Tanya Cook, that's T-a-n-y-a. The last name is spelled C-o-o-k. I am the Nebraska State Senator representing Legislative District 13 and the introducer of LB43. I introduced LB43 to help ensure that Nebraska's tax policy towards charitable residential housing for our seniors matches the current industry standards. Nebraska law defines charitable as a property that is owned and operated for the mental, social, or physical benefit of the public or an indefinite number of persons. The Nebraska courts and most county assessors have refined this definition to include senior living facilities that include substantial healthcare services, and to exclude senior living facilities that do not include substantial healthcare services. In practice, this has led to a distinction for property tax purposes between assisted living facilities and independent living facilities. Typically, a county assessor will consider an assisted living facility exempt from property tax, and an independent living facility subject to property tax. In the past, this distinction was probably accurate. Assisted living facilities and independent living facilities were physically separate and provided substantially different levels of care. Assisted living facilities provided medical care, whereas, independent living facilities were essentially residential facilities restricted to seniors. However, with the emphasis on preventative care, longevity, and allowing seniors to maintain a more independent lifestyle for a longer period of time, many senior living providers have evolved toward more integrated continuum of care facilities. In these integrated facilities, the distinction between assisted living and independent living is less than in the prior model, and in some cases, it is no longer accurate as it relates to property tax statutes. This is true because residents in the independent living portion of the facility have access to similar services on the same 24-hour per day, 7-day per week schedule as those in the assisted living portion of the facility. These services may be provided on an on-demand basis in the independent living portion of the facility and they are more prevalent in the assisted living portion of the facility, but they are available, nonetheless. In turn, the residents of the independent living portion of the facility pay more in rent than they would as a resident in a purely senior housing facility of the same quality without the higher level of services. Restated, independent living portion of the facility provides access to similar services as they are provided in the assisted living portion of the facility. Both portions of the facility meet the statutory definition of charitable ownership and use and, therefore, should be exempt from property tax. LB43 accomplishes this and makes the statute consistent with the current state of the industry. LB43 requires all portions of the facility to be internally connected. It must truly all be one facility. LB43 requires the healthcare services to be provided on site by licensed healthcare professionals and available at all times. Furthermore, this legislation requires that the entity owning and operating the facility be able to demonstrate that residents are paying for the access to these healthcare services to further demonstrate that they are above and beyond merely residential facilities. Amending statute to reflect the charitable organizations providing safe, secure, and life-enhancing housing for our seniors, will show the Legislature's commitment to the quality of life for Nebraska seniors. Testimony to follow will outline the technical operation of this legislation, its limited scope, and the anticipated effect on the future of this vital charitable service in our state. These are the reasons for the legislation and the practical effect that its passage will encourage. I appreciate your consideration and support of the advancement of LB43. Thank you. [LB43]

SENATOR SCHUMACHER: Thank you, Senator Cook. Any questions for Senator Cook? Senator, have you had a chance to take a look at Senator Karpisek's bill? [LB43]

SENATOR COOK: Not yet. I just got a note making reference to it and I just got that before I walked into the hearing room. [LB43]

SENATOR SCHUMACHER: Thank you. Proponents on LB43. It looks like it's just you and me, kid. (Laughter) [LB43]

JULIE KAMINSKI: (Exhibit 9) I was going to say, the party left. What happened, you guys? (Laughter) I think we should have gone with the other bill, huh? My name is Julie Kaminski, J-u-l-i-e, Kaminski, K-a-m-i-n-s-k-i. I testified on the other bill and one of the key separations between those two bills is, the first one, that is purely low-income. Everybody that is residing in that housing setting will be a low-income eligible client, whereas, in this bill, it's both a mix. There will be some market rate combined with low-income. So that's one differentiation between those two. So again, Leading Age Nebraska, we represent the nonprofit providers of senior housing and services in Nebraska and serve about 5,000 Nebraska seniors each year. So we support LB43, which, you know, one of the key components of this is that the independent living has to be connected either to a nursing home or assisted living. And that piece of that key distinguishing between maybe just an apartment building that is not going to be connected and have the licensed healthcare staff to provide medical services to the independent living. So that continuum, what happens is the individuals live independently and as they age in place, as we know they do, they'll pull services into their apartment, which could be a med reminder or a bath or transportation, different services, but it comes from within that campus. So independent senior housing is a key piece in the continuum of senior services. So as we look at our members are all going to be charitable nonprofit 501(c)(3)s, and they don't have shareholders. The profit that they receive, what little that might be, is reinvested back into the community, back into serving the residents and expanding services. And again, when maybe a question is why are they not property tax exempt? It kind of goes back to that same point that they didn't feel like they were providing nursing home or assisted living level of care even though, again, these are connected to them and they've got the same staff providing services into the independent apartments. So again, our members are not out here to generate a large profit. They are here to serve Nebraska seniors, and what we're seeing when we talk about trends is, people want to age in place. They don't want to make that move if they don't have to, and this is one of the ways that a senior can stay in their apartment, receive the services in that setting. So we support LB43 and we ask that this property tax exemption again be applied. And it's very few, and they'll talk to you about this, that there's going to be a lot of independent living senior properties, but those that are connected to a nursing home or assisted living, there are not that many within our state. And I think somebody behind me has that information. Any questions? [LB43]

SENATOR SCHUMACHER: Senator Hansen, any questions? [LB43]

SENATOR HANSEN: No. Thank you. (Laughter) [LB43]

JULIE KAMINSKI: You're thinking about the party, aren't you. [LB43]

SENATOR SCHUMACHER: Thank you for your testimony. [LB43]

JULIE KAMINSKI: Thank you. [LB43]

SCOTT BEAR: Senators. [LB43]

SENATOR SCHUMACHER: Welcome to the Revenue Committee. [LB43]

SCOTT BEAR: (Exhibit 10) Thank you, thank you. My name is Scott Bear, spelled S-c-o-t-t B-e-a-r. I represent Immanuel Retirement Communities. Immanuel Retirement Communities is a not-for-profit provider of senior services that is organized to undertake charitable, benevolent, religious, social, and health services designed to promote healthy aging of the mind, body, and spirit. Immanuel Retirement Communities supports LB43 which would treat independent senior housing providers that are connected to a licensed care facility, such as a nursing home or assisted living, as property tax exempt for their independent housing units. Independent living today is much more than residential housing restricted to seniors. It is a model that has evolved into housing with services. Senior housing services are an important component--as Julie had mentioned--in the continuum of care provided to seniors. It is a housing option for seniors that allows them to age in place with supportive services, aimed at helping them remain independent. Examples of these services provided to these residents include transportation to and from medical appointments, access to nursing staff evaluating health resident concerns, nurse call devices for emergency response, wellness centers equipped to engage in an active and healthy lifestyle, telehealth centers help to, you know, monitor things such as blood pressure, heart rate and oxygen saturation to again identify those indicators before they become a significant issue to the resident. Existing law has treated independent living as purely residential and, therefore, taxable, even when owned and operated by a nonprofit provider such as Immanuel. Under this new model, however, as you can clearly see, independent living, when attached to an assisted living facility, is far more than mere housing. LB43 updates the statute to reflect the current state of the industry. With this property tax exemption, Immanuel and other organizations, not-for-profit 501(c)(3)s will be able to continue providing services to seniors that allow them to remain independent as long as possible. Without it, organizations will be forced to cut some of these valuable programs and services seniors utilize today. Therefore, in summary, Immanuel Retirement Communities supports LB43 and we ask you to (inaudible) the property tax statutes treat independent senior housing that is connected to a licensed care facility with regard to these important services that we provide in those facilities. Thank you. [LB43]

SENATOR SCHUMACHER: Any questions? Thank you, Scott, for your testimony. [LB43]

SCOTT BEAR: Thank you. [LB43]

SENATOR SCHUMACHER: Welcome, again. [LB43]

DAVID LEVY: Thank you. Senators, good afternoon. David Levy, spelled L-e-v-y, attorney with Baird Holm law firm, and registered lobbyist for Immanuel Retirement Communities. I do not have prepared testimony, but I just want to address you on two points and I'd be happy to answer any questions you might have. The first point I wanted to make is I want to confirm and I want to emphasize that this is not a new property tax exemption that we're talking about here. Rather, this is a change in the definition of what is exempt to confirm that these types of facilities that are run by nonprofits, owned and operated by nonprofits, housing seniors where those seniors throughout the facility have access to medical care, are fully treated as tax exempt. It's that access to healthcare services that creates the exemption in the first place for the assisted living in the nursing home side of things. And where that assisted living and those healthcare services are flowing into the other parts of the property, they also, in our view, meet that test for exemption that already is there in existing law. Some communities already treat them this way, some do not, and so this was really a definitional change or proposed definitional change to--as Mr. Bear said very well--bring the statutes current with the state of this industry. The other point I wanted to make, as I walked in I received for the first time a copy of a letter--and saying the first time, that's not a criticism of them--from the Department of Revenue raising a couple of questions about this bill. One of the questions or points states that administratively if one out of four dwelling units is a licensed healthcare facility, the entire property would be exempt from property tax even if these four dwelling units only constituted a portion of the property. As I read that, and I could be wrong, the folks at Revenue are very sharp, it strikes me that they have their fraction reduced, but they may not. Secondly, the other part of the facility that's not independent living would already be exempt because it is assisted living. So this doesn't expand a property tax exemption beyond these particular units that are more than housing; they're housing with healthcare services involved. So again, I'd be happy to talk to Revenue about that further, but I'm not sure I'm with them on that point. They also say there's no definition of "internally connected" for a county assessor to use to determine if the property qualifies for the exemption. That's a fair point and we would be more than happy to work with them to come up with an acceptable definition. Last point I'll make is we really did work hard. I want to thank Senator Cook and her staff for bringing this bill and for working with us on this. And we worked very hard with them to draw this definition as narrowly as possible so that all it does is address this particular issue where the statutes have kind of fallen behind the state of this industry, and it doesn't open the door to a much broader set of exemptions or a much broader set of properties being exempt. And in total, based on our research, this would affect about ten facilities across the entire state. So, as you can see, its impact truly is limited in scope; but for those facilities that are nonprofit providers of continuum of care services, it's very important. With that, I'd be happy to answer any questions. [LB43]

SENATOR SCHUMACHER: Any questions? [LB43]

SENATOR HANSEN: One question I'd ask real briefly, that "internally connected" part, that's going have to be under one roof, no matter what, isn't it? [LB43]

DAVID LEVY: That's our intent. Yeah, it's not a situation where you have one here and one down the block and people shuttling back and forth. Again, it's a true continuum of care. There's a center and there's a wing with one type of services going on, and there's another wing with those same services being available to those residents there, but they might use them less. Although from talking with Immanuel, for example, I've been told that the folks "independent living," some of them use those services even more than the folks in assisted living. You know, we all think we're younger and healthier and all those things than we are and so we want to live in what's called independent living. We get there and those services are available and we make use of them, and it's, I think, very important in the healthcare realm that those are available to people. And, you know, if you have two spouses...or a couple, spouses, and one needs those services more than the other, they can still be in the same place and live together and have that flexibility. So, yes, I agree, it's really intended to be one facility under one roof providing that continuum of care. [LB43]

SENATOR HANSEN: We have a pretty good-sized facility in North Platte. I think if they had known that, they probably would have put a breezeway or something there. But, I mean, because they share a common parking lot, but it's not hooked together, so. [LB43]

DAVID LEVY: Yeah. And, you know, they would have to provide the services and be a nonprofit and the other things too, but you're right, this could result in small spate of breezeway construction. (Laughter) [LB43]

SENATOR HANSEN: Thank you. [LB43]

DAVID LEVY: Okay. [LB43]

SENATOR SCHUMACHER: Any other questions? You had a chance to compare and contrast Senator Karpisek's bill with this one... [LB43]

DAVID LEVY: I have. [LB43]

SENATOR SCHUMACHER: ...because they're working on both the same paragraph in there. What's...yours is fairly limited compared to his? [LB43]

DAVID LEVY: Exactly. [LB43]

SENATOR SCHUMACHER: Is that the biggest difference? [LB43]

DAVID LEVY: Yep. Ours...or LB43 is very limited in scope and it's very targeted at these continuum of care facilities that are owned and operated by nonprofits. LB237 is a much broader exemption for low-income senior housing provided by nonprofits. [LB43]

SENATOR PIRSCH: And can you give us a sense of how many of these continuum of care properties there are? Are they primarily in one area or just dispersed throughout the state? [LB43]

DAVID LEVY: Our research found ten facilities that would meet this definition as we read the definition. Two or three of those are in Omaha, two or three are in Lincoln, and the remaining five or so are distributed across the state. [LB43]

SENATOR SCHUMACHER: Any other questions? Thank you for your testimony. [LB43]

DAVID LEVY: All right. Thank you, Senators. [LB43]

SENATOR SCHUMACHER: Still on proponents. [LB43]

CHRIS YOUNG: Proponents. [LB43]

SENATOR SCHUMACHER: Proponents. Welcome. [LB43]

CHRIS YOUNG: (Exhibit 11) Good afternoon. Thank you for having me here today. My name is Chris Young, spelled Y-o-u-n-g, and I'm here representing Midwest Covenant Home. I serve as a long-term care administrator at that facility and we do represent one of the outlying continuum of care campuses that would consist of an independent facility physically connected to an assisted living and to a nursing home. And as Senator Hansen mentioned, our board did it 20 years ago, but they did, in fact, connect what used to be an independent standalone retirement set of apartments to what was at that time a nursing home. And, of course, also the other thing that happened in the meantime, is the development of assisted living level of care in many states, including Nebraska. So our campus includes independent on the west end, physically tied to assisted living in the middle, physically tied to the nursing home on the far east end. And so, in answer to your question, under one roof definitely would be applicable. And most of my testimony would echo what the other proponents have offered. And I guess I would, in support of what Senator Cook said, that's where our transition came about was it changed as the level of care began to increase or the need in, and especially our rural community, they needed to be able to provide that continuum, aging in place, and so on. And so, as Mr. Bear alluded to, we have a call light system in all of the independent apartments that calls to a central station and the nurses or the med aides would be able to respond. We now, interestingly enough, just last year with our regulatory agencies, the Life Safety Code that's administered by the Nebraska Fire Marshal's Office, is beginning to regulate some of the housing under the same residential board and care rules and regulations. And so, in that instance, it would be very applicable that tax exemption that would apply to an existing assisted living and nursing home would also be applicable to that of an independent facility, especially if the regulatory agencies are going to interpret their health and safety codes to be similar. And I cannot say that all of them have been applied and that's very likely not universal across the state. But having discussions with our local state fire marshal deputy, they're very interested in health and safety somewhat more uniformly throughout an independent campus tied into assisted living and the nursing home. And our campus did comply and we have an all-inclusive fire suppression and fire detection system and I think that's going to continue to be more commonplace than the anomaly in Stromsburg. And so we are very much in support, again echoing the other proponents of LB43, and simply updating the statute to support a tax exemption for those independent facilities that would be under one roof connected to an assisted living, an existing nursing home. And so with that, if you have any questions. [LB43]

SENATOR SCHUMACHER: Any questions? Seeing none, thank you for your testimony today. [LB43]

CHRIS YOUNG: Thank you. [LB43]

SENATOR SCHUMACHER: More proponents. [LB43]

NICK FAUSTMAN: (Exhibit 12) Good afternoon. Nick Faustman, Nebraska Health Care Association. That's N-i-c-k F-a-u-s-t-m-a-n. The Nebraska Health Care Association is a parent association for a family of entities including the Nebraska Nursing Facility Association, NNFA, and the Nebraska Assisted Living Association, NALA. Both NNFA and NALA represent nonpropriety and propriety long-term care facilities. NNFA and NALA both support this bill. All of the testifiers, the supporters, have done a fantastic job in summarizing the bill, and as did Senator Cook, and so I will summarize my statement in saying that NNFA and NALA both support this bill because having this property tax exemption would mean a great deal to our 21 members. According to our research, we have found 21 of our members that it would apply to. It would help these long-term care providers continue caring for Nebraska's aging population, and for these reasons we urge the committee to advance to General File. [LB43]

SENATOR SCHUMACHER: Any questions? Thank you for your testimony. [LB43]

NICK FAUSTMAN: Thank you. [LB43]

SENATOR SCHUMACHER: Any more proponents? Seeing none, any opponents? [LB43]

LARRY DIX: Senator Schumacher and members of the committee, for the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials appearing today in opposition to LB43. I would certainly state LB43 is a different bill than what we heard before with Senator Karpisek, and I appreciate Senator Cook narrowing the scope. And this bill certainly does that. There's no question about it. But, so that we can make sure we have a consistent record over the years, I'm going to read some things in that I read on the previous bill just so that when future generations look at the testimony in the transcript, they have the same information. Currently, to obtain a property tax exemption in Nebraska, the property must be owned by an organization that is organized under and operated exclusively for a charitable, educational, religious, cemetery purpose. And the Supreme Court over the years with respect to housing for elderly, the court has determined that licensed assisted living and nursing facilities qualify for the property tax exemptions. The rationale for those exemptions seem to have revolved around the level of care provided to the residents. The court has also determined that independent living facilities do not qualify for the exemption. And what we're starting to see in society is, as times change here, we are starting to see independent living facilities that now more closely resemble those that are facilities that resemble assisted living. So the independent living are more closely resembling the independent living. And so we're starting to see that blurring together, if you will. Senator Cook's bill, you know, addresses that and brings it all under one roof, but it doesn't necessarily address the, quote, use of the property. And so, when we looked at this bill we said, I think just like was alluded to before, we're going to have an economic boom of construction to link some of these properties together to meet the requirement of under one roof, and then you start to ask, well, if you only limit it to under one roof but you have a facility that may have a campus that has a mix of both of these and they're provided in the same really core services but they just don't happen to be linked, then will they be in, in future, in trying to expand this? So it's sort of a slippery slope as you look at it. Again, I think Senator Cook did a very nice job of limiting it, but I would tell you as we know across the state, we're probably going to have other facilities that aren't under one roof that would say, well, we are providing exactly that same type of service so we want the exemption also. So I'd just caution the committee to think about that as we go down the path. We, too, believe this is a limited number of facilities in the state. With that, I'd be happy to answer any questions you'd have. [LB43]

SENATOR SCHUMACHER: Any questions of Mr. Dix? Thank you for your testimony. Any other opponents? Any folks neutral? Senator Cook, would you like to close? [LB43]

SENATOR COOK: Well, I guess I would, thank you. Very briefly. Thank you, members of the committee for your time this afternoon. It has been rather an intense week for all of us, I believe, Day 35, so I appreciate your attention on a Friday afternoon. Very briefly, this is not LB237 and thank you for asking that question. I think Mr. Levy helped to expand upon the differences between the proposals in terms of the narrowness of the crafting for our intent purposes. We do talk about the use of the property and offer a definition, and the fact that it is linked and having 24-hour access to those health services. When I first was contacted about my interest in the proposal, Immanuel Village and its assisted living and the 24-hour skilled care happens to be located in Legislative District 13, and my mother happens to be a resident of the independent living facility. Now, of course, 13 months ago she didn't think she needed to be a resident there, but as we've learned and as more of our population ages, I can tell you as a child, as an adult parent of an adult, aging adult or two, it is very nice to know that there is a pull-chord should she need some help in the middle of the night or the weekend, in addition to the sock hops and football parties and Mardi Gras meals that she enjoys. So, thank you very much for your consideration, and would look forward to working with the committee to bring this out to the floor for a full debate. [LB43]

SENATOR SCHUMACHER: Any questions for Senator Cook? Thank you for bringing this to us, Senator Cook. That looks like it closes the hearing on LB43, and we're down to the last one, LB110. Senator McGill. [LB43]

SENATOR McGILL: Well, this should be short, hopefully. And I can go back to a lively Judiciary hearing, let me tell you, so. (Laugh) Good afternoon. I'm State Senator Amanda McGill, M-c-G-i-l-l, and I'm here to introduce LB110, a bill that changes eligibility requirements for the homestead exemption. I was contacted by a couple of constituents, a husband and a wife over the interim, regarding property formerly owned by the wife's parents. Her parents died on April 20 and May 19 of 2012, and because of the current state of the law, the property owned by the deceased did not qualify for the homestead exemption for 2012. The couple was then left to pay the property taxes. Nebraska law currently requires that the owner of the property actually occupy that property from January 1 through August 15 of each year in order to qualify for the exemption. LB110 changes this requirement so that the owner of the property for the purposes of the homestead exemption is determined on January 1. California and Georgia currently use this particular structure. In Colorado, an owner may qualify for the homestead exemption if the homeowner is over 65 and has lived in the home for at least ten years. Exemption applications have to be filed by July 15 of every year, but the law does not specify how long the original owner must occupy the property. Since I drafted this bill, you know, it came to my attention that Nebraska residents must reapply for homestead exemption each year. In other states there's a one-time application requirement. Given this yearly application here, it may be difficult for the specific mechanism in my bill to function, so I'd consider moving the eligibility date up perhaps to maybe just halfway through the year. And with that, I'd appreciate your consideration. Again, this was a constituent situation that I decided to bring on their behalf. [LB110]

SENATOR SCHUMACHER: Any questions for Senator McGill? [LB110]

SENATOR McGILL: Why, thank you. [LB110]

SENATOR SCHUMACHER: We could talk more to keep you out of Judiciary. (Laughter) How many questions do you want? [LB110]

SENATOR McGILL: Well, we're on opponents now. So, I'm good, thank you. [LB110]

SENATOR SCHUMACHER: Okay. Any proponents? Seeing none, any opponents? [LB110]

MARILYN HLADKY: (Exhibit 13) Good afternoon, Senator Schumacher and members of the Revenue Committee. My name is Marilyn Hladky, M-a-r-i-l-y-n H-l-a-d-k-y. I am the Seward County Assessor and I'm here today representing the Nebraska Association of County Officials and the Nebraska Association of County Assessors. The homestead exemption program in Nebraska is a wonderful program allowing low-income individuals who meet the qualifying criteria the ability to stay in their homes. The program is currently for individuals who are over 65 or disabled veterans or disabled individuals. If they are owner-occupant from January 1 through August 15 and meet the income guidelines, they qualify for an exemption of up to 100 percent of the allowable valuation. This is a very meaningful benefit. Some of the concerns and questions that I would have if this bill were to pass is, as written, this bill would require the owner-occupant to occupy their home only on January 1, just one day of the year. It appears this change will allow situations where the applicant owns the home but may not really live there but now they could still apply and qualify for a homestead exemption if they were there in the home on January 1. How would the assessor's office handle the situation of an individual that lived in their home on January 1 but passed away on January 2? Could the family still fill out an application for that individual? Along the same line, if the property sells January 2, will the new owner still get the exemption for the remainder of the year? Can the owner-occupant who was there on January 1 come in after the property sells and still apply? This creates a situation where others, who the program was not designated for, to benefit from not having real estate taxes to pay. What safeguards would there be to stop someone from putting property in the name of a homestead qualifier to get a homestead exemption and then change it back? Currently, an applicant has until August 15 to transfer their exemption if they purchase and move into a different residence. How does this change affect that process? Will they be able to transfer their exemption clear through December 31? The assessors have until August 1 to send in the applications to the Department of Revenue. On November 1, the Tax Commissioner certifies back out to the assessors those people that qualified based on income. And then the county's homestead exemption loss report has to be certified back to the Tax Commissioner by November 30. This bill may expand who will benefit from somebody else's exemption, therefore creating additional costs to be incurred by the state. In checking with the Department of Revenue for 2012, there were 46,309 applicants with reimbursement back to the counties in the amount of $67,443,195. Is this change how you want the program to work? It will certainly create a more liberal interpretation of the existing program. I think the owner-occupancy requirement is a really important qualifying determination and it should be at least 51 percent of the year. So, as written, I would encourage you to oppose this bill and leave the homestead exemption program intact as it currently exists. Owner-occupant should mean more than just one day out of the year. So I thank you for your time and consideration and I would be happy to answer any questions that you may have. [LB110]

SENATOR SCHUMACHER: Senator Harr. [LB110]

SENATOR HARR: Thank you. And I appreciate your comments. I guess my question, though, is, couldn't you do a pro rata? So if you lived in that house from January 1 to January 31, the exemption would apply for that period, and then the second you move, the exemption ends. What would prevent us from doing that? [LB110]

MARILYN HLADKY: Nothing would prevent you from doing that, but currently it does not exist that way. [LB110]

SENATOR HARR: Okay. So if we did that pro rata approach, so that when there's a transfer in title, it would automatically cease the exemption which you object to this bill? [LB110]

MARILYN HLADKY: I guess my initial reaction is that...because it's been talked about before that that's a possibility, yes. [LB110]

SENATOR HARR: Okay. I appreciate that. Okay. Thank you very much. [LB110]

SENATOR SCHUMACHER: Any other questions? Just a little bit of a follow-up along that line. The original bill has them being there for, I think it's eight months or seven months out of the year, in order...so that if somebody wanted to have a home somewhere else or not live there for five months, is that your impression why it isn't requiring them to live there year-round? [LB110]

MARILYN HLADKY: Through that August 15 date? [LB110]

SENATOR SCHUMACHER: Yeah. [LB110]

MARILYN HLADKY: And to be quite honest with you, I don't know how that date was ever arrived at, so it's been that way for quite some time. So I don't know what the analogy behind that...how that was developed, so. But certainly, you know, I think some of the assessors' feelings are that those people should at least live in that home 50 percent of the year or with some kind of proration so that they still benefit in that closing process because they do prorate the taxes in closing. [LB110]

SENATOR SCHUMACHER: Any other questions? Thank you for your testimony. [LB110]

MARILYN HLADKY: Thank you. [LB110]

SENATOR SCHUMACHER: Any other proponents? [LB110]

MARY JANE EGR EDSON: Opponents. [LB110]

SENATOR SCHUMACHER: Oh, we're on opponents already. Jeez. Opponents, Larry.

[LB110]

LARRY DIX: I've got to do it. [LB110]

SENATOR HARR: There you go, you got to be perfect today. [LB110]

LARRY DIX: Got to be. (Laughter) For the record, my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials appearing today in...our board voted to oppose LB110, specifically for what the assessor from Seward County had mentioned. But, I just...the only reason I jumped up, Senator Harr asked the question. If we go to a prorational prorating, I would tell you the...it would be very, very difficult to try to figure out how many days somebody lived in that house. You would have to go back...I assume you're saying upon when...how would an assessor know when somebody moved out of the house? Because you don't have to sell the house to move out of the house and so... [LB110]

SENATOR HARR: How do they know now? [LB110]

LARRY DIX: They have to come in and file a homestead exemption and it has to be in by a certain date, and so... [LB110]

SENATOR HARR: Yeah, and that's for the whole year, right? [LB110]

LARRY DIX: And you have to stipulate that you lived in that house. [LB110]

SENATOR HARR: Well, wouldn't we do the same thing when you apply, you would stipulate... [LB110]

LARRY DIX: Oh, I can just see...I can see people coming in left and right saying, you know, I lived there all year and when they really...nah. [LB110]

SENATOR HARR: But they do that now. [LB110]

LARRY DIX: I just think it would be problematic to them start...then you're going to start...then you are going to start saying, okay, of the homestead exemption, the total amount you would receive, now you're going to receive a percent of the total. I just... [LB110]

SENATOR HARR: And I think right now probably...I guess what I would argue is right now they would probably say, hey, I lived there the whole year anyway. And the only thing that would change is if there's a change in ownership, so that if you have the January 1 to January 31, you could say, okay, there's a transfer in title, she passed away, and they could get it for that month as opposed to...because right now, I guarantee you, even if they don't live there the whole year, they're coming in and signing it that they lived there the whole year. I mean, I don't want the Florida situation, yeah. [LB110]

LARRY DIX: Yeah, I would give you that. I just think we're creating a little more... [LB110]

SENATOR HARR: Paperwork. [LB110]

LARRY DIX: ...paperwork and chance for errors, not only at the county level, but I think we're creating a tremendous amount of paperwork probably at the state level because they're the ones that actually go through and do the calculation and send that money back to the counties. [LB110]

SENATOR HARR: Yeah. My problem is the person who passed away August 14 versus August 15. They're in two different...I mean, their tax is...so. [LB110]

LARRY DIX: Yeah, there are so many situations in taxing where there's a date and there's always somebody that falls on either side of that date no matter what we pick. [LB110]

SENATOR HARR So how do we make the system fairer, simpler, and more modern in two minutes or less? I'm kidding. We can handle that a little bit later. (Laughter) We have all summer for that. [LB110]

LARRY DIX Oh, thank you. [LB110]

SENATOR SCHUMACHER: Thank you for your testimony. Any other opponents? Anybody neutral? Senator McGill is waiving. She's cheating. She's not getting back to Judiciary Committee. (Laughter) That concludes our hearings today. [LB110]