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Transportation and Telecommunications Committee  
February 06, 2007

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[LB147 LB489 LB561 LB621]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 6, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB489, LB147, LB561, and LB621. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; LeRoy Louden; Mick Mines; and DiAnna Schimek. Senators absent: Dwite Pedersen.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer. I am the chair of the committee, I represent District 43 in the Nebraska Legislature. I would like to introduce the other members of the committee at this time. On my far right is Senator DiAnna Schimek from Lincoln; our Vice Chair, Senator Arnie Stuthman from Platte Center; next to Senator Stuthman is Senator Ray Aguilar from Grand Island; to my immediate right is Mr. Dustin Vaughan, who is our committee counsel; on my left is Mrs. Pauline Bulgrin, and she is the committee clerk; next we have Senator Carol Hudkins from Malcolm; and last, but not least, we have Senator LeRoy Louden from Ellsworth. Our pages are Michael Schaeffer from Lincoln; and also Kristin Kallsen from Big Springs. And Kristin just stepped out on an errand, she will be back. We will be hearing the bills in the order that they are listed on the agenda. The first one is LB489; the second, LB147; third, LB561; and fourth is LB621. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying, in order that we can keep the hearing moving. Please complete the yellow sign-in sheet, which is on the on-deck table, so it is ready to hand in when you testify. And we do have a new transcription program, so it's very important that you follow the directions that are on that sign-in sheet. And if you would, please, hand that sheet to Mrs. Bulgrin, our committee clerk, before you testify. For the record, at the beginning of your testimony, please spell your last name and also your first name, if it can be spelled different ways. Please keep your testimony concise and try not to repeat what someone else has already covered. If there are a large number of people that wish to testify on an issue, it may be necessary to place time limits on that testimony, and as chair, I will be the one who puts time limits on testimony. If you do not want to testify, but you want to voice your support or opposition to a bill, you can indicate so at the on-deck table on the sheet provided. This will be a part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a yellow sign-in sheet and actually testify, even if you just state your name and your position on a bill. If you do not choose to testify, you may submit comments in writing and have them read into our official record. Please relax, don't be nervous. If we can get you anything, please let us know. And I would ask that you turn off all cell phones at this time. And I believe we're ready to open the hearing then on LB489. I would ask how many people are here to testify on that bill? If you would raise your hands. I see six hands. Thank you. And we have Senator John Harms here, from Scottsbluff, the bill sponsor for the

opening. Thank you.

SENATOR HARMS: (Exhibits 1, 2, 3) Thank you very much, Senator Fischer and committee members. First of all, thank you for giving me the opportunity to bring LB489 to you. It's really one about safety. But before I actually start to go through that bill and give you a little bit of background, I've given you some information. One is an amendment in regard to this, and I apologize for that. But we made some changes in this bill, and I'll walk you through those changes here in just a few minutes. You will also get a list of the medical profession of the people who are actually supporting this legislation, primarily because they've had to deal with the issues of children being injured in accidents. And then you also, of course, have the fiscal note. So...and you also have a DVD. I want to...I would really encourage you, for those of you who didn't get a chance to see that, drop that in your laptop and it works beautifully. We're not advertising for SafeGuard, but it just gives you the research and some of the background of why seat belts are so vitally important to us. This bill is about safety. This bill is about putting our children in an environment that is safe. When a mother puts her son or daughter on a bus every day, she expects the child to be in a safe environment, she expects the child to come home. Every day that a child gets on a bus and goes to school, a child has made the assumption that he or she is in a safe environment. And I think as lawmakers, the people who are the custodian of the laws, we need to make sure that we are doing everything that we can to put our children in a safe environment--when they go to school, when they come back from school, when they participate in activities. Kids are used to wearing seat belts. Buckle up is something that's pretty regular today. When your children get in the car it's buckle up. And so they're used to hearing that terminology about buckling up their seat belts. You'll also find with research, and you'll also find in discussing with a number of people who are bus drivers, who have used seat belts, that in fact having a child in a seat belt is less...it causes less distraction. In fact, there is less movement in the bus, and they're not running around on the bus, and that's a factor. If you look at the study that was done by the academic pediatricians, they make it very clear that seat belts are more than just about deaths, it's about long-term, it's long-term emotional issues, there are internal injuries, there are spinal cords that are broken, there are children that end up crippled for life, so it's more than just the fact that a kid, a student, a young person can be killed. The thing that has amazed me about this issue of seat belts in this state is that we require, by law, Section 79-609, we require by law a bus driver to wear a seat belt. I find that amazing that the most important thing that we have is our children, and we're placing our children in an environment that's now proven that it is not safe, that we can prevent some of the injuries that have occurred, we can prevent, hopefully, some of the deaths that have occurred by seat belts. But yet we have refused to do that, yet we require our bus driver to wear a seat belt on a bus. There are 450,000 school buses in service annually, 25 million students ride a school bus daily in this country. School buses travel 2 million miles every day in this country. And the amazing thing about all of this is that we have them in an environment where there is more traffic, there are more

cars, there are more trucks, there are more buses, there's a greater opportunity for further accidents. Across this country there are about 16,000, as an average, school bus collisions annually. And from that there are 12,000, approximately 12,000 injuries, and 130 deaths that occur annually in bus accidents. I find that appalling. I find that almost embarrassing that this state has not been willing to step up and address that issue. For every 1 percent increase in seat belts, there are 250 lives that are saved, and that comes from the Nebraska National Highway Traffic Safety Administrator. Restraints on buses, such as buckling up, is nothing new, we hear it all the time. In a recent survey that was done, 84 percent of the parents that were surveyed across this country have said they wanted seat belts in an automobile...or excuse me, in a bus. And I think that's important. So I believe that this is a safety issue. And I'd like to just share very quickly with you a study that was recently done by the Transportation Research Center, along with the National Highway Traffic Safety Administration. And in this long-term study what they found were four, they made four conclusions from the study. First, the compartmentalization that we saw on the video does help, but it doesn't save lives. It does help some in injury, but we still have severe injuries. We still have neck injuries, we still have head injuries, we still have back injuries. It may help with a head-on collision, but on the side it does not. And compartmentalization is simply where we bring in the seats closer, raise the seats...back of the seat higher to try to stop that force. But when it's a head-on collision that force is there and these young people are injured. The lap belt restraint has proven to be effective with some of the dummies that they've had in the buses and they've done their research. They still found that there was neck injuries. They still found that there was back injuries, and spinal injuries, but it was very sensitive to the spacing and the size of the dummy that they used, and the spacing of the seats. The lap-shoulder restraint was much more effective than the other two--less injuries, held the children in place. Not so much concern about size, not so much concern whether it was a head-on or a side collision. And there was a fourth conclusion, they used an inflatable air bag belt restraint system, and with that it appeared to cushion the impact, it prevented some of the head injuries, it was fairly successful. But when they evaluated the seat belt versus the lap-shoulder restraint and the inflatable air bag restraint, they were about the same in their actual findings. That's just one of the many pieces of research that's available in regard to safety of our children and the use of seat belts. I'd like to, if I can for a moment, walk you through these amendments so that you might have...any questions you might have, I'd be very happy to try to answer for you. In the preparation of this legislation, this is not the first time this has been before a committee here in the Legislature. I went back and I read every argument, every debate, every testimony, and we tried to incorporate the concerns that people voiced the last time this bill was heard. Okay? And on page 1, Section 1, starting at page 10 through 15 is written to deal with one of the criticisms before that we're not asking that this be retroactive. We're asking for all new school buses that are purchased on January 1, 2008, if this bill would come out of committee and be approved, that the seat belts would be placed into those seats. So that was an issue because, quite frankly, the cost of retrofitting is fairly high as there are a lot of school buses in Nebraska. And it must

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meet the federal standards of 49 CFR, and I have no idea what those are, I read them, but those are federal standards, and hopefully one of our experts that comes up can probably answer that for you. But it answered that particular question. I will tell you that if this bill comes out of committee and this bill is approved, I'm going to work very hard to see if we can find a source of funds in the future to where we might be able to go back and retrofit and help pay...and actually pay for that. I'm going to be talking to foundations and other people privately to see if they would assist us once we get a better handle on what the cost would be. Also, on the last page, page 3, you will find that we talk a little bit about the school buses and the lap belts, shoulder belts or lap-shoulder belts. Some buses do have some belts in them, so in order to incorporate that in to make sure that we were clear, we were saying if you have a lap belt on, if you have a shoulder belt or if you have both of those, this applies to you. One of the issues we found was on the liability question by the bus driver, that kids will be kids, and once they get on the bus, they go through the process, they buckle the kids...the kids are buckled down, and the bus driver drives, there's no way to maybe completely control them from getting out of the seat. And one of the questions was in past discussion is, what about the liability? We removed that part of the liability away from them. In just about all the buses that are recorded, you've got cameras on those buses. We'll know whether the bus driver has gone through and made sure all those...children are secured down appropriately and properly in their seat belt. It takes that liability away. Now it does not take the liability away if you're negligent. If you were driving too fast for the conditions of the road, if you had been drinking or any of those kinds of things come about, you still have all those liability issues. It just takes it away from the bus driver and the concern, because kids are kids, they may pop out of that seat belt. But what we saw on the tape, and what I've had the opportunity to read in the studies, and the research, it makes it really clear that there is less distraction, there's less movement on the bus. This is about safety, it's about our children, and I think it's time that Nebraska starts to address that issue. Fiscal note, if you look at the fiscal note real quickly, you can see what some of the costs are. I think the costs are a little high. In regard to retrofitting, if you wanted to retrofit or if you wanted to buy a new 60-passenger bus what it would cost you to do that. Now the one thing that I will tell you that I have not been able to resolve and that was one of the arguments that this reduces your bus capacity. It does by 30 percent. So if you had a 60-passenger bus it would be down to 42 passengers. I think that's a small price to pay for the life of a child and for the safety of a child. And I would entertain any questions, Senator Fischer. [LB489]

SENATOR FISCHER: Thank you, Senator Harms. Are there questions? Senator Schimek. [LB489]

SENATOR SCHIMEK: Thank you, Madam Chair. Senator Harms, I think I was listening closely, but maybe I wasn't. I didn't hear you say how many buses we have in Nebraska. [LB489]

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SENATOR HARMS: In the state... [LB489]

SENATOR SCHIMEK: I heard you say nationally. [LB489]

SENATOR HARMS: No, I didn't say that. [LB489]

SENATOR SCHIMEK: Okay. [LB489]

SENATOR HARMS: And I'm not...I don't remember exactly how many we have, but we have a large number. [LB489]

SENATOR SCHIMEK: Okay. So maybe I see the lobbyist for the Lincoln Public Schools is here. I'm going to ask him how much, for instance, how many buses we might have in the Lincoln Public School System, to get some idea of what we're really talking about here for an individual school system. [LB489]

SENATOR HARMS: Yeah, yeah. What we're really talking about again is we're not going to go back, and this law does not require them to retrofit. [LB489]

SENATOR SCHIMEK: I understand that. Right. [LB489]

SENATOR HARMS: Okay, it will be for all new buses. And there is some question even after a bus is five to ten years old, whether you can actually retrofit it safely or not. [LB489]

SENATOR SCHIMEK: Oh, that's interesting. The other thing I wondered during your testimony is, why would we remove the requirement for the bus driver? [LB489]

SENATOR HARMS: Pardon me? [LB489]

SENATOR SCHIMEK: Why would we remove the requirement for the bus driver? [LB489]

SENATOR HARMS: No, I didn't say that. What I'm saying is I was absolutely surprised that we... [LB489]

SENATOR SCHIMEK: I heard you say that, but I'm looking at the bill. Maybe I need to look again. I thought it struck that part? [LB489]

SENATOR HARMS: No, no, it should still be there. If it is, it's in error. [LB489]

SENATOR SCHIMEK: It's in a different place, maybe? [LB489]

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SENATOR HARMS: It shouldn't be, it should be there. We've not removed that. The bus driver should be in a seat belt, just like the kids should be in a seat belt. [LB489]

SENATOR SCHIMEK: Oh, it says, "but which restrains drivers and passengers." [LB489]

SENATOR HARMS: Yeah, um-hum. [LB489]

SENATOR SCHIMEK: So, yeah, it is... [LB489]

SENATOR HARMS: We just grouped it together. [LB489]

SENATOR SCHIMEK: ...in a different place. Okay. [LB489]

SENATOR HARMS: Thank you for that question. [LB489]

SENATOR SCHIMEK: Yeah, thank you. [LB489]

SENATOR FISCHER: Senator Stuthman. [LB489]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Harms, in your amendment I have a little bit of a concern on the underlined...I think you stated in your statement that it was any new bus purchased after January 1, 2008, that this does not refer to any new bus? It just says... [LB489]

SENATOR HARMS: Well, we can definitely add that. [LB489]

SENATOR STUTHMAN: It just states... [LB489]

SENATOR HARMS: It is required, it would be a new bus. And thank you for bringing that to our attention. That's something you can amend very easily. [LB489]

SENATOR STUTHMAN: Because I know there are school districts that buy used buses. And then I just felt that this... [LB489]

SENATOR HARMS: Yeah. If it's not new to the school, I mean, if you got a used bus that was new to the school, that's not what we're referring to. It's brand new that you purchase. [LB489]

SENATOR STUTHMAN: Yeah, a brand new one... [LB489]

SENATOR HARMS: Yeah, a brand new one that you purchase. [LB489]

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SENATOR STUTHMAN: Because I think, you know, there would be quite an expense to putting it in... [LB489]

SENATOR HARMS: Absolutely. [LB489]

SENATOR STUTHMAN: ...the old ones, and actually an old bus would be almost worthless then. [LB489]

SENATOR HARMS: Um-hum. Well, you're right. And that's why we're starting where we are. So that's correct. And we would want to make sure that, if you decide to bring that out, that you correct that for us and make that amendment as a committee, because that's really what the intent of this thing is. [LB489]

SENATOR STUTHMAN: Okay, thank you. [LB489]

SENATOR HARMS: Yes, thank you for the question. [LB489]

SENATOR FISCHER: Other questions? I have a question, Senator Harms. [LB489]

SENATOR HARMS: Yes, Senator. [LB489]

SENATOR FISCHER: Since with the amendment the bill would not be retroactive, what happens to school districts where the number of buses, and they buy the new bus that has the restraints that would be required, but yet they have an entire fleet of buses that do not have the restraints? I guess I'm looking at what would their liability be? I could see parents protesting and, heaven forbid if there was an accident involving an older bus without the restraints, how would that affect a school district? [LB489]

SENATOR HARMS: I think that's a great question, and that's the dilemma we'll be confronted with, because I think you're absolutely on target. I think as a parent I'd be very much concerned that my daughter was on this bus who had the restraints, and my son was on this bus who did not have the restraints. That's why, quite frankly, I think it's extremely important that we find a source of funds to be able to address this issue. And I stayed away from that in this particular piece of legislation because I think that that is going to be an expensive issue. And I thought by starting first, and then giving us a little more time to come back and try to find the source to do that, I would like to do that, and I'm going to be committed to that if it comes out and we can get it approved. But it's a starting point, and right now I think it's based on safety. And I hope you'll agree with that and bring it out to the floor for debate. [LB489]

SENATOR FISCHER: You mentioned also, I can't remember the percentage, in a survey you said of parents who want to see seat belts. [LB489]

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SENATOR HARMS: It was 84 percent. [LB489]

SENATOR FISCHER: Eighty-four percent? [LB489]

SENATOR HARMS: Um-hum. [LB489]

SENATOR FISCHER: And I see we have some school officials here. So I'll be asking them this question, too. [LB489]

SENATOR HARMS: Sure. [LB489]

SENATOR FISCHER: If parents are that concerned and also very supportive of this idea, why can't it happen at the local level with the local district, board making that decision instead of the state mandating the decision? If there is so much concern from parents, and aren't they speaking to their local boards? Why does the state need to step in? [LB489]

SENATOR HARMS: Because of its cost. Because, quite frankly, a lot of schools will not do it. I mean that's just what it boils down to. If you go back, Senator Fischer, and just read, and I'm not talking down to you, please, okay, so you understand that. If we would just go back and read just the testimony of the past hearings on the bills, you'll see all that. It all came down to basically expense and cost and the fact that if we were in a rollover could these children get out of it? Or if we went into a lake or a river could they get out of the seat belts? I'll tell you what, they've got a greater chance to getting out of the seat belts and being alive than being thrown around in a bus, because their bodies become weapons and they kill. So yeah, it is an issue, it's a good one to surface. But I think it just boils down the cost. [LB489]

SENATOR FISCHER: Okay. Senator Stuthman. [LB489]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Harms, in some of this policy statement it states in there that in 1982 there were 140 deaths resulting from school bus accidents. [LB489]

SENATOR HARMS: Um-hum. [LB489]

SENATOR STUTHMAN: That's not just Nebraska, is it? [LB489]

SENATOR HARMS: No, it's nationally. [LB489]

SENATOR STUTHMAN: That's the national one. Would you have any idea how many from Nebraska? [LB489]

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SENATOR HARMS: No, I don't have that data with me, but I can find it out for you. [LB489]

SENATOR STUTHMAN: Okay, thank you. [LB489]

SENATOR FISCHER: Other questions? [LB489]

SENATOR HARMS: Well, thank you very much. [LB489]

SENATOR FISCHER: I see none. Thank you very much. [LB489]

SENATOR HARMS: And I would like to close, if I may, please. Thank you. [LB489]

SENATOR FISCHER: Okay. Thank you very much. If I could have the first proponent, please. Welcome. [LB489]

STEVE WALLEN: (Exhibit 4) Thank you, Madam Chairperson, committee members. Thank you for having us here. My name is Steve Wallen. Last name is spelled W-a-l-l-e-n. I'm president and general manager of SafeGuard. We are a division of IMMI in Westfield, Indiana, and we are a manufacturer of occupant protection systems for all ground vehicles, basically, except basic automobiles. If it rides on the ground and it's not a car, we make some kind of restraint for it. We started...our company started in 1961, just to give you a little background, so we've been bringing safety to people for 45 years. And we have, as you saw on the video, if you were able to see that, we have world class development facilities, including the premier barrier crash facility for commercial vehicles and school buses in the world. We're also a leader in child restraints. We manufacture, develop, and market components for most of the child seats that are used in the industry, as well as our very own SafeGuard Child Seat and SafeGuard Go. In the school bus market we have been a supplier to school buses since 1973. As Senator Harms mentioned, we've been supplying drivers' belts, actually, since 1973 to school buses. But we also supply some passenger systems to states that already require either lap belts or lap-shoulder belts. And with the lap-shoulder belt we actually found we had to develop a new seat, so we actually make the entire seat. But it's not new technology. We've made the SafeGuard School Bus Seat for five years now. We have over 50,000 seats in service in 5,000 buses in 45 states, so this is not untested technology. Our company has crashed 10 school buses to date on our barrier facility, which is more than anyone else in the world, including NHTSA. And so we know a lot about occupant protection. And I just want to talk a little bit about what we've seen in real life practice. What you're going to hear from some of the school bus industry is a lot of theory and hypothetical situations, if this hearing is like others that I've attended. And so what I want to do is introduce a lot of what we've seen in practice. First, as far as lap-shoulder belt technology, the current compartmentalization standard was developed in the mid-1970's. Since then there are twice as many heavy trucks, and three times as

many cars on the road. And if you think about the cars of the 1970's, and you look at the safety progress that's happened since then, you've had air bags, antilock brakes, electronic stability control, crumple zones, and a lot of other safety technology introduced. Seat belts have been proven to reduce, lap and shoulder seat belts, excuse me, have been proved to reduce fatalities and injuries by 45 percent in every new vehicle they've been introduced in throughout their history. The SafeGuard School Bus Seat was developed for school bus application to meet the current requirements of compartmentalization, which has worked fairly well in frontal crashes, as well as providing the additional protection of lap-shoulder belts for rollovers, side impacts, multi-event forward crashes, in other words, you crash into a vehicle and then another barrier, and all conditions that can eject the child passenger outside of their protective seating compartment. What we've seen from studying a lot of school bus crashes is that fatalities and injuries occur because crashes are not generally single forward events, and because children are not always sitting in their proper seating position in the specified compartment, like our test dummies are when we run our tests. As far as from safety data, as Senator Harms said, this bill is about safety. NHTSA's report to Congress, National Highway Traffic Safety Administration, says that there are nearly 10,000 injuries per year. And the school bus industry tends to talk about being the safest vehicle on the road. And while that's true, they're very safe, they hide behind a fatality injury that's very low or fatality number that's very low. But there are nearly 10,000 injuries per year. And according to the AAP study that Senator Harms referred to, that number may be more than double or close to double that, about 17,000 injuries a year, a recent study showed. Maybe you saw that study, it was the end of last year. And as we've said, lap and shoulder belt usage shows this data can be reduced by 45 percent, if a school bus acts like other vehicles. Now some drivers do complain that they have to be responsible for buckling in children. I've heard people actually say, now I've got two jobs, I've got to buckle the children in, and I have to drive the bus. But in reality what we've seen from school bus drivers who, some of them, were our fiercest opponents before getting those SafeGuard School Bus Seats, is that drivers tend to focus a lot more on driving the bus and less on what's going on behind them. It's actually made their job easier. Probably the most important benefit though we think of this bill is education and just reinforcing the fact that every time a child gets into a vehicle they need to buckle their seat belt, no matter which vehicle, no matter what the situation. Over the past 10 years, nationwide now, over 68,000 teens have died in auto crashes, and half of those were not buckled up, 34,000 teens in 10 years died in auto crashes because they weren't buckled up. And making them...forcing them to buckle up on a school bus teaches a life-long habit in every vehicle. What we've seen in our studies is that elementary age children automatically buckle up when they get on the bus, while high school students take a little bit of training. But it's important that teenage drivers have this habit. They tend to get deprogrammed riding the school bus for 12 years, and not knowing that you have to buckle a seat belt every time. I want to quickly address the most common objections to this bill. Those always boil down to two things--capacity and cost. So let's talk about capacity a little bit. I think it's important that

we recognize the difference of stated versus usable capacity. All school buses have stated capacity of 3 children per seat on a 39-inch seat, but the truth is, over 10 years old, you can only fit 2 students on a standard 39-inch seat. Per NHTSA's guidelines, they say you're not providing protection to an occupant if they're sitting even partially outside the defined seating compartment. And that means sitting three across with one child in the aisle. The biggest concern about capacity is that more buses will be required. Senator Harms mentioned 30 percent, I've heard numbers as high as 50 percent. But in practicality, that hasn't really played out. When California required lap-shoulder belts in 2005, the San Francisco Unified School District, which is a fairly low-income district, was very concerned about capacity. And they brought in some experts on routing. They were able to...they had several buses at capacity already, some were under. They were able to reroute buses in certain ways and they found that they needed zero additional buses for the entire San Francisco Unified District. A statewide study in the state of Indiana, done by the state director of pupil transportation, shows in reality 12 to 15 percent more buses would be needed statewide, not 50 percent. And I think that can apply to Nebraska, too, which is a similar state, a lot of rural areas, with a few metropolitan areas, similar to Indiana. Finally, I want to address cost. What we're finding nationwide, our five years of experience, for a large bus on an original equipment installation is a \$7,000 to \$9,000 up charge, which at \$8,000 it's about 8 percent the total cost of the school bus. On a small bus it's \$3,000 to \$4,500. Senator Schimek, to answer your question from earlier, the state of Nebraska currently has 2,636 school buses in service, according to the latest data from School Transportation News. [LB489]

SENATOR FISCHER: Could you repeat that number. [LB489]

STEVE WALLEN: Two thousand six hundred thirty-six (2,636). And just from my math to what I came up with was at an 8 percent replacement rate, which is a 12.5 year school bus cycle, typically nationwide the life of a school bus is 10 to 15 years, so at an 8 percent replacement rate that's 211 buses replaced per year in the state, at an \$8,000 premium is \$1.688 million, the cost of this bill, and that is about \$1 a year for every citizen of Nebraska. Stated another way, every student will pay about \$150 to ride in a lap-shoulder belt for his or her entire 12 years of school or about 3.5 cents per trip. In conclusion, I just want to say that lap and shoulder belt technology on school buses is being proven out every day across the country, about 5,000 school buses in 45 states and counting. We believe the main question about lap and shoulder belts on school buses is not if, but when. The cost of the proposal have been exaggerated by its opponents and costs continue to decrease through technology and volume. And we've actually seen that and we're still seeing it as volume increases, as more states come on board, more school districts come on board, we're seeing costs go down. And as Senator Harms mentioned, 84 percent of parents nationwide want lap-shoulder belts on school buses. And the main benefits of this bill are injury reduction, behavioral improvements, and the reinforcement of a lifesaving habit; those are tangible benefits.

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Finally, I just want to say, besides California, there are a lot of other states this year that are looking at very similar legislation. So while you're leading the way in the state of Nebraska, you're certainly not alone, you're not a lone voice in the wilderness. Alabama, Missouri, Nevada, Texas, Florida, Indiana are all looking at some form of legislation for seat belts on school buses. And so I just want to thank you and let you know that Nebraska has the opportunity to lead the way in making your children safer on the ride to school. And I'll entertain any questions that you have. [LB489]

SENATOR FISCHER: Thank you, Mr. Wallen Are there questions? Senator Schimek. [LB489]

SENATOR SCHIMEK: Yes, thank you. I'd like to follow up, if I might. Did you say about one-eighth of the buses are replaced every year? [LB489]

STEVE WALLEN: Eight percent, that would be... [LB489]

SENATOR SCHIMEK: Oh, 8 percent. [LB489]

STEVE WALLEN: That would be over 12.5 years the entire fleet would be replaced. [LB489]

SENATOR SCHIMEK: Okay, that makes a difference. I was trying to figure out your math. [LB489]

STEVE WALLEN: I do have a copy of the outline of my testimony and some other resources here for the committee, if you'd like it. [LB489]

SENATOR SCHIMEK: Thank you. [LB489]

SENATOR FISCHER: Other questions? First, I'd like to mention that we've been joined by Senator Mick Mines from Blair. And, Senator Stuthman, do you have a question? [LB489]

SENATOR STUTHMAN: Thank you, Senator Fischer. Steve, the question that I have is, do commercial buses have seat belts, like Greyhound, Arrow Stage Lines? Do they have seat belts? [LB489]

STEVE WALLEN: No, in fact coach buses have even fewer safety requirements than yellow school buses. Most of them don't have compartmentalization. Many of them have side-facing and other directional facing seats. There's no requirement as far as...certainly not nationwide, and I don't even know of any state requirements for coaches and commercial buses. [LB489]

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SENATOR STUTHMAN: Okay, thank you. [LB489]

SENATOR FISCHER: Other questions? Did you say Nebraska would be the first, if this bill would be passed? No other state has passed it, although a number of states have considered it? [LB489]

STEVE WALLEN: No, that's not true. There are several states that currently have lap belt legislation: New York, New Jersey, Florida and others. [LB489]

SENATOR FISCHER: Have those bills been passed? [LB489]

STEVE WALLEN: Yes. [LB489]

SENATOR FISCHER: Are they law? [LB489]

STEVE WALLEN: Yes, and California has lap-shoulder belt legislation, similar to this one. Every new school bus sold in the state of California, since July 2005 is when that provision was enacted. It was enacted in 2004 for small buses, and 2005 for large buses. So California, in the DVD that you saw before the committee hearing, actually was from our experience in California and what drivers and transportation directors told us about that experience. [LB489]

SENATOR FISCHER: Okay, when you said legislation, I thought perhaps it was pending. [LB489]

STEVE WALLEN: No, in California it has been enacted for a year and a half. [LB489]

SENATOR FISCHER: Thank you. Senator Schimek. [LB489]

SENATOR SCHIMEK: Yes, just one quick question. When you were giving us the figures of 2,636 buses in Nebraska, are those all the large buses or are some of those, you know, the...more the van type buses? [LB489]

STEVE WALLEN: That information comes from School Transportation News, which is the leading magazine in the school transportation industry. My assumption, from looking at that, was that's the large buses. It's harder to count small buses because some of them are counted as yellow school buses, others are what they call multi-function activity buses, sports team buses, and some of those are even childcare buses. So my assumption is that the 2,636 is actually large yellow school buses. [LB489]

SENATOR SCHIMEK: And I think the smaller ones are already covered by seat belt laws, probably. So that's why I wondered, maybe. [LB489]

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STEVE WALLEN: I don't know the specifics of that in Nebraska. In most states some of the very small buses are covered, and some of the over 10,000 pounds, even the smaller buses over 10,000 pounds are not. So I don't know the specifics for your state. [LB489]

SENATOR SCHIMEK: Are not, and that might be true in this case. Thank you. [LB489]

SENATOR FISCHER: Other questions? Senator Mines. [LB489]

SENATOR MINES: Thank you, Madam Chair. And I apologize for coming in late and going out. And I apologize to Senator Harms; there were other things going on in the Capitol at the same time, so I missed much of what you had to say. But liability to the individual schools is a concern. And Senator Hudkins has told me that there is...for those school buses that do not have the restraints there could be some exposure for the schools. And I'm also interested in the exposure to the school for children that are in the buses that do have the restraints but aren't wearing them. Do you have experience nationwide with any liability concerns we might have? [LB489]

STEVE WALLEN: I would encourage you to take a look at the California bill. They did have a provision in there for liability for school districts who were in that transition period. I would say to you, I mean my opinion is that the fact that...the biggest piece of liability comes from the fact that all the parents will want seat belts on their school buses, which seems to me an optimal reason to pass this bill, not an optimal reason not to pass it. California did have some liability limits for schools that were in the process of that. And I don't remember precisely what those were, so I'd hate to testify to that. [LB489]

SENATOR MINES: Okay. [LB489]

STEVE WALLEN: I know other bills that have been pending have put a liability waiver for school districts as far as making children wear the seat belts. In fact, the SafeGuard School Bus Seat was specifically designed to keep compartmentalization intact, as well as having the lap-shoulder belt so that if there were children not wearing the buses...or not wearing the belts, they would have the same degree of safety on their ride as they have now. [LB489]

SENATOR MINES: But if, and Senator Harms mentioned in his opening, kids will bounce around, and if you get children that choose to take the restraints off and jump around, and there's an accident, how do we hold schools harmless? [LB489]

STEVE WALLEN: Yeah, what we've seen and heard from school bus drivers is that that is actually now the easiest part of their job, because to see if a child is misbehaving now you have to look in the rearview mirror and see what every child is doing. To see if a

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child is misbehaving with seat belts on the school bus all you have to do is look and see if you see their head pop up above the seat, you can tell they're out of their seat belt. So it's actually a pretty easy task from what...not from what we've said, but from what we've heard from school bus drivers. [LB489]

SENATOR MINES: Okay, thank you. [LB489]

STEVE WALLEN: You're welcome. [LB489]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Wallen. [LB489]

STEVE WALLEN: Thank you. [LB489]

SENATOR FISCHER: Other proponents. Good afternoon. [LB489]

DAWN PRESCOTT: Hi. Thank you for having me today. My name is Dawn Prescott, P-r-e-s-c-o-t-t, first name often gets misspelled, it's D-a-w-n. I'm from Fremont, Nebraska and I'm Benjamin's mom. Ben would be almost 20 years old today, and in his second year of college, probably studying to become the youth minister he dreamed about, but he never got the chance. Benjamin died on October 13, 2001. On that day he was riding on a school bus with no seat belt. He was 14. I was there when he died. The sun was shining that crisp, fall day as the Seward High School band headed home from a marching band contest. I was a band parent, traveling with the group, when the school bus veered sharply off a bridge and plunged 50 feet into a creek. Words cannot begin to express the horror I saw. Students were lying everywhere. All I could think about was getting to my son at the front of the bus. As I managed to plant my feet and move, I saw my seat mate and friend, Tracy, another band mom, lying slumped in the aisle. She was dead. Students lay in tangled heaps, having been tossed like pinballs inside the bus as it lurched and landed. Bodies having impacted other bodies were piled in the aisles and on the floor. I climbed over those students, other people's children, who were calling out for help because they could not breathe and were struggling to get free. I finally found Benjamin. He lay in the aisle on top of his friend Adrian, who was struggling to breathe beneath his weight. But my son was not struggling to breathe, he was not struggling at all, he was gone. I dared not to believe it because I saw no outward injuries. He looked like he was asleep. I begged, I pleaded with the rescuers who carried my son out of the hatch of the bus and tried unsuccessfully to resuscitate him. But it was over. In an instant his promising, vibrant young life had been cut short. This is the most difficult story I have ever had to tell, but one thing is sure, I survived because I reached up and held fast to the overhead luggage rack as the bus pitched violently over the guardrail and into the creek below. Only because I clung to that luggage rack did I remain fully conscious and avoid hitting my head. I was admitted to the hospital with critical injuries to my left side. A badly separated shoulder, several broken ribs, a collapsed lung, cracked vertebrae, and a broken pelvis. These injuries were likely caused by the impact

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of my friends body slamming into me as the bus rolled. Interestingly, a student across the aisle, on the side of the bus that impacted the creek also held onto the luggage rack during the fall. He walked away. His brother who sat on the same side of the bus as I and who had not secured himself was not so fortunate. Today he remains in a wheel chair, continues rehabilitation, and will need life-long care due to his massive head injuries. His life has been altered forever. In all this, please note and remember this, it was the driver's section of the bus that impacted the hardest, hitting the river bank. My son and another friend, Ian, sat just one and two rows back from the driver. The driver wore a seat belt. My son and his friend did not. The driver survived, my son and his friend did not. At the moment the bus rolled, the unbelted passengers on that bus were still traveling at the buses original speed, traveling and flying through the air, bodies impacting bodies, only to land in a heap when the bus did. Lap and shoulder belts, a three-point system must be a priority for school bus safety. We are required by law to buckle up in every other vehicle, but when a five-year-old hops on a school bus for the first time, he's puzzled when he can't find the seat belt. Are we willing to shoulder the risk of our children's lives every time they ride in a bus? Our children are precious cargo, worth enough to make sure school buses have seat belts for their passengers as well as their drivers. I have lived through a tragic bus accident firsthand, and I am convinced that seat belts would have saved lives that day, including my son's. Thank you for the opportunity to speak to you today. I strongly urge you as committee members to vote to pass LB489 on. [LB489]

SENATOR FISCHER: Thank you, Mrs. Prescott. I speak for myself and I believe all the committee members, in offering you our sincerest sympathies in the loss of your son. And we certainly appreciate you being here today and sharing your story. [LB489]

DAWN PRESCOTT: Thank you. [LB489]

SENATOR FISCHER: Are there any questions? I see none. Thank you very much. [LB489]

DAWN PRESCOTT: Thank you. [LB489]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB489]

SUSAN FERRIS: (Exhibit 5) Good afternoon. My name is Susan Ferris, S-u-s-a-n F-e-r-r-i-s, and I come to you today as the president-elect of the Lancaster County Medical Alliance. For most of the past ten years, I've also been a board member of the Nebraska Medical Alliance. We are the voice of the medical family and we work to build healthier communities. We support our spouses in their work to provide medical care, and we also speak for the patients and families who receive that care. I'm also the mother of four, and recently the grandmother of one. We remember well the years where seat belts were optional in automobiles. We now have shoulder belts and car

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seats for babies, and booster seats for toddlers. We have airbags, and side airbags, and safer tires. We have raised a generation that gets into a car and automatically reaches for seat belts. We can get into trouble for not wearing a seat belt and for not ensuring our children's safety in a car. We want these same seat belts in our school buses. The American Medical Association endorsed legislation to provide this most basic safety equipment for our school buses in 1987. That was 20 years ago. When my husband, Michael, was a brand new doctor, 27 years ago, and he was serving his first ever weekend on ER duty, he stopped and called me in the middle of it. He wanted us to promise each other that our family will always wear our seat belts, always, and we do. It does not take a medical expert to tell us today that we need to put seat and lap belts, shoulder and lap belts in our school buses. I applaud the efforts of my friend, Dawn Prescott, for bringing it to my attention and yours that this work is not finished. Thank you to Senator Harms for stepping forward to offer his leadership on this issue. This is long overdue. Please follow it to completion this session. Thank you. [LB489]

SENATOR FISCHER: Thank you, Ms. Ferris. Are there questions? I see none. Thank you very much. [LB489]

SUSAN FERRIS: Thank you. [LB489]

SENATOR FISCHER: Next proponent, please. I see none. Are there any wishing to speak in opposition to the bill? I see none. Any wishing to testify in the neutral capacity? Good afternoon. [LB489]

VIRGIL HORNE: (Exhibit 6) Senator Fischer, members of the committee, my name is Virgil Horne, V-i-r-g-i-l H-o-r-n-e, representing the Lincoln Public Schools. First, let me say that in the state of Nebraska we agree with the fact that there are 2,636 buses. They run in size from the Type A bus, which is usually passengers of 14 to 16 passenger style buses. They are a bus, they are not a van, they are required to have seat belts. They go in size up to an 84-passenger bus which is not required. To help clarify your thoughts about why I'm testifying in a neutral capacity, let me say that the Lincoln Public Schools have 111 buses, 83 of those buses have lap belts on them. They are the buses that run in size from 47 passengers on. We have 28 what we call transit buses, which are 84-passenger buses, they do not have lap belts on them. Again, from a factual standpoint, we've been told that when we purchase a new bus, a 59-passenger bus, it would cost us anywhere from \$8,000 to \$10,000 additional cost for the lap belts alone. If there were shoulder restraints as well it could go higher than that. I do have a document. I would just indicate that this document is from the School Transportation web site. School Transportation is a magazine printed primarily for directors of school transportation across the country. While school bus manufacturers and manufacturers of other types of equipment and supplies for school buses advertise in this magazine, they are not in any way connected from the standpoint of owning the magazine or have that influence on us. I would simply encourage you to read it. The

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reason I'm giving it to you is because in the back part of this there are pros and cons listed, so that it is not a one-way street as far as supporting or opposing this particular legislation; it's simply additional information that comes to you in a neutral manner. And that concludes my testimony. [LB489]

SENATOR FISCHER: Thank you, Mr. Horne. Are there questions? Senator Stuthman. [LB489]

SENATOR STUTHMAN: Thank you, Senator Fischer. Virgil, how long have you been with the Lincoln schools? [LB489]

VIRGIL HORNE: Thirty-six years. [LB489]

SENATOR STUTHMAN: Thirty-six years. In that time frame have you got any idea how many accidents you've had? [LB489]

VIRGIL HORNE: How many accidents? [LB489]

SENATOR STUTHMAN: With school buses? [LB489]

VIRGIL HORNE: Oh, well, we probably had numerous accidents, but injury accidents, there are two classifications of accidents. There are accidents where a bus will hit a car or a car will hit a bus, things of that nature, there's probably numerous of those. The number of injury accidents, if I may, Senator, rough idea? [LB489]

\_\_\_\_\_ : In the five years I've been associated, none. [LB489]

VIRGIL HORNE: This is our director of transportation. So in five years we've not had any injury accidents. [LB489]

SENATOR STUTHMAN: So there would be no deaths either then? [LB489]

VIRGIL HORNE: To my knowledge, in the 36 years I've been in Lincoln, and I was originally hired in Lincoln as the safety director, I'm not aware. And I want to clarify that at my age I have senior moments, but I can't recall us ever having a death as the result of a school bus accident in the Lincoln Public Schools. [LB489]

SENATOR STUTHMAN: Okay, thank you. [LB489]

SENATOR FISCHER: Other questions? I have a question, Mr. Horne. How often do you replace your buses? [LB489]

VIRGIL HORNE: May I defer to my bus driver? [LB489]

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SENATOR FISCHER: Yes, please. [LB489]

\_\_\_\_\_ : Ten to 12 years, and in some cases 15 years, depending on the size of the bus. [LB489]

SENATOR FISCHER: Would you repeat that for the mike. [LB489]

VIRGIL HORNE: Oh, excuse me, for the record, 10 to 12 years, sometimes 15 years, depending upon the size of the bus. And I would assume that the smaller the bus the more frequent the replacement. That's a correct assumption. [LB489]

SENATOR FISCHER: Okay, thank you. Other questions? I see none. Thank you very much. [LB489]

VIRGIL HORNE: Thank you. [LB489]

SENATOR FISCHER: Anyone else to testify in the neutral capacity? Good afternoon. [LB489]

BRIAN HALE: Senator Fischer, members of the committee, my name is Brian Hale. I represent the Nebraska Association of School Boards. We certainly believe that the safety of all the school kids should be of paramount concern. There is a variety of research on this topic. You've been presented with at least now a couple. Certainly there are a lot more through the years as people have tried to research this. School boards are being pressured from a lot of sides. The federal government would have us eliminate the 15-passenger vans with seat belts in favor of school buses without seat belts to transport students. And so we have that continuing issue from the federal level. We are appreciative that Senator Harms is not asking for retrofitting. That is a major expense item that, especially when you're talking about replacing the seat and with the hardware. Ultimately, wearing seat belts is a matter of personal responsibility that we all face every time we get in a vehicle. And so the liability issue is a concern. When you're putting personal responsibility on 6-year-olds, or 16-year-olds to not only click that seat belt, but also keep it clicked as their attention span wanders and something across the aisle appeals to them. And so the liability issue about what...who's going to be responsible for that, to what extent is the school district liable in an event that something happens, not only just going to school, but certainly traveling to an athletic event? Controlling football players is every bit as difficult or more, than controlling 7-year-olds, I suspect. So we are very much concerned about that. We did not see the amendment necessarily, but I think that concerns about liability on school districts should something happen in that respect is very much in our bailiwick of interest in this bill and would keep us from supporting it outright in this respect. So by and large, I think that's my comments. I'll entertain questions. [LB489]

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SENATOR FISCHER: Thank you, Mr. Hale. Are there questions? I see none. Thank you very much. [LB489]

BRIAN HALE: Thank you. [LB489]

SENATOR FISCHER: Anyone else to testify in the neutral capacity? Senator Harms, would you like to close? Oh, I'm sorry. You have to jump up fast in this room. (Laughter) Good afternoon. [LB489]

JEREMY MURPHY: Good afternoon, Senator Fischer, members of the committee. My name is Jeremy Murphy and I'm the associate director for Education Issues for Nebraska Catholic Conference. [LB489]

SENATOR FISCHER: Could you spell your last name? [LB489]

JEREMY MURPHY: Yes. It's M-u-r-p-h-y. My first name is spelled J-e-r-e-m-y. We're taking a neutral position on this bill. We have about 120 Catholic schools in Nebraska that would be impacted by this. And while we're very concerned about our children's safety, we must keep in mind this appears to be a significant unfunded mandate for every public and private school in the state. One question I think the committee will have to deal with is, where is the pool of funds to pay for this? There may not be any money from the state to pay for this, and we don't know if there is any federal money to pay for this, although if there is, we need to find out about that. We're also concerned, the fiscal note may underestimate the cost because it does not deal with the issue of purchasing a new bus or replacing your entire fleet, if you choose to do that. And we're told by at least one of our school administrators that new buses can run \$70,000 to \$75,000, depending on the size of the bus. If the bus is reconfigured and retrofitted, do you need more school buses? It appears that the answer to that may be yes. It's unclear from the language of the bill...I think Senator Harms appears to be intending to require a lap and shoulder belt in every case. But that's not clear from the language in the bill. It's not clear from the language of the bill if this is going to require five-point safety seats for toddlers on school buses, whether parents need to bring their own car seats to install into the school bus or whether that's the school's responsibility. And what about the special needs children? We're not clear on what standards are appropriate and applicable within the definition of occupant protection system in the statute. If we're referring to federal language, we need to cite which federal statutes we're talking about. I was going to ask the committee to deal with the issue of, in a liability situation, what happens if a school district has buses with seat belts and buses without, and something happens with the bus that does not have the belts? There's a lot of liability exposure there to every school district and every school that owns a fleet that's split in that fashion. From our perspective, the only way for us to handle financially a mandate of this nature and size would be to raise tuition in our schools to the point that the parents

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could not afford tuition, further increasing the financial pressure on parents and crushing parental choice in education. Perhaps the best way for the committee to proceed would be to study the issue and determine if there is clear-cut research showing which occupant protection systems are safer for children of different ages, sizes and special needs. Are there any questions? [LB489]

SENATOR FISCHER: Thank you, Mr. Murphy. Any questions? I see none. Thank you very much. Any others who wish to testify in the neutral capacity? I see none. Now, Senator Harms, would you like to close? [LB489]

SENATOR HARMS: Yes, thank you very much for giving me the opportunity to introduce this piece of legislation. It is a dilemma, there is no question about it. You've heard both sides. I believe that when you look at the liability question, you can do about the same thing California did, you can put a hold harmless clause on that until people can bring themselves up-to-date. The other side, if the private schools have major concerns about it, I can understand that. We can also write them out of the piece of legislation, which I would not recommend for you. But I think that it's time that we seriously give this consideration. Whether you're in Lincoln, Nebraska or whether you're in rural America, in rural America we drive a lot of miles and the roads are bad, and you have great opportunity for having an accident. So it still boils down to safety. It still boils down to when the mother puts the child on the bus, are we going to be assured that we've done everything we can to bring that child home safely? When the child gets on the bus, are we assuring that child will have the opportunity to grow up and not be crippled or emotionally scared. So it is a dilemma. But I think that everyone who is in this room is very bright and will find a solution to it. And I thank you for your graciousness and kindness in letting me bring this before you. And I would be happy, if you have questions about where we got the data, we have a lot of data, a lot of research, it's very clear, which tells you which is the best to use. So you just let me know, and I'd be very happy to do that. I thank you very much for your kindness. Thank you. [LB489]

SENATOR FISCHER: Thank you, Senator Harms. With that...oh, we have a question, Senator. You have to flag me down. Senator Schimek. [LB489]

SENATOR SCHIMEK: Thank you, Madam Chair. [LB489]

SENATOR FISCHER: It was such a fine closing, I thought it was a nice ending, though. [LB489]

SENATOR SCHIMEK: I know. I should have just left it alone, right? I'm sorry. [LB489]

SENATOR FISCHER: Senator Schimek. [LB489]

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SENATOR SCHIMEK: I just want to clarify something that the last speaker said, Senator Harms. And actually, this question was in the back of my mind. Where in the bill does it say that the three-pronged approach should be used? [LB489]

SENATOR HARMS: We don't say that. We just talk about the seat belt and shoulder belt. [LB489]

SENATOR SCHIMEK: It could be one or the other or both? [LB489]

SENATOR HARMS: No, we want it to be...we want the shoulder belt and the lap belt, together. [LB489]

SENATOR SCHIMEK: But it says that somewhere in here? [LB489]

SENATOR HARMS: No, I'm saying that's what we were saying. [LB489]

SENATOR SCHIMEK: Okay. [LB489]

SENATOR HARMS: You were asking the question about where that is. It's not...we don't use the term "three-pronged," we just don't. [LB489]

SENATOR SCHIMEK: Well, if that's what you want, that's what it needs to say. [LB489]

SENATOR HARMS: Yeah, I know. [LB489]

SENATOR SCHIMEK: Well, then my next question relates to the standards that exist on the date of the effectiveness of this act, which would be 90 days after session ends. What are those federal standards now? Do those federal standards say the three-pronged... [LB489]

SENATOR HARMS: You know, I'd have to go back and look at that. That document is about this thick. And I would have to go back and read that again. I did review that, but to be honest with you, I don't recall exactly what that is. [LB489]

SENATOR SCHIMEK: If you read that, you probably don't have much social life. Is that right? (Laugh) [LB489]

SENATOR HARMS: Ah, that's what my wife is saying to me now. [LB489]

SENATOR SCHIMEK: Well, I just think we ought to know what those federal standards are. [LB489]

SENATOR HARMS: Sure. They're there, they're very clear, they're very distinct. And I

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can give you that documentation that shows exactly in verbatim what it means. [LB489]

SENATOR SCHIMEK: Okay, thank you. [LB489]

SENATOR FISCHER: Other questions? Senator Mines. [LB489]

SENATOR MINES: Thank you, Madam Chair. Senator Harms, in the pros and cons that was handed out, you didn't get a chance to see it, it says there are no federal standards. So I think we have some work to do on defining and complying with whatever federal standards there might be. [LB489]

SENATOR HARMS: Well, I think it is clear...well, maybe. I don't know what... [LB489]

SENATOR MINES: Well, I don't know. This was just passed out. [LB489]

SENATOR HARMS: Yeah, yeah. [LB489]

SENATOR MINES: And I'll check it as well. [LB489]

SENATOR HARMS: I don't know about that, we just have to look at it. [LB489]

SENATOR MINES: Two things, one is liability, and I just restate that again because I need to determine for myself what liabilities there may be if we in fact advance the bill. What liabilities are there to schools that don't have restraints in all their buses? [LB489]

SENATOR HARMS: Yeah, and I think that's a good question. I think that's the question we have to ask our legal counsel. [LB489]

SENATOR MINES: Right, exactly. [LB489]

SENATOR HARMS: That's what we'll have to ask our Attorney General or someone who can give us an unofficial review of that, to see just exactly if we can do the same thing California did, maybe that's where we'll have to go, if you choose to do that. [LB489]

SENATOR MINES: The other question is more practical. And I'm presuming...the language is about a universal approach to restraint. But the idea of kids with special needs and particularly young children, let's say 4, 5, 6 years old, they'll be in the same restraint that will be used for a high school student. And I don't know that those are always compatibly. Don't we require seats for kids and... [LB489]

SENATOR HARMS: Yeah, that's true. Let's just reverse the question here a minute. What do we do now? [LB489]

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SENATOR MINES: Yeah, well, they don't do anything, right. [LB489]

SENATOR HARMS: They don't have anything. [LB489]

SENATOR MINES: Right. [LB489]

SENATOR HARMS: And I find that interesting. If you have a special needs child, the child should be treated appropriately. If the child needs to be put in a special seat, then the child should be put in the special seat. I'm guessing that they probably don't address those issues. But I don't know that for a fact, and that's just what I would think, but I might be wrong. And I've been proven to be wrong quite often. So that's okay. [LB489]

SENATOR MINES: Thank you. Join the crowd. [LB489]

SENATOR HARMS: Yeah, thank you very much. And I appreciate it. Any other questions? [LB489]

SENATOR FISCHER: I see none. Thank you very much. [LB489]

SENATOR HARMS: Well, you had good questions. Thank you very much. And, you know, if this is a starting point, this is a starting point. We just have to work at it. [LB489]

SENATOR FISCHER: Thank you very much. With that, I will close the hearing on LB489. The next bill we have is LB147. And I open the hearing on LB147. I see that Senator McDonald is here to give the opening. Welcome. [LB489 LB147]

SENATOR McDONALD: (Exhibit 1) Chairwoman Fischer and members of the committee, I'm Senator Vickie McDonald, representing the 41st Legislative District. LB147 simply applies the Class IV misdemeanor penalty provision to Section 60-6,304 subsection (4) to the entire section. Currently, the penalty provision applies only to subsection (2) and to subsection (3). Last summer, a carrier enforcement officer issued a traffic ticket to a commercial truck which was part of a fleet hauling dirt for a construction project. The trucks hauled dirt from a site on one side of town, through town, to the other side for use in the project. Even though their loads were covered, big clouds of dust sifted out from under the load covers and followed the trucks down the highway. The dust coming off these loads was so heavy that it actually showed up on a film shot by the nearby property owner. The carrier enforcement officer issued a ticket in violation of Section 60-6,304 subsection (1) for the dust sifting out from under the load cover. Unfortunately, the judge was forced to dismiss the ticket, simply because the penalty provision applies to subsection (2) and (3), but not to subsection (1). As I said, LB147 is a simple bill. The statute says that contents aren't allowed to drop, shift, leak or otherwise escape the vehicle. And Section 60-6,304 subsection (1) says that law

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enforcement should be able to write a ticket for violating subsection (1) and have it stick. LB147 complies with this by applying the penalty provision to the entire section. Thank you for your time and interest. And I also have a handout. You might have received this in your offices. This was by the superintendent of law enforcement and public safety, Bryan Tuma. [LB147]

SENATOR FISCHER: Thank you, Senator McDonald. Are there questions? I see none. Thank you very much. [LB147]

SENATOR McDONALD: Thank you. [LB147]

SENATOR FISCHER: Could I have a show of hands of the people that plan to testify on this bill, please? I see none. So we have no proponents? Any proponents to step forward? Opponents? Anyone in the neutral capacity? I see none. Senator McDonald, would you like to close on the bill? [LB147]

SENATOR McDONALD: I'll waive closing. [LB147]

SENATOR FISCHER: That was a simple little bill. Thank you very much. [LB147]

SENATOR McDONALD: Now you can get on with your day. [LB147]

SENATOR FISCHER: Thank you very much. [LB147]

SENATOR McDONALD: Thank you. [LB147]

SENATOR FISCHER: With that, I will close the hearing on LB147. I will open the hearing on LB561. And Mr. Vaughan will be doing the opening on this bill. [147 561]

DUSTY VAUGHAN: Senator Fischer, members of the Transportation and Telecommunications Committee, for the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel to the committee. LB561 is being introduced on behalf of the Nebraska State Patrol. The bill authorizes a peace officer to remove or cause to be moved from a roadway obstruction...or roadway obstructions which are creating or aggravating an emergency situation or endangering the public safety, giving due regard to the protection of the property removed. This may be accomplished without the driver or owners permission. There is no liability for the state or any law enforcement agency for damage incurred to a moved vehicle. In addition, the state law enforcement agency won't be held responsible for any damages that may result from failure to exercise the authority under this bill, if the agency acts in good faith. The bill also states that whenever a vehicle is disabled or inoperable on a roadway or obstructs the flow of traffic for reasons other than an accident, the driver shall move the vehicle as soon as practical. Temporary obstructions vary in scope by the type of obstruction,

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location on the roadway and owner status. An incident obstructs traffic flow and may block travel lanes, the median, shoulder or the right shoulder. Regardless of the type or location of the incident, partial or complete road blockages result in traffic congestion due to traffic volume and limited availability of viable alternate routes. This can lead to secondary crashes, heightened frustration by the motoring public, and increased potential for civil liability by the state of Nebraska. LB561 will aid law enforcement in managing traffic around incidents to reduce congestion, delays, and road closures or detours, and also reduce the risk of secondary crashes. And I believe superintendent Tuma is here to explain how this will be done through the bill. So with that, I will answer any questions you may have. [LB561]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. Could I have a show of hands of the people who plan to testify on this bill, please? I see four hands. Thank you. Would any proponent step forward, please. Good afternoon. [LB561]

BRYAN TUMA: (Exhibit 1) Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Colonel Bryan, B-r-y-a-n Tuma, T-u-m-a, superintendent of the Nebraska State Patrol. I'm here in support of LB561 and to provide information specifically regarding the removal of obstructions from roadways. I'd like to take a few moments to provide the committee with an overview of efforts taking place between the State Patrol and other allied agencies to address the development of protocols that are intended to assist in the response and the mitigation of traffic crashes on major roadways. A Nebraska Interagency Safety Committee was formed to address planning initiatives contained in the Nebraska Strategic Highway Safety Plan. This planning document is required by the Federal Highway Administration for all states. The intent of the effort is to propose and document comprehensive highway safety measures intended to reduce traffic fatalities in Nebraska and across the nation. Aside from the State Patrol, the Nebraska Department of Roads, and the Nebraska Department of Motor Vehicles, this planning group includes input from members such as the Health and Human Services System, the Nebraska Association of County Officials, and the Nebraska League of Municipalities. One critical element of the planning effort includes the adoption of protocols known as traffic incident management. The traffic incident management model is intended to improve safety through the mitigation of traffic incidents which create costly delays or contribute to the increased likelihood for crashes to occur. The concepts associated with traffic incident management include: an examination of protocols for law enforcement, first responders, and transportation officials to employ in the event of major traffic crashes that inhibit the safe and efficient flow of traffic on the Interstate highway system or other high volume traffic roadways. The deployment of technology to assist in the mitigation of traffic crashes, and to utilize intelligent transportation system resources to monitor transportation corridors to ensure the safe and efficient flow of traffic; and to establish planning and training requirements to

improve the response and mitigation of transportation accidents. The primary goal of the Nebraska Strategic Highway Safety Plan is to reduce traffic fatalities. However, considerable attention is given to an operational perspective that safety and efficiency of Interstate and highway systems is a matter of economic priority. Today, the phrase "time is money" really applies to the manufacturing and transportation industry. Goods and products roll off the assembly line directly into trucks, who in turn transport the product to market. Unplanned delays associated with detours or traffic congestion due to traffic accidents undermine efficiency and safety, and ultimately add to the cost of business. Furthermore, in urban areas with higher concentrations of commuter traffic, efforts must be made to reduce costly and time-consuming delays associated with accidents or transportation incidents. These episodes contribute to the increased incidence of secondary crashes, additional delays, and frayed nerves. The purpose of LB561 is to provide authority for the rapid and safe removal of temporary obstructions from the roadway in an effort to manage traffic around incidents to reduce congestion and delays, and road closures or detours, and also to reduce the risk of secondary crashes. LB561 would allow a peace officer to make appropriate measures to remove or cause to be moved obstructions which are creating or aggravating an emergency situation or endangering public safety. The primary goal is to clear the roadway of wrecked or disabled vehicles, spilled cargo or miscellaneous debris. Incidents involving hazardous materials would continue to be handled according to current protocols in order to contain any materials within a restricted area as much as possible. The current procedures would not be affected by this proposed legislation. A key element of LB561 would provide protection from liability in connection with damages resulting from the removal of disabled or wrecked vehicles or with cargo that creates an obstruction and constitutes a hazard to the normal flow of traffic. In these cases, the peace officer would be required to give due consideration to the protection of property being removed. The final component of LB561 would address disabled or inoperable vehicles on roadways for reasons other than an accident and would require the removal as soon as practical as to not obstruct the regular flow of traffic. The Nebraska State Patrol has worked cooperatively with the Nebraska Department of Roads and members of the trucking and the insurance industry in the drafting of LB561. The Texas Transportation Institute reports, for every minute saved in clearing an incident, an estimated four to five minutes of associated motorist delay are also saved. And according to the National Conference on Traffic Incident Management, secondary crashes make up 14 to 18 percent of all crashes and are estimated to cause 18 percent of deaths on freeways. LB561 clarifies the statutory authority for peace officers to remove obstructions from roadways. It reduces the liability associated with efforts to remove vehicles and property in order to open roadways in an effort to promote safety and efficiency on our Interstate and highway system. I encourage the committee to advance LB561 to General File. Thank you for the opportunity to present this information to you today. And I'd be happy to answer any questions. [LB561]

SENATOR FISCHER: Thank you, Colonel Tuma. Questions? Senator Loudon. [LB561]

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SENATOR LOUDEN: Yes, Colonel Tuma, thanks for being here today. What do you do now when you have a wreck? Who removes them or who calls the wrecker? [LB561]

BRYAN TUMA: Well, essentially, the officers that are working the scene will work with the motorist or the owner of the vehicle to have that removed from the roadway. What we're trying to do with this bill is to expedite that process. We don't want to cause any undue damage to the vehicles or the cargo or the debris that's laying on the roadway, but we would like to get it cleared. In some cases, when we have to wait for approval or authority to move a vehicle, it creates substantial delays. [LB561]

SENATOR LOUDEN: You mean to say if your car is wrecked and kind of in the one lane and stuff, you have to wait and get permission from that owner before you can move that car? [LB561]

BRYAN TUMA: Not always. But there are liabilities associated with moving the vehicles, and this bill would remove those liabilities. [LB561]

SENATOR LOUDEN: Okay, because I've been notified of problems where some of the people that run wreckers complain about some of the officers cutting business certain directions. And this is the reason I wondered. I was under the impression that the officers more or less called the wrecker at the time of the accident out there, because they were usually the ones that had some kind of communications network going. [LB561]

BRYAN TUMA: We utilize a rotation system in the Patrol. The officer will ask for the next wrecker on the rotation list. In some cases the owner or the operator of that vehicle asks for a specific wrecker service, and we'll use that service. But typically we have to go off that rotation list. [LB561]

SENATOR LOUDEN: In other words, you've been doing this all those years and you didn't necessarily have authority to do that? Is that what you're telling me? [LB561]

BRYAN TUMA: Well, no, we've always had the authority to remove the vehicles from the roadway or to clear it. In some cases, due to the nature of the vehicle it takes considerable time to get appropriate equipment out there to do that. In some cases we could have some liability if we move that vehicle prematurely or in some cases we have vehicles that are just inoperable, they've become disabled for whatever reason and there we sit with no authority to move that vehicle. Then we get into these issues about who's liable for causing any damage to remove that vehicle, the contents and so forth, so what we're seeking is a clear...remove some of the issues regarding the liability when we have to remove those vehicles. [LB561]

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SENATOR LOUDEN: Okay. Now, if this law passes then, who is responsible to pay the wrecker bill? [LB561]

BRYAN TUMA: The owner. [LB561]

SENATOR LOUDEN: That would be no different than what it was before? [LB561]

BRYAN TUMA: No. [LB561]

SENATOR LOUDEN: Because I had a son get in a wreck once and called a wrecker there. And he...the wrecker came and drug it off, and then charged the fees and the storage fees, you know, and it got to be several hundred dollars for storage fees, and finally told them they can either keep the car or see you in court. And so they kept the car, that's how we settled because... [LB561]

BRYAN TUMA: Yeah. [LB561]

SENATOR LOUDEN: And I'm wondering how you will get away from something like this, with this bill, if this improves that situation any? [LB561]

BRYAN TUMA: Well, I think that would improve our situation, because if the vehicle is obstructing the roadway, our goal is to restore traffic flow and to remove the obstruction so we don't have any secondary crashes. If we have a disabled vehicle, for whatever reason, it's blocking the roadway, if the owner comes back and says, I didn't want that wrecker service or I didn't want you to tow it, I had help on the way, who's going to pay the wrecker bill now? This would remove those issues, we feel. [LB561]

SENATOR LOUDEN: In other words, this is...all this bill does is take you out of the liability issue? [LB561]

BRYAN TUMA: It would help us in that regard, yes. [LB561]

SENATOR LOUDEN: Okay, thank you. [LB561]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB561]

SENATOR STUTHMAN: Thank you, Senator Fischer. Colonel Tuma, in an accident situation, can only a licensed tow truck remove a crippled vehicle or can I hook onto my brother's vehicle and drag it out? [LB561]

BRYAN TUMA: I think you could probably hook onto that vehicle and move it. To my knowledge, there's no requirement that there's a...you know, that you be a certified wrecker or any of those issues. If you want to remove the vehicle yourself, you can

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certainly do that. But when we get into those situations, you know, we don't want the officer out there working an accident scene, the vehicle being a potential traffic hazard, something that might cause secondary crashes or it's disrupting the flow of traffic to wait for Uncle Joe to show up with their flatbed trailer so that you can load that vehicle on it. I mean we don't have that luxury. Our goal is to get the roadway cleared as soon as possible. [LB561]

SENATOR STUTHMAN: And open the traffic lanes. [LB561]

BRYAN TUMA: Right. And typically, the owner/operators of wreckers that are in the business that do it every day can respond much quicker and have the appropriate equipment to get that done. [LB561]

SENATOR STUTHMAN: But there is no law stated that only a tow truck can remove it from the scene? [LB561]

BRYAN TUMA: Not to my knowledge, no. [LB561]

SENATOR STUTHMAN: Okay, thank you. [LB561]

BRYAN TUMA: Yes, sir. [LB561]

SENATOR FISCHER: Other questions? Senator Mines. [LB561]

SENATOR MINES: Thank you. Colonel Tuma, there one term of art used in Section 2, subsection (4), whenever a vehicle is disabled or inoperative or for any reason obstructs the regular flow of traffic. It would then allow for the removal, as soon as practical. And "as soon as practical" kind of has a broad meaning. I mean, what would your definition of "as soon as practical" be? [LB561]

BRYAN TUMA: Again, getting the proper equipment, safety is a huge concern. Typically, we have wreckers that have the appropriate lighting equipment on them, other safety equipment so that they can respond quickly, efficiently, and get the job done again more efficiently. [LB561]

SENATOR MINES: But here might be an example, because this is not in a wreck, this is disabled or inoperative. Let's say I'm driving home tonight on the Interstate, my car runs out of gas. I get out of the car and I walk down to get some gas. As soon as practical could mean that a trooper comes by, there's no one in the car, calls a tow truck and tows my car. Is that right? [LB561]

BRYAN TUMA: Again, I think you have to consider that the officer is going to have some discretion on at what point they find it necessary to actually have that vehicle

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removed. I can think of a lot of situations where our officers will get out and push the vehicle, unless the aid of folks to help push it off to the side of the road, if it's blocking a roadway. Some of our fleet is now equipped with push bumpers, so we can actually, if the motorist is there, we can push the vehicle off to the shoulder of the road without any damage to the vehicles. [LB561]

SENATOR MINES: But if I'm already pulled off to the shoulder, that is part of the roadway. So... [LB561]

BRYAN TUMA: That's correct. I think what we're concerned with mostly here is blocking the traffic lane... [LB561]

SENATOR MINES: Right. [LB561]

BRYAN TUMA: ...so we can restore traffic flow. [LB561]

SENATOR MINES: Okay, thanks. [LB561]

BRYAN TUMA: Yes, sir. [LB561]

SENATOR FISCHER: Other questions? I see none. Thank you. Oh, Senator Louden. Sorry. [LB561]

SENATOR LOUDEN: Yeah, got one more to follow up. Thank you, Senator Fischer, to follow up on Senator Stuthman's. If we have this wreck and one of the cars ends up clear down in the ditch, how quick do you have to clean it up then with this law or nowadays? [LB561]

BRYAN TUMA: Typically, if we're on the scene to investigate that accident, we will make arrangements to have it removed as soon as possible. [LB561]

SENATOR LOUDEN: Yeah, but it's not in the roadway, it's clear down in the ditch. [LB561]

BRYAN TUMA: It's not. But we also have vehicles that are disabled, the owner or the operator might be injured and we have some responsibility to protect that property as well. So we will collect their personal items, if they're scattered all over, put those in the vehicle, and get it into some type of safe storage. [LB561]

SENATOR LOUDEN: Okay, thank you. [LB561]

SENATOR FISCHER: Other questions? I see none. Thank you, Colonel Tuma. [LB561]

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BRYAN TUMA: Thank you. [LB561]

SENATOR FISCHER: Other proponents of the bill, please. Good afternoon. [LB561]

MIKE HYBL: Afternoon, Madam Chair, members of the Transportation and Telecommunications Committee, my name is Mike Hybl, H-y-b-l. I'm the registered lobbyist for the Nebraska Trucking Association testifying in support of LB561. Colonel Tuma has gone through, I think, the substantive provisions of the bill. The Legislative Committee for the Trucking Association has reviewed this bill. Our specific interest of the association is that in instances where there is an accident upon a highway that law enforcement have the tools that are necessary to restore traffic flow, to allow traffic to continue to move efficiently, remove congestion that might cause follow on accidents after the initial accident has occurred. With that, unless there are any questions, I'll close my testimony. [LB561]

SENATOR FISCHER: Thank you, Mr. Hybl. Are there questions? I see none. Thank you very much. Other proponents of the bill? I see none. Are there opponents of the bill? Please step forward. Good afternoon. [LB561]

PAUL O'HARA: Good afternoon, Madam Chair, members of the committee, my name is Paul O'Hara. I'm a registered lobbyist appearing today on behalf of the Nebraska Association of Trial Attorneys. We have reviewed LB561, have no problem with Section 2. It is very straightforward in what it proposes, but we find Section 1 is very confusing and needs work, at minimum. In Section 1, subsection (4), it proposes an immunity with no standard whatsoever. And in these civil liability cases, immunity is generally expressed, these standards are generally expressed as ordinary negligence or gross negligence or willful and wanton negligence. And I think Senators Mines, and Hudkins, and Pedersen, and Schimek in the Judiciary Committee hear these with some regularity. But subsection (4) would bypass all of the standards of negligence which are used essentially to hold someone's conduct accountable, and would say that any actions taken, even if totally irresponsible, would be protected. And subsection (5) offers the standard of good faith. Good faith is a standard which is used on contract law, it is used in insurance law, but negligence is the standard that's used in tort law. That said, these two sections are stating essentially what the law already holds. The U.S. Constitution says that a public body cannot take private property without just compensation. But the courts have held that a public body is not liable for damages, not liable for a taking if it destroys or damages private property while properly exercising its police power in abating a nuisance or a public health standard. There is also the general proposition that a public body cannot give an order...must give an order...an owner sufficient notice, under the due process provision, to be heard, an opportunity to remediate the hazard in order for that public body to exercise its police power in the destruction of private property. But courts have recognized situations where the public body can summarily destroy or damage property without liability for a taking. And that is

when the courts have found that an emergency exists such that the due process is not as encompassing as that necessary in the absence of such emergency. And that was a Nebraska case. In short, the law now says that if there is a hazard, the public necessity standard says it can be removed. So Section 1 would just, in our opinion, clutter the law. If you choose to advance the bill, we would suggest that you either apply the negligence standard to the actions in Section 1 or more appropriately remove Section 1. I'd be happy to answer any questions you may have. [LB561]

SENATOR FISCHER: Are there questions for Mr. O'Hara? [LB561]

PAUL O'HARA: Thank you. [LB561]

SENATOR FISCHER: I see none. Thank you. Other opponents to the bill? I see none. Anyone to testify in the neutral capacity? Good afternoon. [LB561]

LOY TODD: Good afternoon, Senator Fischer, members of the committee. My name is Loy Todd. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. It's L-o-y T-o-d-d. We've chosen to testify in the neutral capacity on this bill, basically, because if the committee chooses to pass this out with the immunity clause, I guess we're very concerned with that, unless we're part of the immune group. As you can understand, my members have tow trucks and sometimes they're called by the Patrol or other law enforcement to remove these vehicles or parts of vehicles or whatever else fell on the highway. And we do that at the request of either the owner or the Patrol. And it's a judgment call. My members tend to have to rely on the judgment of the law enforcement personnel. This bill allows them to make a judgment, call our people, step aside and say, good luck, I hope we were right for your sake. It seems inappropriate. If there's going to be an umbrella of immunity, then it ought to encompass those people acting at the request of law enforcement or the government officials. And so we would ask that if you do consider advancing this with the immunity provision, that we be added to those people who are immune. And, Senator Loudon, you bring up a very good point. Our other difficulty is who pays us? We run into that from time to time because, as you well understand, someone who is disgruntled about the vehicle being towed in the first place or whatever happened, is reluctant to embrace the towing bill. And so we would like the committee to consider some provision in there that if a private party acts at the request of the government or law enforcement, that either government or law enforcement or the consumer of the services has to pay. And I'll give you two very brief examples of the kinds of difficulties that we do experience. One, I believe that Senator Hudkins for sure will remember, there were some over length bills in the last few years where what my heavy truck dealers were experiencing is the State Patrol would find or have a disabled semi on the Interstate, call my people. They would come and hook up to haul the disabled semi off, and then the State Patrol would give us a ticket for being over-length because you would add the length of the tow truck to the length of the disabled vehicle. So sometimes judgments aren't all that great. And so if

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we're going to be subjected to the judgment of the people who do that, we want some kind of shared immunity with them. Another typical provision, we had one in the Norfolk area, where I believe the local sheriff raided a party, called my members to come and tow...the kids took off, left their vehicles stranded all over the place. Called our tow trucks, they came and took the vehicles and impounded them. We were sued for conversion of those vehicles because we were holding them until we got paid for the tow. And the courts held that it was our responsibility and that we wrongfully held those, even though we did it at the request of law enforcement. So life isn't as simple as one might think. So if the committee does choose to advance this, we would also like some responsibility for government officials and law enforcement, if we are doing that pursuant to their requests. Thank you. [LB561]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Louden. [LB561]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Loy, this actually then is a liability issue, this bill, more than it is a towing issue? Is that correct? [LB561]

LOY TODD: It sure looks like it to me, Senator. [LB561]

SENATOR LOUDEN: And why hasn't that liability ever been brought up before? I mean, they've been towing these vehicles that get wrecked and everything for a long time. If it's working, how come we're trying to fix it? [LB561]

LOY TODD: In my experience, historically, with this issue is it falls on a case-by-case basis. If the person doing the towing happened to be negligent or careless or even grossly negligent, they ended up suffering the consequence. If everybody did everything right, then you have a bit of the roll of the dice. But that's not our bill. [LB561]

SENATOR LOUDEN: Are you satisfied with the status quo? [LB561]

LOY TODD: No, we kind of like this immunity thing. It sounds good to us. [LB561]

SENATOR LOUDEN: You like this bill? [LB561]

LOY TODD: If we are included in the umbrella of people immune. We don't like it all, if we're not. [LB561]

SENATOR LOUDEN: Okay. But I mean the status quo is you're better off the way you are now than if this bill is passed such as it is? [LB561]

LOY TODD: We're better off with status quo than this provision, I believe, because at least we'll have shared responsibility then if we leave the law alone. [LB561]

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SENATOR LOUDEN: Okay, thank you. [LB561]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB561]

LOY TODD: Thank you. [LB561]

SENATOR FISCHER: Anyone else to testify in the neutral capacity? I see none. With that, I will close the hearing on LB561. Now we will open the hearing on LB621. And Senator Pirsch is here, so welcome, Senator Pirsch. [LB561 LB621]

SENATOR PIRSCH: Thank you, Madam Chairwoman. Members of the Transportation and Telecommunications Committee, my name is Pete Pirsch. The last name, for the record, is spelled P as in Paul i-r-s-c-h. I'm here as the sponsor of LB621. LB621 seeks to enhance the penalty and enforcement provisions for speeding violations. The legislation creates a new classification of speeding violation. Under this new classification the operation of a motor vehicle in excess of 35 miles per hour over the authorized speed limit will assess 5 points against the driving record of the operator. Additionally, any person violating the maximum speed limit by operating a vehicle in excess of 35 miles per hour over the authorized limit shall be fined \$400. Conceptually it's a pretty nontechnical bill, it just adds...currently, there are five tiers of speeding: 1 to 5 miles over is a \$10 fine; currently, 6 to 10 is \$25; 11 to 15 is a \$75 fine; 16 to 20 is a \$125; and then the top level right now is 21 miles per hour and over, and that is a \$200 fine, those five tiers. I'm just adding a sixth tier to encompass those extreme speeders. The problem, as I've experienced, as a criminal prosecutor now is that unfortunately due to films such "The Fast and the Furious", and the existence now of high performance automobiles and motorcycles is that there are more and more vehicles on the road going at very extreme, dangerously high speeds, speeds where it is not...it leaves the realms of high level possible accidents and enters the realm of where accidents are probable. And this is...there is one thing that I want to point out with respect to the way that the bill looks to you, and there does seem to be a lot of underlying language there on the bill. And I should explain that. That at the time that I submitted just this small proposal to add yet the sixth tier to the five that exist, the Revisor's Office asked me if I could use this as an opportunity to, in parts of the speeding statute that I wasn't changing clarify some language. And I did accede to that. So you will see that the language has been changed in the lower speeds that is for clarification purposes suggested by the revisor, and not due to any substantive changes. However, in so making those clarifications, adding verbiage that the revisor thought was clearer to the average reader, I do note that there was one error that she made, and that is in subsection (a) it says \$10 for traveling 1 to, and as per this...the way the bill is submitted now it says 1 to, and 5 has been crossed out, and 6 has been added and underlined. It actually should remain 1 to 5 miles over. So that's on page 5, line number 7, where it does say the new language would purport to say 6, that's incorrect; it should remain 5

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miles per hour to stay consistent with the prior language. Really, where the heart of the change takes place are in lines 18 through 22. And from now on, under this bill, it would make it so that the current law is now if you're going 81 miles per hour in a 60 zone, that's a \$200 fine; and if you're 160 miles per hour in a 60 zone, that's a \$200 fine. So this would introduce...it would say now from 21 miles per hour to 35 miles per hour, and that's in lines 18 and 19, now that remains...that would be a \$200 fine; and now, as I stated earlier, it would be a \$400 fine for traveling 35 miles per hour over the authorized speed limit. So if the speed limit were 65 miles per hour, if you're at 101 miles per hour and over you would now be subject to a new \$400 penalty and 5 points now on your license. So that is the effect of the bill. And again a couple of reasons brought this, again one of which, and I won't read it, there are an increasing number of speeders who travel at high speeds. Also a recent, 1997 court case actually, 1997 State v. Howard, indicated that in the past prosecutors, when they have charged individuals who are speeding at high speeds, 140 miles per hour in a 45 mile per hour zone or something, with charges of reckless driving. Well, the courts have not sustained such convictions, and have held that that is not an example of reckless driving, merely speeding. And so this would seek to, I think more accurately, ascribe a penalty to a type of activity that does present a great deal of danger to people in society. So thank you for your time. [LB621]

SENATOR FISCHER: Thank you, Senator Pirsch. Are there questions? Senator Stuthman. [LB621]

SENATOR SCHIMEK: Thank you, Senator. [LB621]

SENATOR FISCHER: Senator Schimek. [LB621]

SENATOR SCHIMEK: Well, you were pointing at me and then... [LB621]

SENATOR FISCHER: I didn't know if you had your hand up, though. You kind of went like this then. Senator Schimek. [LB621]

SENATOR SCHIMEK: My question isn't so much about what you're trying to do here, Senator Pirsch. I think that what you're trying to do is a good thing. But something occurred to me when I looked at this bill and I honestly don't know the answer. This bill affects both points and fines. [LB621]

SENATOR PIRSCH: That's correct. [LB621]

SENATOR SCHIMEK: If somebody from out of state, for instance, is traveling through Nebraska and is apprehended, arrested or issued a ticket for traveling any of these different categories over the speed limit, they get a fine. But they don't get any points on their drivers license deducted, do they, if they're from out of state? [LB621]

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SENATOR PIRSCH: Very good question. I'm going to...I anticipate a number of individuals testifying after me here today who can maybe address that more in-depth. But I'll tell you that it is my understanding that we do belong to a compact. [LB621]

SENATOR SCHIMEK: Okay. [LB621]

SENATOR PIRSCH: And so it may well be that in certain states those points would assess, and perhaps in others they would not. It's that way with all, I believe, traffic violations, that sort of compact. So it wouldn't be introducing a new element into the equation, so to speak. [LB621]

SENATOR SCHIMEK: No, I realize that you're not trying to change anything here, except just the number. But I've not been on Transportation Committee before and I never thought about that before. [LB621]

SENATOR PIRSCH: Yeah. That's an excellent question. [LB621]

SENATOR SCHIMEK: But it seemed to me that if we can't deduct points off of that traveler from the other state, we ought to be able to assess a heavier fine. That was the only thing I was thinking. [LB621]

SENATOR PIRSCH: Yeah. [LB621]

SENATOR SCHIMEK: Thank you. I'll wait for further information. [LB621]

SENATOR PIRSCH: Sure. [LB621]

SENATOR FISCHER: Thank you, Senator Schimek. Now, Senator Stuthman. [LB621]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Pirsch, it is my understanding this is...that over 35 would be that expensive one. So you're coming on a...on a blacktop road and you enter one of these small communities where the speed limit is 20 and you're going 56, that would be a \$400 fine? [LB621]

SENATOR PIRSCH: Well, I would say that probably, and I appreciate your question, probably those problems already exist. Hopefully, I believe that there is a system in place so that we don't have on our roads today immediate drop-offs, where you're going from...great drops of speed, from 65 to say 25 or something of that mechanism. However, built...and this is probably worth mentioning, there always is discretion built into the law. The judges can always order, and this is kind of a release valve, if they think that the substantive facts, though you violate the terms of the statute as written, that the technical violation has taken place, but that there are facts that would somehow

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make it unfair for this type of fine to be levied. The judge, as exists now, always has the ability to place a person on probation, as they do in Douglas County quite frequently. If that happens, the statutes say that person, the judge can order that person to attend a traffic school. And if that is the case, the person can escape paying any fine whatsoever, and just pay the costs of the traffic school and in so going to the traffic school, it's my understanding, that they also escape any points from being assessed. So this is...there are processes in place to give judges the discretion to do justice there in the courtrooms in light of the circumstances. [LB621]

SENATOR STUTHMAN: Yes, and thank you for those comments, Senator Pirsch. I also think in the situation that I am talking about, it comes off of a 65 mile an hour road onto a blacktop, which I think is either 60 or 50 with no posted 60 or 50, and then the first posted sign is 20 miles an hour. And with the experience that I've had, it has to be in increments of 10 miles or 15 miles posted, you know, you go from 35 to 45 or 45 to 35, to 20 or 25. [LB621]

SENATOR PIRSCH: Yeah. And that's probably going to be a problem at any, you know, from going from even the current paradigm that we have now, if you're going from, you know, 60 to, like I said, 35, that might require, you know, some...perhaps it's inadequately posted as required by law currently. [LB621]

SENATOR STUTHMAN: The concern that I had, you know, going from 55 to 20 is not near as dangerous as going from 105 to 70. [LB621]

SENATOR PIRSCH: Yeah. [LB621]

SENATOR STUTHMAN: I mean, that, to me, is a different situation. [LB621]

SENATOR PIRSCH: Okay. [LB621]

SENATOR FISCHER: Thank you, Senator Stuthman. Are there other questions? Senator Louden. I have...Senator...okay. [LB621]

SENATOR LOUDEN: Go ahead. [LB621]

SENATOR FISCHER: Thank you, Senator Louden. I do have a question dealing with construction zones. If you have the \$400 fine, does that double in construction zones? [LB621]

SENATOR PIRSCH: It would be. And that is to...it's that way with every category. And that is to encompass the extra risk that is attendant when you're...and in school zones as well, as I understand. So if you're going at that sort of speed, say in a 25 mile per hour school zone you're going 80 miles per hour, you know, as I said, there's a pretty

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good probability that you're going to be striking a child, so it is...I think it's appropriate for the law to step in, in situations like that where we have young children playing by roads, that that is such a dangerous activity, that that would be appropriate. Again, though there is that built-in release mechanism that if a judge were persuaded otherwise, hearing the facts, that he could step in and just order traffic school. [LB621]

SENATOR FISCHER: Are there statutes that we would have to look at changing if we did advance this bill then that deal with the school zones and construction zones? Or does it just say doubled in those statutes? Have you looked at that? [LB621]

SENATOR PIRSCH: It wouldn't require anything more than is encompassed by the bills you have in your packet. It just fits right nicely with the existing...it's just adding another...a sixth tier to the five tiers that already exist is my understanding. [LB621]

SENATOR FISCHER: Okay, thank you. Senator Louden. [LB621]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Senator Pirsch, I see what I think you're trying to do from your presentation that you're concerned about these people driving 101 miles an hour down the Interstate or something like that. And I was always under the impression that when you were going above 90 or 100 miles an hour, that was a different kind of fine, because usually if you get stopped, you get to ride to town in the back of the police car rather than just getting a ticket. And you certainly can't do this free payment deal and get it off, you have to go to court, if you're going a certain speed over. So I agree, if you're going 100 miles an hour then, as I had a cousin always used to say, you can drive as fast as you feel like you can afford. And that takes care of that. The problem I see with this, I think you'll have more problems with, as Senator Stuthman said, going through these slower places. I travel around the state a lot. There's dozens, there's truckloads of places, you might say that a little town, you're coming down the highway and the little town has the speed limits, they may have a school zone in there, 20 mile an hour and you're coming along 65, and slow down to 35 or 45 or something like that, right away you're getting close to that 35 mile an hour limit, you know or spacing in there that would cost you the 400 bucks. So I...that's where I see the problem, because I've seen many places, Minatare, for example, the guy had a new...the police officer there had a new radar deal and I mean he went out on the road out there, they had a little zone right at the edge of Minatare, and he paid for the thing; Tryon, we had them in here the other day, it's 55 mile an hour speed limit coming down the road to Tryon, you turn the corner right quick and you're in downtown Tryon, it's 20 miles an hour speed limit. And I mean if you shut your eyes you went through Tryon. But nonetheless, if you have these speed traps out there, and this is what I envision, 400 bucks is enough that some of these agencies will go after 400 bucks from somebody. So I kind of have a problem with the bottom end of the thing. I have no problem if somebody is driving 100-and some miles an hour, then they can pay the fine or whatever. I have no problem with that, but I do have on the bottom side. Is there

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some way or other, instead of doing this, that you should just put it as some other class of a misdemeanor or something if you're going over 100 miles an hour? [LB621]

SENATOR PIRSCH: Well, I think given your example, where you're on a 55 mile per hour zone, and then you turn the corner and you're in a school zone, a 25 mile per hour zone, you're still, at that speed, even at that high speed you're still not exceeding this limit. You'd have to be going 56 or higher than that. So I think that there's a great enough margin, which is why we didn't make it...normally the increment is 1 to 5, 6 to 10, 11 to 15, 16 to 20. To have this and stopping at 20, which is why we didn't just make it at 25, I wanted to put it at a high enough limit so that it clearly would present a clear and present danger to those people who would be expected to be in that type of environment. For a school, you know, 25 miles per hour, you know like I said, that would be 56 miles per hour in a school zone, that does seem to be, if you're going 56 miles per hour in a school zone, is a very dangerous activity. But of course, you know, that's...my experience has been that that has been, you know, I've tried thousands of cases as a criminal prosecutor over the last nearly a decade. And that does seem to be a workable paradigm, based upon the experiences that I've had. [LB621]

SENATOR LOUDEN: Okay, thank you. [LB621]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB621]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Pirsch, is this your own bill or was it brought to you from somebody? [LB621]

SENATOR PIRSCH: No, largely it's borne of experiences that I had as a criminal prosecutor over nearly a decade now, and input from those in the community as well, and as I've gone door-to-door, of neighbors who have experienced around schools extremely high speeds that they felt presented a very real danger to their families. [LB621]

SENATOR STUTHMAN: Okay, thank you. [LB621]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB621]

SENATOR PIRSCH: Thank you. [LB621]

SENATOR FISCHER: Do you plan to stay to close, Senator Pirsch? [LB621]

SENATOR PIRSCH: You know, I'm going to waive closing. [LB621]

SENATOR FISCHER: Okay, thank you. Senator Pirsch is going to waive closing. May I ask how many people are going to testify on the bill? If you'd raise your hands. I see

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one. First we'll do the proponents. Good afternoon. [LB621]

MARTY CONBOY: Good afternoon, Senator. Chairman Fischer, ladies and gentlemen of the committee, my name is Marty Conboy, C-o-n-b-o-y. I'm the city prosecutor in Omaha, Nebraska and I appreciate the opportunity to testify in support of LB621. This particular bill is, I guess, an extension of our times. On my way down here today I noticed for the first time my speedometer goes up to 160 miles an hour. I really hadn't paid attention to that before, and I thought, gosh, I can get down from Omaha in about 20 minutes now. (Laughter) And the irony is once you go 20 miles an hour over the speed limit, you might as well go 160, there is no additional penalty in Nebraska. That's kind of unusual nationally. It also creates or is exasperated by the court decisions which have held that speed alone does not constitute reckless driving. So there really isn't the kind of offense where you can put somebody in the backseat of the cruiser, although that makes sense. At some point, and I guess where that point is, according to this bill, is 35 miles an hour over the posted limit. We normally think of those cases, I guess in Omaha certainly we've seen a lot of cases where people are going 125 miles an hour. They buy cars designed to do that, they buy motorcycles and treat them as race vehicles. And obviously the danger that presents not only to them but to other people who expect, as they proceed along at the posted speed limit as they change lanes or pull out into traffic, they're expecting other cars to arrive there at a fairly predictable rate. When somebody is going twice the speed limit, you know if you're in a 35 zone and somebody is going 70 down a street, and you're pulling out of a parking lot or a gas station, that car is going to get there pretty quick and it's going to be very difficult for you to anticipate that. Similarly, in a 20 mile per hour zone it is already, if you're going to 40 in that 20 zone, a \$200 fine. This would...I guess to the time you get almost three times that 20 miles an hour, even if you're in kind of a hurry or don't notice the sign, going 60 miles an hour through a small town downtown area is probably enough to warrant concern. And it already is a concern. I know in some communities there are, as you put it, speed traps. And I think that's a legitimate definition. I've seen them myself many times. You're driving along and if you don't see that first sign saying it went from 60 to 20, you're in trouble. And that's inappropriate. And the statutes actually provide that that should be posted properly. Hopefully, citizens who are affected by that would ask that there be proper notice to drivers nowadays. Senator Schimek, in answer to your question, it is correct that Nebraska belongs to an Interstate Traffic Compact. As such, because different states have different recidivism statutes, here we use a point system based on the nature of your violation. In Iowa, for instance, the violation accumulation, if you have three moving violations within a two year period, you can lose your license, similar to a point accumulation. And they do look at our records as part of that compact. So a speeding ticket in Nebraska will affect an Iowa license. They do not look at the level of the speed, only at whether you're convicted of a moving violation. Other states have different formulas for doing that. But those compact states do communicate with us. In addition, and for better or worse, failure to comply with our tickets is a factor, too, because in those other jurisdictions if they fail to pay a ticket they get in Nebraska they

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can be suspended, likewise we suspend drivers who are Nebraska drivers who are ticketed in those compact states and fail to pay their moving violation. We had a case recently, it's been in the last few years, where the State Patrol stopped a car from Wisconsin, a noncompact state, three times on the Interstate, while passing through the state, each in excess of 120 miles an hour, each time the person was cited for a \$200 offense, but there really is no enforcement mechanism for those fines. And unfortunately the person probably just threw those tickets away when they got to Colorado. But the fact is that is part of the problem with these fines. I guess one thing in Nebraska these fines do not go to the local agency. So the incentive for a community to write these tickets, really they do not get to keep the money. So even if it is a \$400 fine, that money, by constitutional provision, would actually go to the schools in that district or county, depending on how it's divided. So the incentive for law enforcement in those communities is not direct, there is no additional ability to use that money in any incentivised way. So this would really strictly be designed to discourage these exceptional cases, not just the people going 120 on the Interstate, but the people who are going 70 in a 35 zone, and 60 through residential neighborhoods. You can imagine pulling out of your driveway tonight in the dark and some car is going 60 miles an hour down your residential street. That would be very alarming, and you'd be looking for a police cruiser. And this is designed, I guess, even though it's just an additional fine of \$400, that compares with many states to still be a pretty low fine for that high a rate of speed. So I hope I've answered any of the questions. We do see these in Omaha by the dozen certainly among the thousands of tickets that are written. It's not a huge percentage, but they are certainly very dangerous. I saw a car in a Ralston parking lot of the school there yesterday that was almost unrecognizable, it was a car that was going over 100 miles an hour, on State Street, hit a tree. And this car, I mean you can imagine, Godzilla couldn't have smashed this car anymore than it was smashed. Of course the kids were killed in the car. I don't know if...how much kids think about it, but I think of the formula of driving as fast as you can afford. I guess that does make some sense. People do think at some point about what it's going to cost them. And that's why you drive on the Interstate, a lot of them are speeding, but most of them aren't going very fast, so...at least over the limit. I'd be happy to answer any questions that you might have. [LB621]

SENATOR FISCHER: Thank you, Mr. Conboy. Any questions? Senator Louden.  
[LB621]

SENATOR LOUDEN: You say you're a trial attorney? [LB621]

MARTY CONBOY: Yes, criminal prosecutor. [LB621]

SENATOR LOUDEN: As this bill is written then, I mean, out where I live there's a whole bunch of country out there that you can drive 140, 150 miles an hour if you've got the chip in your car that will let it go that fast. Nowadays most of them have a chip in there

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that they can only go up to 130. If that was the case then, if I had the right stuff in the car and I wanted to go that fast, it would be just a \$400 fine, it wouldn't necessarily be a misdemeanor and I'd have to go to jail. [LB621]

MARTY CONBOY: Correct. [LB621]

SENATOR LOUDEN: Right now, whereas without this bill you'd actually have to go to jail, wouldn't you? [LB621]

MARTY CONBOY: No, actually absent this bill, the \$200 fine is the only fine there is for speeding in excess of 20 miles an hour. So as fast as you'd want to go, the Supreme Court of Nebraska has said, speed alone does not constitute reckless driving. So reckless is the next level of jailable offense for traffic. [LB621]

SENATOR LOUDEN: When did that ruling come down? [LB621]

MARTY CONBOY: In State v. Howard, as Senator Pirsch mentioned, was decided in 1997, Judge Caparelli cited some older cases, but that is a direct quote of the court. And since that time, law enforcement in the local courts have refused to treat speeding alone as anything other than speeding, in which case, since it's not jailable at any level, unfortunately, for better or worse, some of those excessive speed cases are still just speeding tickets. Hopefully, that will be changed. Maybe some day the courts will change that definitionally or perhaps the Legislature. But at this point, this is I guess the first step in that direction, at least affects the pocketbook, if not the handcuffs. [LB621]

SENATOR LOUDEN: One other question just for my own information. When you say, you know, these speed traps and stuff, right, the fines go to the school districts. But the court costs and that, if that's in municipal court, that court cost goes into the municipal court then, doesn't it? Just the fines go to the school districts? [LB621]

MARTY CONBOY: Actually, the way the court costs are set up now, and that's interesting you mention that because that used to be the formula. It's over the last several years it has changed. Of the court costs, about half go now to the schools directly. Part of it goes to the judges retirement, some of it goes to a court automation fund, I think about \$3 goes to the Commission on Public Advocacy, which does criminal defense work around the state. And so they've pretty much taken the local jurisdictions out of the equation. It used to be that some local operations were subsidized that way. And to avoid that bounty hunting mentality, they've completely stripped that out of there. [LB621]

SENATOR LOUDEN: The municipal court doesn't get any of that money? [LB621]

MARTY CONBOY: Not any more. [LB621]

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SENATOR LOUDEN: I see. [LB621]

MARTY CONBOY: Not a penny. So there's no incentive anymore locally. And I guess perhaps that scenario you and Senator Stuthman described of the bounty hunter officer sitting behind the billboard at the city limits, catching unsuspecting motorists was a factor in that thinking, I think. [LB621]

SENATOR LOUDEN: Okay, thank you. [LB621]

SENATOR FISCHER: Senator Louden, we can't let you ask for any more free legal advice. (Laughter) [LB621]

SENATOR LOUDEN: Pardon? [LB621]

SENATOR FISCHER: I said, we can't let you ask for any more free legal advice. (Laughter) Other questions? Senator Mines. It depends, Senator Mines. [LB621]

SENATOR MINES: Well, I just wanted to...it's a comment, it's not a question. I've not been able to see Marty testify before a committee for a couple years. I was on Judiciary Committee for a couple years, and I know you're here all the time. And I just want to tell you that I miss your ties. That's all I wanted to say. [LB621]

MARTY CONBOY: Thank you, I appreciate it. Most people make fun of them, so I appreciate it. [LB621]

SENATOR MINES: Thank you. [LB621]

SENATOR FISCHER: Thank you, Senator Mines. Any questions? I see none. Thank you very much. [LB621]

MARTY CONBOY: Thank you, thank you, Senator. [LB621]

SENATOR FISCHER: Any other proponents? Opponents to the bill? Anyone who wants to testify in a neutral capacity? I see none. Senator Pirsch did waive closing, so we will close the hearing on LB621 and we close the hearings for the day. Thank you. [LB621]

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Disposition of Bills:

LB489 - Indefinitely postponed.

LB147 - Advanced to General File.

LB561 - Advanced to General File, as amended.

LB621 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk