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Transportation and Telecommunications Committee
March 02, 2009

[LB60 LB111 LB278 LB560]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, March 2, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB60, LB111, LB278, and LB560. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Galen Hadley; Charlie Janssen; Scott Lautenbaugh; and LeRoy Louden. Senators absent: None. [LB60]

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer. I am the Chair of the committee and I'm the senator representing the 43rd District here in the Nebraska Unicameral. At this time I would like to introduce my committee members to you. On my far right is Senator Kathy Campbell from Lincoln. Next to Senator Campbell is Senator Tim Gay from Papillion. Next we have the Vice Chair of the committee, Senator Arnie Stuthman, who is from Platte Center. On my immediate right is Mr. Dustin Vaughan, who is our committee counsel. On my immediate left is Ms. Laurie Vollertsen, who is our committee clerk. And next we have Senator Galen Hadley who is from Kearney. We will be joined by our other committee members later. As you know, we do introduce bills and so we'll have senators coming and going. Please do not take offense when a senator is either late coming or has to get up and leave when you're here. Our committee pages today are Justin Escamilla from Scottsbluff and Jamie Myers from my legislative district, from Stuart, Nebraska. We will be hearing the bills in the order that they are listed on the agenda. 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 to keep the hearing moving. I would ask that you complete the yellow sign-in sheet at the on-deck table so it's ready to hand in when you testify. We are using a computerized transcription program and so it's very important that the directions on the sign-in sheet are followed, and you will need to hand that sheet in to our committee clerk before you testify, please. For the record, at the beginning of your testimony I would ask that you spell your last name and also your first name if it can be spelled several different ways. Please keep your testimony concise. Try not to repeat what someone else has already covered. If you don't 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, and this will be part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, however, you must complete a yellow sign-in sheet and actually testify, even if you just state your name and your position on the bill. If you do not choose to testify, you may submit comments in writing and those will be read into the official record. If you need anything, please ask; our pages will get it for you--to make copies of any testimony, a drink of water, anything like that. At this time I would ask that you turn off cell phones. We do not allow cell phones on, in this committee hearing, and that means no texting. With that I will open the hearing on LB60, and Senator Adams is here to open. Good afternoon, Senator Adams. [LB60]

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SENATOR ADAMS: Good afternoon, Senator Fischer and members of the Transportation Committee. I'm Greg Adams, representing the 24th Legislative District and I bring to you LB60. And I'll make my opening very short. It's a relatively simple bill and I have asked an attorney from my district that represents several of the villages in my district to be here, and he can better explain the technicalities, what there are of this. But if you can imagine, under state statute we define what an abandoned vehicle is--a vehicle that's been sitting on the street, that's been sitting in a parking lot for a period of time. The list goes on. And those are all abandoned vehicles. Hence, when the political subdivision determines to take possession of that abandoned vehicle--and there is a due process procedure, a notice to the owner, etcetera, before they actually take possession of it. But once they do, because it is defined as abandoned under current statute, it means that the political subdivision can get quicker access to the title of the vehicle and therefore dispose of the vehicle without incurring a lot of cost to have this thing stored while it sits and it sits and it sits, waiting to get clear title to it so the political subdivision can dispose of it. What this bill would do would be to add one more category to "abandoned," and that would be a vehicle that is sitting on private property that under the city or the municipality or the village's nuisance ordinances has been deemed a health hazard or a public nuisance. An example: Let's say that you've got a car sitting in someone's side yard and it's sitting up on blocks and all the neighborhood cats are running in and out of it, technically it's not an abandoned vehicle because it is owned and it is sitting on private property. The city can file notice with the property owner that it is a nuisance. The property owner has a due process procedure of going before the village board or the city council to explain their issue. If the city impounds that vehicle--impounds--and it's not considered abandoned, then it takes...it could potentially take a long time before the city finally gets title to it so they can get rid of the car. And frankly, in a lot of cases, the owners of these things are happy that the city has come to get them because it kept them from having to dispose of the vehicle. All this bill would do is to put those kinds of vehicles in the abandoned category so the city can get quicker title to it and dispose of it. It doesn't take away any of the due process rights of the owner of that vehicle who may want to reclaim it. And that really is the essence of the bill, and I would answer a question or two but I'm sure that the village attorney that's here with me today can better answer those questions. [LB60]

SENATOR FISCHER: Thank you, Senator Adams. Are there questions? Senator Louden. And I would like to mention for the record that we have been joined by Senator Louden from Ellsworth and Senator Janssen from Fremont. [LB60]

SENATOR LOUDEN: Thank you, Senator Fischer. Senator Adams, now when you say that car is sitting on private property up on blocks and all that, how do you tell if it's a vehicle like that or if it's a restoration work in progress? (Laugh) How do you make the...? [LB60]

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SENATOR ADAMS: That decision is, in essence, made by the village board or the city council, and sometimes it might even be made, in part, by the neighbors who have gone to the village board or the city council and said we've got a problem here. And at the same time that car won't be removed off those blocks until the owner has been noticed and had an opportunity to explain the situation, and then obviously it becomes a...it may become a gray area if they're arguing that, hey, I'm restoring it, and the city says, uh, we don't think so. [LB60]

SENATOR LOUDEN: Well what I was thinking was when you go through Minatare now this guy has this business, I guess, but he's got all these old cars, wooden wheels, and the whole bit, you know, lined up out there, and I guess, yeah, it looks like kind of a junkyard. I mean the only difference between it and a junkyard is he does have the weeds mowed. And I'm wondering if there was a chance for some harassment there, and I guess I just wondered how we were going to tell the difference. [LB60]

SENATOR ADAMS: You know, I think there's always the possibility for harassment wherever you're at, but my guess is in that situation he may be zoned properly for that kind of thing to begin with, and more than likely he has a history with that village so that the village citizens as well as the village board understands the circumstance. I hope so in his case. [LB60]

SENATOR LOUDEN: Thank you. [LB60]

SENATOR FISCHER: Any other questions? I see none. Thank you, Senator Adams. [LB60]

SENATOR ADAMS: I am going to waive closing. [LB60]

SENATOR FISCHER: Okay. Thank you very much. Could I ask how many people are here to testify on this bill in either for or against? I see two. Okay. Would the first proponent please come forward. Good afternoon [LB60]

MICHAEL MULLALLY: Good afternoon, members of the committee. My name is Mike Mullally. My last name is spelled M-u-l-l-a-l-l-y. I'm an attorney in Seward, Nebraska. I am a licensed Nebraska attorney and I have practiced in Seward for over 25 years this year. In my capacity as a private attorney, I have represented municipalities for over 20 years of my practice. There's been some good times and some bad times, as maybe Senator Louden can relate to, being from a smaller town area like I am. Included in my current representation are the villages of Beaver Crossing, Utica, and Goehner, Nebraska, and I also represent the city of Friend, which is a second-class city. During these years of representation I've been able to identify some problem areas that are unique to small municipalities that perhaps could be corrected legislatively to assist and benefit the citizens of these villages and small cities and their attorneys in their

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representation. LB60, I believe, addresses one of those problem areas. Senator Adams, has indicated earlier, one of the most problematic issues that we have in some smaller communities that I represent involve abandoned or junked and unlicensed vehicles which are sitting on private property. Not only are these vehicles unsightly but they also tend to become a health hazard in the community and their presence can rapidly depreciate the value of neighboring properties. I've been advised by my clients, the municipalities in this case and some of the neighbors of these properties, of instances in which children were playing upon and around these vehicles and they've been injured. Additionally, these vehicles also act as homes and breeding grounds for various animals and vermin. I can tell you from experience that I have sent countless letters to property owners who are occupants of the property asking them to remove these vehicles. And typically, for the most part, they're ignored. We do get some action every now and then which is appreciated and it's typically the exception rather than the rule. When the owner or the occupant chooses not to work with the village or the city, I've used a variety of legal methods to deal with these vehicles over the years. The most common approach that we have is for the municipality to declare the vehicle's presence on the property to be a public nuisance. This process is statutized in Nebraska law, and every municipality has a version of the nuisance ordinance on their...or has a nuisance ordinance of some sort on their book. The process involves a finding by the governing body which is either the village board or the city council, in my case, that a nuisance exists. We send a notification to the property owner of that finding and we notify the property owner that they have a right to have a hearing before the board to contest the finding. If the village board or the city council, as the case may be, finds that the property...the condition of the property is actually a nuisance or if the property owner does not request a hearing, which is typically what normally happens, then the village or the city can take action to remedy, or what we also call abate under the statutes, the nuisance condition. In the context of vehicles, our common remedy is to hire a towing company to remove the vehicle and then store it at that company's salvage yard. After the vehicle has been towed, there is a notice that is commonly sent to the vehicle owner advising him or her of the location of the vehicle and their right to reclaim the vehicle if they pay the costs associated with the removal. Given that the costs can be considerable versus the value of the vehicle--and as you can imagine we're not dealing with valuable vehicles most of the time here--the owner simply ignores the notice. I had one owner remark to me, actually more than one, that the village or the city did a favor to them by removing the vehicle. The issue then becomes what the village or the city is to do with the vehicle: What can we do with it? The answer, in my opinion, is that nothing can be done as there is no way for the municipality to acquire a title to the vehicle under current statutory law. Because typically the vehicle owner refuses to assign the vehicle title to the municipality. We're basically left as a municipality with no remedy whatsoever. The result is that the village or the city is left with an endless cost to store the vehicle at taxpayer expense with no way to transfer the title to even the salvage dealer. And I should note that this isn't something that's come up overnight. We have dealt with this over and over again. My clerk's office, our local county clerk's office

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came to me one time and said, well, Mike, I think we can do an abandoned vehicle title, and so I took a look at the statutes, and frankly there just isn't anything under the abandoned vehicle section of the statutes that allows us to do anything with these titles. So as a result, we're just sitting there with the inability to title a vehicle. That is important to us because there is no way that my clients can transfer the title to that vehicle over to the salvage yard that takes it because salvage yards won't take a vehicle as a general rule without the title. That's really the crux of the issue here. I believe that a relatively simple solution to the problem would be to add an additional definition of an abandoned vehicle under 60-1901 of Nebraska statutes to include a motor vehicle which is removed from private property by a municipality pursuant to an ordinance of that municipality. If this definition was added, small municipalities such as those that I represent would be able to follow the procedures to notify the vehicle owner under 60-1903 of the statutes which allows the owner one final opportunity to reclaim his or her vehicle. If the owner again chooses not to act at that point, the municipality would be able to obtain a title to this vehicle, allowing it to sell the vehicle in an effort to reclaim some of its incurred expenses. LB60 would continue to provide constitutional and legal safeguards to the owners of these vehicles, as well. The owner still retains his or her right to have a hearing at the local level to address the initial nuisance finding and the rights of appeal of finding, and there is an appeal process that's contained in statutes and contained in just about every municipal ordinance that I've seen that allows a property owner contesting a nuisance finding to appeal it to the, I believe, the district court level. Section 60-1903 of the statutes provides a second safeguard in that the vehicle owner is required to be notified of the governmental possession of the vehicle, and it affords the owner the right to reclaim that vehicle by paying the costs. It's my belief that LB60 addresses adequately the concerns of small municipalities throughout the state. I'm asking for your support of this legislation. Its ultimate passage would provide a great service to those of us who work with or reside within smaller communities and would benefit the health and safety of many citizens in the state of Nebraska. Thank you very much for your attention to this issue and my thanks also to Senator Adams and to the League of Municipalities who I believe is also in support of this bill. I'd certainly be willing to answer any questions that you might have at this time. [LB60]

SENATOR FISCHER: Thank you very much. At this time I would like to note for the record that we have been joined by Senator Lautenbaugh from Omaha, Nebraska. Are there questions? Senator Stuthman. [LB60]

SENATOR STUTHMAN: Thank you, Senator Fischer. Do we have a problem with authority over a nuisance, a vehicle that is a nuisance on private property? I mean, that is...that's a concern that I have. You know, a person has property and no matter sometimes how bad it looks or anything, unless it's a real hazard to the community or could be a safety issue for neighboring kids, can communities, villages, you know, do they have the authority to remove stuff from private property at the present time? [LB60]

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MICHAEL MULLALLY: To answer your question, I believe the answer is yes. In Friend, for example, that I represent, we had a property owner that had a refrigerator in the front yard and the doors were on the dang thing, and it was an older one that had the handles. And we worked with that person for quite awhile because let's just say that they were kind of cantankerous. (Laugh) And so we really tried to soft-shoe the issue as much as we can without getting the guy upset. Ultimately our police department just, after notifying him of our finding that it was a nuisance and he never showed up for a hearing, we went and took the refrigerator because we felt like the property owner's interest in that case, while we certainly respect that, there was a definite safety concern there. And so that's just one example of how we've and how I've advised my communities to look at this nuisance issue. Vehicles are really an issue in some of these towns. I can tell you I've tried to attack this thing every way to Sunday from a legal perspective, and I keep getting back to the same thing. I believe that we can, as a governmental entity, remove vehicles and other nuisance situations and correct those. As a matter of fact, the nuisance statute in Nebraska that authorizes...it actually authorizes local governments to do just that. So I think to answer your question, I certainly agree and feel that we do have that authority and we need to have that authority as the local government. [LB60]

SENATOR STUTHMAN: If this bill is enacted would villages or communities have more authority over...and I'll give you an illustration. Some of these small communities have, as you enter town, it's the first place is the very unsightly place, and the one as you leave town is very unsightly. Can villages, at the present time, do they have any authority, you know, and it's really within that one mile of additional jurisdiction, do they have any authority of beautification or nuisance or whatever? And, you know, most of those small communities are in that situation. [LB60]

MICHAEL MULLALLY: And I agree with that and they are. I don't know if this necessarily...I guess I would consider it to be another arrow in the quiver if they chose to be more aggressive. Frankly, many of the municipalities that...and other municipal attorneys that I've talked to, have found that it's really a decision with their local governing board, their village board or their city council, as the case may be, on how aggressive they want to get. And it can be a hot-button issue in some of these little towns because you might find yourself sitting next to the guy at the coffee shop the next day after you sent him a notice to tow ten vehicles, and it's tough in a small town. And I can tell you the boards that I represent and the city council in Friend, we don't go out seeking these things, and they're generally driven by citizen complaints versus a city council member or a village board member going around and canvassing the community. So we wait for a citizen typically to come in and complain and then we do everything that we can to work with the property owner before we even would look at the nuisance situation. But we do have individuals that just don't want to work with us and those are the folks that I'm really trying to get to here. [LB60]

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SENATOR STUTHMAN: Okay, thank you. [LB60]

MIKE MULLALLY: Thank you. [LB60]

SENATOR FISCHER: Other questions? Senator Gay. [LB60]

SENATOR GAY: Thank you, Senator Fischer. If you're going to tow one of these vehicles, in the ordinance can they ask for...let's say it's \$100 to tow the vehicle, the property. In the ordinance, would they write, oh, the property owner has to pay the \$100 to pick up the fees? [LB60]

MICHAEL MULLALLY: Right now the, legislatively, our local legislations that I'm working with don't have that. I think as a matter of practice, the towing companies that have possession of the vehicle would want to get paid before they're going to release the vehicle. But we don't have anything like that necessarily in our local ordinances right now. [LB60]

SENATOR GAY: So you can't go back and get it from the property owner? The city or the village is going to pay for that cost. [LB60]

MICHAEL MULLALLY: Yes. [LB60]

SENATOR GAY: Okay. Thank you. [LB60]

SENATOR FISCHER: Other questions? Senator Louden. [LB60]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. How do you handle it now in these smaller towns, because, I mean, if those cars get to be kind of a rusted down hulk or something like that, there is a way to get them out of there, isn't it? [LB60]

MICHAEL MULLALLY: Getting them out isn't the issue. It's what do we do with them after we have it, and that's what this bill is designed to do. Because once we get them out of there, what ends up happening is...in Utica, for example, we've got Fehlhafer's, which is a towing business and they do auto repairs and they've got a large salvage yard. They'll gladly come out and tow the vehicle. They'll store it for us at about \$5 to \$8 a day. And when you tow a \$75 to \$100 broken down, rusted-out hulk, that adds up pretty darn quick. And when they have it on their property and my clients are incurring that cost every day, it's a definite fiscal loss to the municipality. So I believe the current legislation that we had, with nuisance ordinances in place, allows us, effectively, to go and remove the property. It's what do we do with that thing after we have it? Fehlhafer's, for example, I've been told can't do anything with the vehicle. They can't take it and crush it or do anything with it because they don't have a title to it. And that's where what we're trying to do simply is to allow us to acquire a title, a municipality to acquire a title

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that we can then assign over to Fehlhafer's, in this instance, and then they can take it and crush it. [LB60]

SENATOR LOUDEN: You'll acquire a title, then assign it to a salvage yard, is that what you're saying? [LB60]

MICHAEL MULLALLY: Most likely. [LB60]

SENATOR LOUDEN: Okay, thank you. [LB60]

SENATOR FISCHER: Any other questions? I see none. Thank you very much for being here today. [LB60]

MICHAEL MULLALLY: Thank you. [LB60]

SENATOR FISCHER: Anyone else here in the proponent position? Good afternoon. [LB60]

LYNN REX: Good afternoon, Senator Fischer, members of the committee. My name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities, and we do strongly support this bill. And this is an issue not just for small communities but also for large communities. It is a safety issue. It is an issue when kids are getting hurt, when you've got vermin running around. And the issue, as has already been articulated to you by the attorney that testified before me, is essentially this. The issue is not can we remove it; the issue is what do we do once we remove it. And should the taxpayers...not only are they paying, for the most part, for the towing of it, but then they're paying for the storage fees ad nauseam, and at some point we need to be able to take title to that so you can then assign it to a salvage yard. And this is a very controversial issue in the sense that you might imagine that there are municipal officials that have been subjected to recall. All the neighbors come forward and indicate they want Harry or Sally to clean up their property, and then what happens is the city does take action after a number...after going through the due process proceedings of notice and a hearing and trying to get some action by the property owner to resolve it. And what occurs is essentially that we are then in a position of having that one person upset, and to my knowledge we have not yet had someone actually recalled by virtue of it because the community actually wanted that property cleaned up, but still that person has to go through that procedure--which is another bill, another day, that Senator Lautenbaugh introduced. So in essence we really would appreciate if you would be kind enough to have this bill advanced from committee. I'd be happy to respond to any questions. [LB60]

SENATOR FISCHER: Thank you, Ms. Rex. Are there questions? I see none. Thank you very much. [LB60]

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LYNN REX: Thank you. [LB60]

SENATOR FISCHER: Any other proponents for the bill? Any opponents to the bill? Anyone wishing to testify in the neutral capacity? I see none. Senator Adams did waive closing. With that I will close the hearing on LB60. And Senator Stuthman, I will turn the gavel over to you. [LB60]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Fischer will open on LB111. Good afternoon, Senator Fischer. [LB111]

SENATOR FISCHER: Good afternoon, Senator Stuthman and members of the Transportation and Telecommunications Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District here in the Nebraska Unicameral. I'm here today to introduce LB111. LB111 requires construction workers to be present in a construction zone in order for a speeding fine to be doubled. The bill does not change any speed limit in a construction zone. That is still determined by the Department of Roads. I introduce the bill as a common-sense measure that I've often heard from the public. I don't think anyone is trying to argue that driving at slower speeds when construction workers are doing a job on a highway is a good thing. But what frustrates a speeder who has just received a citation is the doubling of a fine just for being in a so-called construction zone when no work is being done and no construction workers are present. What's more, construction zones can be posted weeks in advance of actual construction and left for several weeks after construction is completed. My hope in introducing this bill is to have a discussion on why construction zone signs are posted when the public has the perception that no construction is taking place. I hope we will have some information presented which may help to clarify the activities that motorists may or may not observe taking place in these construction zones. With that, I will be happy to answer any questions. [LB111]

SENATOR STUTHMAN: Are there any questions for Senator Fischer? Senator Lautenbaugh. [LB111]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Senator Fischer, for bringing this bill. Are you soliciting some kind of an amendment to deal with the long-term placement of these fines, doubled signs? Because as it is now, I think that's the best evidence we have of eternal life is that when something is designated a fines doubled zone it goes on forever. [LB111]

SENATOR FISCHER: It seems to be that way. No, I'm not looking for any amendment. What I'm hoping to do is have some clarification on why we have construction zones posted and why they are there when, as a motorist, we don't see any work being done because that adds to frustration for motorists when, Senator Lautenbaugh, you're from

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Omaha. I think there were 11 changes in speed limit between Lincoln and Omaha for, what was it, well over a year or so? And it's very frustrating for people. So hopefully this bill and this hearing will help to clarify why we need to post that an area is a construction zone and why in some cases that needs to be posted early and why it remains posted for so long. [LB111]

SENATOR LAUTENBAUGH: Thank you. [LB111]

SENATOR STUTHMAN: Thank you, Senator Fischer, and Senator Lautenbaugh. Senator Hadley. [LB111]

SENATOR HADLEY: Senator Stuthman. Senator Fischer, could there be times, though, that we would want...that it really is in the best interest safetywise for people to slow down because of the actual construction equipment, changing lanes, those kinds of things and maybe the doubling of fines makes them more aware of adhering to that slower speed limit? [LB111]

SENATOR FISCHER: I think you're right on there. First of all, as you pointed out, this bill doesn't change the speed limit. It just doubles...or the current law doesn't change the speed limit with this bill, but this bill then would just take care of the doubling of the fines as we have it now. I just...I would like to have a public discussion so that people are better informed on the necessity to have these signs and then for us to decide if it truly is a necessity to have the signs saying the fines are doubled. [LB111]

SENATOR STUTHMAN: Thank you, Senator Hadley and Senator Fischer. Any other questions? Seeing none, thank you. [LB111]

SENATOR FISCHER: Thank you. [LB111]

SENATOR STUTHMAN: We will now hear the proponents of it. I would like to ask how many people would like to testify on this bill. See a show of hands. We have one, two. Okay. We will now have the proponents of this bill. Anyone as a proponent. Anyone in opposition? Come forward, please. Good afternoon. [LB111]

CURTIS SMITH: Good afternoon. Chairman, members of the Transportation and Telecommunications Committee, my name is Curtis Smith, C-u-r-t-i-s S-m-i-t-h. I am the executive director of the Associated General Contractors of Nebraska, and I'm here to testify in opposition to the changes proposed in LB111. I think that obviously Senator Hadley has already mentioned it and Senator Fischer mentioned one side of it and Senator Lautenbaugh. And I have certainly...can empathize and sympathize and experience the same frustrations in driving between Lincoln and Omaha or any other place in the state where there's construction signs up and no one is working. And I am here primarily to caution that we don't move too quickly on something that may not be

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apparent in that oftentimes there may not be people present. But I think Senator Hadley mentioned that there are other...there could be pavement drop-offs, there could be lane changes, there could be lots of things involved that the traveling public may not be aware of. And I am not a proponent of big brother to watch out for everybody. But by the same token, I think I feel and, although I'd be hard-pressed to prove it, that the doubling of the speed zone sign does emphasize the fact that there are dangers inherent to the situation that may not be apparent to the traveling public. And I would...it would probably be impossible to find numbers to prove any of those things, but I do know that there can be...the sign perhaps only the contractor who is assigned the responsibility of changing or maintaining the lights or maintaining the lights, cleaning them between...maybe it's been raining, whatever, those hazards could be...that the traveling public could be not aware of and suddenly there would be a hazard. And I would primarily caution that we don't move too quickly without considering the consequences of removing these, this doubling of the penalty. I'd be prepared...I'd answer any questions if you have any, but other than that, I think that concludes my testimony. [LB111]

SENATOR STUTHMAN: Thank you, Mr. Smith. Are there any questions from the committee? Senator Campbell. [LB111]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Mr. Smith, who sets the parameters of a construction zone? Is it the construction company or the Department of Roads? [LB111]

CURTIS SMITH: The Department of Roads defines pretty much where their traffic engineering department sets where the signs would go, either preliminary to the signs and also the speed limit is set by the department. [LB111]

SENATOR CAMPBELL: So it could span a distance of...I mean is it set by usually it's 10 miles or 15 miles? [LB111]

CURTIS SMITH: I would have to defer that to the... [LB111]

SENATOR CAMPBELL: Department. [LB111]

CURTIS SMITH: Department. [LB111]

SENATOR CAMPBELL: Okay, thank you. [LB111]

SENATOR STUTHMAN: Thank you, Senator Campbell. Any other questions from the committee? I have several. [LB111]

CURTIS SMITH: Oh, excuse me. [LB111]

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SENATOR STUTHMAN: Mr. Smith, I have a real concern with, you know, those signs being posted, you know, along the road, fines doubled is that little yellow sign underneath, almost every sign that's around there. I've been in contact with a lot of students of the University of Nebraska or Wesleyan or college students, you know, coming off the interstate coming back into town. And as they drop in onto 27th Street, you know, there's been no construction going on there for months upon months upon months. And they're getting picked up for speeding, and they're fined double. And that's a real issue. It seems like it's a trap. And they said, you know, they guaranteed law enforcement will be out there, guaranteed. And that is a concern that I have. I also, you know, there's a last sign to be taken off. We've had roads that have been redone like the one 79 going to Valparaiso, going to the Raymond Road, that road there, you know. And the road is virtually done. I don't know, there may be...they may have to pick up a few sticks by one of the culverts yet, but otherwise it's virtually done. But it's still fines doubled on it all the time. I mean and I haven't seen anybody working on there since, you know, three months ago. So those are the issues that I really have. I really honestly think that, you know, fines should be doubled if there's construction workers working there. But the only thing that's right now is the sign there yet so. How do you address that situation? [LB111]

CURTIS SMITH: How do you address that? I've thought about this a little, some, because it's always been a frustration for mine, too, because in good...it's been a long time since I went to college in traffic engineering, but one of the things I do remember is signs are important. And you don't want to leave them up just like when you have a survey crew out there and it says survey crew and you drive through the job and there's no one visible and you think, you know, why do they even have that up there? So and trying to control speed limits when there's no obvious reason, there's oftentimes people will speed. I think the argument, the only one I can really create for the situation, I think those signs ought to be taken down if there is no construction sign. I think someone, the authority, should have a periodic perhaps in a situation like that where they would have a review and say are they still necessary? What is the schedule here for construction? Take that part of it down. Now maybe there's a way...maybe there's a reason they can't, but I don't know the inside of that. But I don't know why...those signs need to be monitored, otherwise the traveling public, like you're saying, loses respect for those. I think the doubling of the speed limit, the penalty, is much more effective than saying, and you know, speed limit is 45 and we really mean it, you know, because people do...the money is a factor in that. [LB111]

SENATOR STUTHMAN: Yes, but... [LB111]

CURTIS SMITH: ..it emphasizes it. And... [LB111]

SENATOR STUTHMAN: Yes. [LB111]

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CURTIS SMITH: And, Senator, I certainly understand and empathize and, you know, just because they don't...students may not have as much money, but still if it's truly unsafe, then it ought to be recognized and have a way to monitor that. I would support that. [LB111]

SENATOR STUTHMAN: And I truly agree with you, but the fact, you know, they're getting picked up for speeding and, you know, they pay their fine, they don't mind that. But it's that doubling. [LB111]

CURTIS SMITH: It's the double. [LB111]

SENATOR STUTHMAN: It's the doubling when they said they've been driving there for three months and there's been no construction going on but yet the fine is doubled. [LB111]

CURTIS SMITH: And it happens. It happens other, you know, not just on North 27th or someplace else it happens frequently. [LB111]

SENATOR STUTHMAN: Okay, thank you. Any other questions from the committee? Seeing none, thank you. Any other testifiers in the opposition? Neutral? Will there be any other testifiers? Good afternoon, Director. [LB111]

JOHN CRAIG: Good afternoon, Senator Stuthman and members of the Transportation and Telecommunications Committee. I am John Craig and I'm the director of the Nebraska Department of Roads. I am here to appearing in a neutral capacity to answer whatever questions you might have on LB111. Fire away. [LB111]

SENATOR STUTHMAN: Thank you for your short testimony, but I don't think you're done yet. (Laughter) Any questions from the committee? Senator Hadley. [LB111]

SENATOR HADLEY: Mr. Craig, thank you for being here. My question, do you or the department, I should say, believe that the fines doubling do serve a purpose in warning people even when workers are not present? [LB111]

JOHN CRAIG: That is a great question. And I would say there is no evidence nationwide and there are a few studies, there are not all that many studies, we're not the only state that has had double fines in construction zones, but there is no compelling evidence to say double fines in construction zones has any decrease...results in any decrease in speed, which then results in decreases in traffic. So nevertheless, we are one of many states that uses double fines in construction zones. [LB111]

SENATOR HADLEY: Okay, thank you, sir. [LB111]

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SENATOR STUTHMAN: Thank you, Senator Hadley. Senator Lautenbaugh. [LB111]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming, Director Craig. Maybe the problem isn't the speed and the zone, it's the speed of the project. And I'm thinking back to the expressway in Omaha where this great reservoir of goodwill was created because the upper deck was created, finished ahead of schedule, and the lower deck, lower level went on and on and on to the point where I called my city councilman and said, what on earth is going on, on the lower level? And the response was, well, that's a state project. Weren't you just appointed state senator and don't you sit on the Transportation Committee? So what is going on, Scott? It was a fair question for both of us I guess. Why does it seem so often like there is not an end game to the construction projects that we have? [LB111]

JOHN CRAIG: I don't know if there's a good answer to that. You have to ask about a specific project. If you ask in terms of numbers of days and schedules, there are a whole variety of reasons why projects take a certain amount of time. If you're talking about a structure, something that's predominantly steel and concrete, if you can keep it warm to a certain temperature so that it cures properly and the elevated expressway, on West Dodge, was such a project, or any number of other bridges around the state, that is different than dealing with dirt or concrete or asphalt when temperatures reach freezing or approximate that. So there's a temperature reason. There is also when we weigh, and this relates to the over the West Dodge overpass as well, when we calculate what are the benefits versus the cost, and when you can accelerate the time for a project that we have a formula, that's actually a national formula, that is based on the amount of traffic and people's travel time to say do the benefits of either going to a calendar days versus working days, which is a proof positive date to have a project finished after you've done the scheduling, so it's not arbitrary and capricious, so that in fact the benefits of spending additional funds or doing those calendar days or having an incentive over and above that, which is another tool in our tool kit, the benefits outweigh the costs of accelerating that project. If you go to a project that carries very little traffic, it is most likely a working day project, this is true in most of the rural parts of the state, and simply put, there's not enough traffic to warrant spending more money for the ultimate cost that would be...or the benefits would outweigh the costs. So those are a couple of responses to that. And the answer is, it depends. But from a driver's standpoint, and I am one of those drivers as well, those...there's a fair question. Why does a project take a certain amount of time? And there is a variety of reasons. [LB111]

SENATOR STUTHMAN: Senator Fischer. Senator Janssen. [LB111]

SENATOR JANSSEN: Thank you, Senator Stuthman. Director Craig, the other question I have just came from your answer earlier. You said we are one of many states that have a fines double order, whatever we call it, statute. Are there any states that you're aware of that have the fines double but only while construction is present? [LB111]

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JOHN CRAIG: I'm almost tempted to give you a discrete answer to that. Sitting here right now, I don't know, but I think I have a... [LB111]

SENATOR JANSSEN: While you look for that, if you could do something about 275 on the way into Fremont, because that's been out there and the first thing you see before Welcome to Fremont is the... [LB111]

JOHN CRAIG: Well, there is a difference between how speed limits and postings occur in a construction zone and the doubling of fines in construction zones. So I'm going to...I'm fair game to talk about any of that. There are states, in fact, some states require that workers be present and there are states that do not require workers be present and there are states that have no such law. [LB111]

SENATOR JANSSEN: Okay. So it would be fair to say if this were to become law we're not going down uncharted territory here. [LB111]

JOHN CRAIG: That's correct. [LB111]

SENATOR JANSSEN: Thank you. [LB111]

SENATOR STUTHMAN: Senator Campbell. [LB111]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Director Craig, I saw you nod in terms of setting the parameters of the construction zone. A couple of questions: One is when we sign a contract with the contractor, are we under any...do we run into any problems if we take the signs down early because their workers are protected under the contract? [LB111]

JOHN CRAIG: First, I'd say everything that occurs or does not occur, this is John Craig's assertion. I don't think you would read this in law, but I think it's a reasonable premise that anything that does or does not occur in a construction zone, a state construction zone, is the Department of Roads' responsibility, whether consultants have been involved, whether a contractor is at work, ultimately we are responsible. Now we share that responsibility, there is no question, but ultimately we are responsible for everything that does or does not occur in there. I would go back to Senator Hadley's question, is there any evidence to indicate that doubling fines in construction zones has any reduction in crashes or speeds, and there is not. So based on that, I think it would be a fair assumption to say if those double fines in construction zones were not there, I don't know that it would have any impact. The signage and even the length of a construction zone is established, the guidelines established in the Manual for Uniform Traffic Control Devices, MUTCD, which is one of the few manuals approved and established by the Federal Highway Administration. And I would say not for doubling

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finer in construction zones, but for a great many other aspects of how construction zones are set up and how long they are even signed as construction zones or even a speed limit or the advanced notice for construction zones, a trial attorney would get us, the first place they would go is to the MUTCD and ask the question, were we following...whether workers were present or not, or regardless of the length of that construction zone at the time, did the state of Nebraska follow the MUTCD? They would go to that and that would be their case if we did not. Double fines in construction zones, based on the evidence, I don't know that that would play any part at all. [LB111]

SENATOR CAMPBELL: Thank you. [LB111]

SENATOR STUTHMAN: Any other questions? Senator Fischer. [LB111]

SENATOR FISCHER: Thank you, Senator Stuthman. Thank you, Director Craig. From your neutral standpoint, how does a driver determine that there is a construction worker present when they are traveling 55, 65 miles an hour through a construction zone that may cover five to ten miles? [LB111]

JOHN CRAIG: You know, I don't think they can as a practical matter. [LB111]

SENATOR FISCHER: And this is my bill, remember. [LB111]

JOHN CRAIG: Yes. I don't...I absolutely don't think as a driver myself that a person can know if there are construction workers present or not. They could be behind a barricade. They could be down slope. They could be any number of places doing work that needs to be done before... [LB111]

SENATOR FISCHER: Do you know how other states do it? What are...do you have a list of the other states that have this? [LB111]

JOHN CRAIG: Actually, I do. There are states that require construction workers be present, and I don't have their law so I don't know what the definition of a...it's part of the problem, frankly. And if you ask many of our law enforcement officers in this state or much likely any other state, they're faced with the same challenge. If you're going to affix a ticket for double fines in construction zones, were workers present or not they're going to wonder. I mean it's going to be uncertainty. So if I could provide this list to the committee, it lists whether workers must be present or not, but it doesn't indicate what those specific laws in those states say relative to what warrants a construction worker being present. Do they have to be 100 feet away from the right of way or 10 feet adjacent to the edge of the pavement or whatnot? And they're... [LB111]

SENATOR FISCHER: How do you determine when you first put up the sign, what do you use for that? [LB111]

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JOHN CRAIG: The double fines in construction zones? [LB111]

SENATOR FISCHER: Yeah, just when you put up a construction zone sign. [LB111]

JOHN CRAIG: If it is a construction zone, the sign should go up. [LB111]

SENATOR FISCHER: How do you determine when it becomes a construction zone? [LB111]

JOHN CRAIG: We have to post it before work starts. And so that could happen the day of, that could happen a week prior to that. There are a variety of reasons for that. [LB111]

SENATOR FISCHER: And then when do you take the sign down? That's the frustration here. [LB111]

JOHN CRAIG: Absolutely. And it comes up annually in our own Highway Commission. It is a common question and we debate that. We did here a few weeks ago within the department, how liberal or how conservative we should be. And this is how we concluded that because it's not...there's not such an easy definition of when is the construction substantively finished. When are we no longer liable? If there's a barricade there, if there's a drop-off, if the highway hasn't been marked yet, what constitutes it having been substantially finished? Until we have accepted the project from the contractor, technically it is still a construction zone. And so honestly how we ended this most recent meeting here of recent weeks was to leave it to the discretion of the individual project managers on site and ask them to be as prudent as they can in making their decision, knowing full well that as long as it's a construction zone we're still liable, there's no nice, neat definition to say when you take it down. And there is the rub and it is problematic and it is subjective in many regards. [LB111]

SENATOR FISCHER: And the project manager works for the department, correct, not with the contractor? [LB111]

JOHN CRAIG: Correct, correct. [LB111]

SENATOR FISCHER: Okay, thank you. [LB111]

JOHN CRAIG: There is...and it is irrelevant but maybe not so irrelevant, there are certain projects that we will require a certified traffic control manager by the contractor in addition to our own project manager so that's another mechanism to make sure that traffic flows through a construction zone as safely as possible. [LB111]

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SENATOR FISCHER: Thank you. [LB111]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Campbell. [LB111]

SENATOR CAMPBELL: Thank you, Senator Stuthman. So at this point, Director Craig, would it be fair to say that from the state's standpoint if the signs are somewhat of a liability protection in that it says to the traveling public, you still may...a worker may still be in this zone and they could come back, you know, for a long period of time, then they come back and stripe and do different so it's somewhat as a warning, would you say that it protects... [LB111]

JOHN CRAIG: I don't know if I could say that. All I can say is it's in state law that double fines in construction zones. The whys and what fors I would be perhaps remiss to speculate. But the assertions that you gave are reasonable speculations I would say. I wouldn't disagree with them, but if I speculated why is it in state law, I don't think I can tell you. [LB111]

SENATOR CAMPBELL: Thank you. [LB111]

SENATOR STUTHMAN: Thank you. Senator Lautenbaugh. [LB111]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Something Senator Fischer asked you kind of made me rethink this. Why does it matter from a practical standpoint whether or not the person knows there are people there? The speed limit doesn't change. It's just whether or not the fine would be doubled. And since the officer writing the ticket and the state has to prove every element of the crime, why couldn't the officer say, and there was a guy over there on the crane I observed so fines are doubled? And if the person wanted to disprove that, they could. I don't think we're saying the people driving through these construction zones should be having to look around to see if there are people. They're supposed to drive the same speed limit no matter what. [LB111]

JOHN CRAIG: Yes. [LB111]

SENATOR LAUTENBAUGH: It's just doubling it would only be in the circumstance where the officer said, and there was a guy there or a person there working on the side of the road. [LB111]

JOHN CRAIG: It's at the discretion of the investigating officer. [LB111]

SENATOR LAUTENBAUGH: Yes. [LB111]

JOHN CRAIG: If you're ask...no one has, what are the most effective tools according to the evidence for making construction zones safer, (1) I'd say that they're, one, posted

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correctly; (2) regulatory speed limit signs are established, which law enforcement can, without any subjectivity, they can enforce those speed limit laws, those regulatory signs as posted; and then law enforcement's presence. So there are tried and true methods to slow people down and to reduce crashes in construction zones. It's another way to answer Senator Hadley's first question which is that doubling fines in construction zones, there's no evidence to indicate they are one of those mechanisms to make construction zones safer. [LB111]

SENATOR STUTHMAN: Senator Hadley. [LB111]

SENATOR HADLEY: Senator Stuthman. Director Craig, who sets the speed limit because some might be...I know some might be 65, some might be 55, 45? [LB111]

JOHN CRAIG: Those guidelines are established in the MUTCD, the Manual for Uniform Traffic Control Devices, as approved by Federal Highway Administration. So it depends on the kind of highway, the kind of construction project. There is some subjectivity in it, but there are guidelines in the MUTCD that we follow. [LB111]

SENATOR HADLEY: And if I heard your response correctly, really the setting of that, the speed limit, is very important to the safety issue. [LB111]

JOHN CRAIG: Yes. Yes. Normally, there is a correlation between crashes and speed, and there are a variety of other items. I might mention, too, no one has asked that when you look at safety in construction zones or crashes versus the rest of the system, it's just the opposite of what people might imagine. Safety in construction zones is one of the safest places to drive. Intuitively, it doesn't seem that way or feel that way, but it is. [LB111]

SENATOR STUTHMAN: Director Craig, the concern that I have is, you know, when there's construction going on and then the road is opened up and construction, I think, has been completed and... [LB111]

JOHN CRAIG: What's the definition of that? [LB111]

SENATOR STUTHMAN: And there are signs that have the black paper over again for all the detour, everything like that. I just feel that there may be a little bit left to do, you know, next spring when the work needs to be...when it has to be completed if there might be a little touching up. But I would like to see the fact that all of those fines doubled sign have put black paper over those during the winter months when you know good and well there's not going to be any construction going on. I mean the extra guy in the pickup could put that black stuff on there real easy. [LB111]

JOHN CRAIG: Well, we'll relook at that. It is a fair question. I don't mean to make light of

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it. [LB111]

SENATOR STUTHMAN: I mean that's the issue because it's the issue of, you know, nobody is there. There is a speed limit, but it's the fact of the doubling of the fines and they can double the fines if it states somewhere along the line, fines doubled. And I think they've got every right to do that. So that's what I would like to have addressed. Any other questions from the committee? Seeing none, thank you, Director Craig. [LB111]

JOHN CRAIG: You bet. Thank you. [LB111]

SENATOR STUTHMAN: Any other testifiers in the neutral? Seeing none, Senator Fischer waives closing, and I'll turn it back over to Senator Fischer. [LB111]

SENATOR FISCHER: Thank you, Senator Stuthman. With that, we will close the hearing on LB111 and open the hearing on LB278 and Senator Mello is here. Welcome. Nice to see you at the Transportation and Telecommunications Committee. [LB111 LB278]

SENATOR MELLO: Well, good afternoon, Chairwoman Fischer and members of the Transportation and Telecommunications Committee. My name is Health Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District. I introduced LB278, a bill that would allow municipalities to adopt an ordinance to allow pedestrians over the age of 18 to solicit contributions for charitable or community betterment purposes. Current state law prohibits this practice. With the passage of this legislation and the adoption of an ordinance by a municipality, organizations would be able to solicit contributions from vehicles stopped at traffic lights or other traffic signals on roads that are not part of the state highway system. The organization would have to inform the municipality of the exact times and locations of this solicitation. Prior to the state law prohibiting this practice, organizations such as the Omaha Firefighters were able to raise considerable sums of money for charities and other community betterment purposes. With the passage of this legislation they will once again be able to do so. In uncertain economic times charities often look to find new and untraditional means of raising money. Passing this legislation will allow one such untraditional method to be utilized. Bills similar to LB278 have been introduced in 2002, 2003, 2005, and 2007, all advancing to General File each time. It is my hope that the committee will once again advance this legislation. Thank you for your time and I would be happy to answer any questions. [LB278]

SENATOR FISCHER: Thank you, Senator Mello. Are there questions? Senator Lautenbaugh. [LB278]

SENATOR LAUTENBAUGH: Thank you, Madam Chair. Thank you for bringing this bill, Senator Mello. This used to be a common practice in Omaha, did it not? [LB278]

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SENATOR MELLO: Yes. [LB278]

SENATOR LAUTENBAUGH: Do you know of any history of injury from this at all? [LB278]

SENATOR MELLO: Not that I'm aware of. There will be some testifiers after me I think that can probably provide more of a historical perspective on the history of charitable giving and this practice. [LB278]

SENATOR LAUTENBAUGH: Because I know of none either. I was just wondering. It seemed safe and commonplace back in the day. Okay, thank you. [LB278]

SENATOR FISCHER: Other questions? Senator Janssen. [LB278]

SENATOR JANSSEN: Thank you, Senator Fischer and Senator Mello. I have a question, being a former...I guess in a campaign I stood on the roadside and waved at people. I didn't know that that was possibly not legal or not, but it was on private property. Is that what this bill addressing...is this addressing the person that stands on the side of the road or is this addressing people wading out into traffic at a stoplight to seek donations? Because when I was waving at traffic I actually witnessed a wreck and I hope I wasn't party to that, but I could see a danger into wading out into traffic, knocking on windows and doing that. [LB278]

SENATOR MELLO: This bill, the way I believe the current state law is, is prohibits individuals, I believe, in right-of-way areas, so to speak, in regards to doing exactly what you suggested: going up and soliciting contributions. And that's where the focus of this legislation is. [LB278]

SENATOR JANSSEN: It's to allow that type of activity. Okay, thank you. [LB278]

SENATOR FISCHER: Senator Gay. [LB278]

SENATOR GAY: So why was this not allowed? They used to do it all the time. They'd stand in the median and come up to you and you'd give them money. What got rid of that? [LB278]

SENATOR MELLO: You know, I think that goes to Senator Lautenbaugh's earlier question which is it was before my time here in the Legislature and the testifiers after me from the Nebraska Professional Firefighters Association, as well as MDA will be able to testify on how that law got changed. [LB278]

SENATOR GAY: So if this passes, any municipality could say we don't want that to go

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on in our... [LB278]

SENATOR MELLO: Any municipality could create an ordinance that would allow it to happen, yes. [LB278]

SENATOR GAY: So if one municipality...the freedom of speech, so (inaudible) ACLU letter here. Why would I not...if I were Omaha and I said, yeah, I want to do this, allow this again, but...or Kearney, and Kearney says we don't want to allow this, couldn't I sue Kearney and say, well, under freedom of speech I should be allowed to do this because Omaha...so would...if we pass this law, has that ever been done anywhere else where one community...? Because I can kind of see a freedom of speech yet I like the idea of the charitable cause, but it could be...maybe other people... [LB278]

SENATOR MELLO: I think it focuses more on local control, Senator Gay, in which it allows municipalities to determine that for themselves through passing an ordinance. If Omaha chooses to do so, it can. Kearney wishes to do so, Kearney could as well. And it's more of that local control issue in providing that avenue for them. So I...and to answer your question directly, I don't how the free speech argument would play into this knowing that it's more of municipal governments would be determining it on their own sakes. [LB278]

SENATOR GAY: So that would be covered because it says that you can't deny anybody from doing this. So if you allow it.. [LB278]

SENATOR MELLO: Yeah, they can seek.. [LB278]

SENATOR GAY: ...anybody gets to do it, that would probably cover it, do you think? [LB278]

SENATOR MELLO: Yes, I would agree with that. [LB278]

SENATOR FISCHER: Senator Lautenbaugh. [LB278]

SENATOR LAUTENBAUGH: Wouldn't it be your guess, Senator Mello, that that would be a time, place, and manner restriction that can vary from community to community or as long as one community wasn't acting based upon the message it would be okay? [LB278]

SENATOR MELLO: Yes. [LB278]

SENATOR LAUTENBAUGH: But it wouldn't necessarily give rise, if Kearney treated these types of activities across the board differently than if Omaha treated them as Omaha treated them across the board? [LB278]

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SENATOR MELLO: Yes. [LB278]

SENATOR LAUTENBAUGH: Thank you. [LB278]

SENATOR FISCHER: Other questions? Senator Louden. [LB278]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, as I look at some of this, Senator Mello, it says that any...there are part of the state highway system. Oh, for instance, over here on O Street, part of that's U.S. 34. Does that mean they can't do that in that area? [LB278]

SENATOR MELLO: Yes. Yes. [LB278]

SENATOR LOUDEN: And what about these little towns like, oh, take Thedford, their main street is Highway 2, and they can't...I mean, if you don't do it on Highway 2, well then you...there's...that's the main street in town. How do they handle that in those...? Because in Alliance these...the fire people do that all the time and they meet you out there at the viaduct on the east side of town and that's on Highway 2 and you just give them your money, you know, and don't say anything about it. Would that...would this make it tougher on them? Or how come they're doing it now? [LB278]

SENATOR FISCHER: Now, Senator Louden, I don't think you want to be giving away our little secrets out there in greater Nebraska. [LB278]

SENATOR MELLO: Well, I think, Senator Louden, I would defer that to the municipality of Alliance or Thedford to determine their own ordinance in regards to how to go about dealing with charitable solicitations. But it does specifically say not...it's not...it won't be allowed on areas of the state highway system. And in Omaha that usually means a fairly significant thoroughfare which is Dodge Street in Omaha, which it would not prohibit solicitations there, so. It's something that I would...if the committee would look to change that, you know, I would be willing to have that conversation. But at this point I think it's more... [LB278]

SENATOR LOUDEN: Okay, that was my question. Should...are you satisfied with having it in that, it should be on state roadways in these towns or something like that (inaudible). [LB278]

SENATOR MELLO: Since this is my first appearance in front of the Transportation and Telecommunications Committee, I would defer to your Chairwoman and your Vice Chair for a little more guidance on what the committee would be looking to do with that. [LB278]

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SENATOR LOUDEN: Okay, thank you. [LB278]

SENATOR FISCHER: Senator Hadley. [LB278]

SENATOR HADLEY: Thank you, Senator Mello. I guess I just...I want to be assured that we don't...it isn't a slippery slope that I'm suddenly having kids coming out and washing my windshields and sticking their hand in the window or...St. Louis, they try to sell you newspapers when you pull up to the stoplights and such as that. [LB278]

SENATOR MELLO: That's a great question, Senator Hadley, and I think once...I want to reiterate the importance of this bill focusing on local control which provides the municipality to determine that. And in Omaha, for example, I imagine that there will be a component that discusses having a certain number of hours of public service training, which obviously firefighters must go through to become firefighters, and up to...like I say, it goes back to the point that individual municipalities could determine that based on what they feel the needs are of their municipality. So if Kearney would like to allow children to wash cars in the middle of streets, that's up to the city of Kearney, not so much me or the body here. [LB278]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator. [LB278]

SENATOR MELLO: Thank you. I will also waive my closing. [LB278]

SENATOR FISCHER: Okay, thank you very much. Could I ask how many people are here to testify on this bill today? One, two, three, four, five. We will limit you to five minutes apiece on testimony and hopefully you can do it shorter. With that I would ask the first proponent to step forward please. Good afternoon [LB278]

DARREN GARREAN: Good afternoon, Madam Chairperson, members of the committee. It's a pleasure and an honor. My name is Darren Garrean, first name Darren, D-a-r-r-e-n, last name Garrean, G-a-r-r-e-a-n. I'm eastern vice president of the Nebraska Professional Firefighters, and as a representative of the union firefighters across the state of Nebraska, in addition to the 270,000 union firefighters across the nation, would like to see this move forward. Based upon the impact that it made for us, specifically in 2000-2001, by us coming off of the streets had a very big impact, and knowing there's other proponents I'll keep it very short. But during that time it seemed to be the reason was safety. Safety is an issue. We as firefighters are very safety conscious in everything we do. As part of us collecting, we can...there has not been one injury ever reported for us being on the streets collecting specifically for the muscular dystrophy. That being said, I'd like, when the committee addresses this and would like to see it move forward, keep that in mind that the safety of us as firefighters, there's not been one reported injury. And knowing that there's a lot of other people, I'll keep it short. Just based on the safety factor. [LB278]

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SENATOR FISCHER: Thank you very much, Mr. Garrean, and thank you for your service to your community. [LB278]

DARREN GARREAN: Thank you. [LB278]

SENATOR FISCHER: Are there questions? Senator Hadley. [LB278]

SENATOR HADLEY: Thank you, Senator Fischer. Yes, sir. You said you could do it up until 2000 or 2001? [LB278]

DARREN GARREAN: That's correct. That's when it was changed. [LB278]

SENATOR HADLEY: And was the state law changed just, I think it was asked earlier, and Senator Mello said that somebody could answer it. [LB278]

DARREN GARREAN: The law was changed where we were no longer allowed to be collecting on the streets. [LB278]

SENATOR HADLEY: And that was the state law that was changed. [LB278]

DARREN GARREAN: Correct. And that took us off the streets. [LB278]

SENATOR FISCHER: Other questions? Senator Gay. [LB278]

SENATOR GAY: And why was the state law changed? [LB278]

DARREN GARREAN: I don't know the specific reasons as to why it was changed, if it was... [LB278]

SENATOR GAY: A senator didn't like it maybe. [LB278]

DARREN GARREAN: I can't make comments on some of these... [LB278]

SENATOR GAY: I've got another question. You've been involved in this before. And I'm reading this bill and it says soliciting. You, MS, great, you know, these big organizations. Community betterment purposes. To me that seems really vague as far as it could be the dance team, it could be a lot of different things. Do you think...? I mean, if we were tighten this a little it should be, like, nonprofit or like a federal nonprofit. [LB278]

DARREN GARREAN: Whether it's a 501(c) or... [LB278]

SENATOR GAY: Something like that, because otherwise, boy, I could just see

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thousands of applications coming in to a city like Omaha. [LB278]

DARREN GARREAN: I would agree with that, that if the committee would like it to be shored up a little bit more. The other thing is if it was deferred back to the municipality and allowed them to say, okay, at that point we only want X, Y, Z to be allowed to do this. But yeah, if the committee would like it to be. [LB278]

SENATOR GAY: But your major nonprofits are going to be a 501(c)(3), and I think at least...I don't know, I just wanted your opinion. Do you think that would be wise to do? . [LB278]

DARREN GARREAN: We would be a proponent for that if that...what the committee would like in order to shore this up, that...or for it to move forward. Yes. [LB278]

SENATOR GAY: All right. Thank you. [LB278]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB278]

DARREN GARREAN: Thank you. [LB278]

SENATOR FISCHER: The next proponent, please. Good afternoon. [LB278]

JAMES OWEN: Good afternoon. Thanks, Madam Chairman; thanks, members of the committee. My name is Jim Owen, J-i-m O-w-e-n. I'm with the Muscular Dystrophy Association, and 2001 was the first year that the firefighters were taken off the streets in the state of Nebraska and we've lost significant income in the proceeding years to the tune of \$233,000 excluding Local 385 in Omaha. I kind of broke it out differently because of just the pure size and manpower of 385, but the average Nebraska fire department is back up to about to the point in terms of income raised where they were in 2000, but that is due in large part to them adding other activities, us getting involved with other fire departments and IFF locals and getting them on board with the Muscular Dystrophy Association. Local 385 in Omaha, Nebraska, took the biggest significant hits initially. In 2000, they raised \$56,000; 2001, \$31,000; 2002, \$28,000; \$32,000; \$36,000. And then in 2005 they--again they have the manpower to do this more than any other of the locals--in 2005 they started adding a tremendous amount of other activities. Steak fries; they're having one Wednesday. You're all invited. Come on down to Omaha to the union hall. Just a number of other things. So their income has increased now above the level that it was in 2000 but it's a year-round project for them as opposed to four days or five days, right around that traditional Labor Day weekend and our telethon. I'd like to point out that the association accepts no government funds, so we...all the income that we raise nationally is from special events much like this. Firefighters are our biggest and longest tenured sponsor. They have been collecting for us for 55 years this year. In the state of Nebraska, the association funds a \$30,000 summer camp, a \$40,000 clinic

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grant to the University of Nebraska Medical Center each year. We assist the families that we serve, \$2,000 towards the purchase of wheelchairs, leg braces. We fund support groups. We serve over 600 families in the state of Nebraska. Because of the decreased income, I want to point out that we have not denied any of the families that we serve, those services. But potentially research dollars have not...we have not been able to put any of that money towards...lost money towards potential research in that time frame. In the last five years we've seen some of the most tremendous breakthroughs. We've actually found the first definitive treatment for neuromuscular disease. I had the pleasure of seeing a lady with Pompeii's disease get up out of her wheelchair and walk. We are very close with Duchenne muscular dystrophy, PTC therapeutics, and it's critical that we continue to provide the funds for the researchers to find cures for this group of diseases, so. [LB278]

SENATOR FISCHER: Thank you, Mr. Owen. Are there questions? Senator Hadley. [LB278]

SENATOR HADLEY: Senator Fischer, thank you. Since obviously your...I think your organization works with the firefighters and probably in all 48 states. Do you have any idea how many states ban solicitation like this? [LB278]

JAMES OWEN: I do not. Actually...no, I guess, is the simple answer. There are pockets in communities in states where we have had state ordinances much like we have in Nebraska, that we've turned them around, where some communities still make the decision not to allow it and others do, and I know that was addressed by someone here. [LB278]

SENATOR HADLEY: Yeah, I was just curious if you had information since obviously your organization probably does this in as many states as it's possible they're going to have... [LB278]

JAMES OWEN: Absolutely. [LB278]

SENATOR HADLEY: ...the firefighters out with the boots. And I just was curious. [LB278]

SENATOR FISCHER: Senator Louden. [LB278]

SENATOR LOUDEN: Yeah. Well, this is banned now in Nebraska? How come they do it? I mean, how come the firemen are able to go ahead and have these fund-raising events? [LB278]

JAMES OWEN: The fund-raising is not banned. It's where they do the fund-raising that's banned. [LB278]

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SENATOR LOUDEN: Well, that's what I mean: on the road, on the road. [LB278]

JAMES OWEN: To my knowledge there is no fund-raising on the roads. [LB278]

SENATOR LOUDEN: Well, I still got my little sticker on the windshield anyway. [LB278]

JAMES OWEN: Well, the ones that I'm familiar with or most familiar with, Lincoln, Omaha, and the eastern part of the state, do their fill-the-boot activities in front of grocery stores, Wal-Marts, things like that. [LB278]

SENATOR LOUDEN: Out...okay, on the street. [LB278]

JAMES OWEN: Off the streets. [LB278]

SENATOR LOUDEN: Off the road on the street. Okay. [LB278]

JAMES OWEN: And other events like golf tournaments, and sporting events, potentially, even. [LB278]

SENATOR LOUDEN: Okay, because, yeah, I know we...we go through it a little bit different the last...like you say, Labor Day, usually it's around that time frame someplace, and they give you a little sticker to put on your windshield so you don't have to pay twice when you go through them. [LB278]

JAMES OWEN: Absolutely. They do a great job. [LB278]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here. Next proponent, please. Good afternoon [LB278]

TREVOR TOWEY: Good afternoon. Thank you, Senator Fischer; thank you, members of the committee. My name is Trevor Towey, T-r-e-v-o-r T-o-w-e-y, and I'm here today representing the Omaha Professional Firefighters on behalf of MDA. And in the interest of being brief and not repetitive I'd just like to point out a couple things that the previous speakers may not have mentioned. It was mentioned that we've been doing this for over 50 years, and the firefighters this is our number one charity. We're supportive of many other charities but MDA is the largest and we give the most money to them. This current law that's in place by the state of Nebraska prohibits us greatly in our fund-raising efforts. It was mentioned in Omaha alone we've always ranked in the top 20 nationally as far as money raised that we give to MDA, and since then we've decreased that by 50 percent. It's been brought up that safety seems to be a big concern regarding our collections on the streets, but I'd like to point out that firefighters are trained extensively on how to operate in the roadways, okay? In the roadways, I guess I'd like to argue that

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those are more predictable than in the parking lots. Since we've been kind of banned from the streets, we've went into the parking lots to try to raise money. And as you all know, if you've been to a Wal-Mart parking lot lately, it can be quite chaotic, and there has been more close calls with us collecting in the parking lots than there ever has been, as far as I know in Omaha, of us collecting on the streets. Senator Hadley had brought up the question about other states that may have banned this sort of a collection, and I do not know the other states that have banned this legislation, but there has been states recently as large as Texas, California, and North Carolina, that I know that have passed similar legislation to this which would allow firefighters the ability to go and collect on the streets again. So that's been done recently within the last three years. And basically that's all I'd like to point out. But as Mr. Owen said, the state of Nebraska has about 600 families that are affected by this disease. The money that we raise goes to support all those families, and I ask you to think of them when you consider advancing this legislation. Thanks. [LB278]

SENATOR FISCHER: Thank you, Mr. Towey. Thank you for your service to your community. Any questions? I see none. Thank you very much. Next proponent, please. Good afternoon [LB278]

BRENT VAN EPEREN: Good afternoon. Thank you, Senator Fischer and members of the committee. My name is Brent Van Eperen and I'm the father of a four-year-old boy, Braydon (phonetic), who was diagnosed with Duchenne muscular dystrophy back in December 2007. [LB278]

SENATOR FISCHER: Could you spell your name, please? [LB278]

BRENT VAN EPEREN: Oh, yes. B-r-e-n-t V-a-n E-p-e-r-e-n. Braydon (phonetic) was diagnosed back in December of '07, and Duchenne is one of the most common forms of muscular dystrophy, which there's currently no cure. My wife and I were devastated to learn about the disease and our little boy would be possibly in a wheelchair between the ages of 8 and 12 and may not live past the age of 20, so that's why this is very important to us. Upon learning this, we discovered support from the Muscular Dystrophy Association from helping with summer camps to funding research that is a whopping \$85 a minute for research. To helping defray the costs of wheelchairs, we also discovered how important the firefighters to the MDA are. The International Association of Firefighters help raise money to support the MDA. Our states needs to allow the firefighters to stand on the street corners during the fill-the-boot campaign to help Braydon (phonetic) and others like him who are diagnosed with debilitating neuromuscular diseases. I'd like to thank the committee for taking the time to hear me talk about this matter, and it is very dear to my heart as a dad. [LB278]

SENATOR FISCHER: Thank you, Mr. Van Eperen. Are there questions? I wish you all the best with your son. Thank you for being here today. [LB278]

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BRENT VAN EPEREN: You bet. Thank you. [LB278]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB278]

BRUCE SANDAHL: Good afternoon, Senator Fischer, members of the committee. My name is Bruce Sandahl, S-a-n-d-a-h-l, and I didn't intend to testify but I just wanted to make a point of clarification. My understanding is that there was not a law change back in 2000-2001; that there was always a law on the books and it was not well known, not enforced. And back in that time frame it did come to light, and since that time the law has been enforced and has impacted professional firefighters around the state from being able to go out on the roadways like they used to. And so I guess I didn't mention I'm the western district vice president of the Nebraska Professional Firefighters Association. And representing the western locals and the locals throughout the state, I just want to ask the committee to consider advancing the bill and hopefully will be able to get it to the floor and get some action there. [LB278]

SENATOR FISCHER: Thank you, Mr. Sandahl. Thank you for your service to your community. [LB278]

BRUCE SANDAHL: Thank you. [LB278]

SENATOR FISCHER: Where do you live? [LB278]

BRUCE SANDAHL: Hastings. [LB278]

SENATOR FISCHER: Hastings. Great. Do you collect on a state highway? [LB278]

BRUCE SANDAHL: We do not. [LB278]

SENATOR FISCHER: Did you used to? Senator Louden is getting us all in trouble so I might as well ask you. [LB278]

BRUCE SANDAHL: In the time I've been at the Hastings Fire Department and a member of our firefighters local, we have not collected on the streets. But historically, I know in the past they did, and at some point in the late '90s when this law came to light they stopped doing it. [LB278]

SENATOR FISCHER: Do you have...? What do you do now for fund-raisers? I guess I'll ask you that. [LB278]

BRUCE SANDAHL: Our primary thing is like what Mr. Owen talked about and some of the other people testifying. We go to Wal-Mart on a Saturday, usually late summer or

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early fall, and do a collection there. [LB278]

SENATOR FISCHER: Thank you. Other questions? I see none. Thank you very much. [LB278]

BRUCE SANDAHL: Thank you. [LB278]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB278]

JACK CHELOHA: Good afternoon, Senator Fischer and members of the committee. My name is Jack, J-a-c-k, Cheloha, C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify in support of LB278 this afternoon. In the interest of local control, the city of Omaha is supportive of this legislation. I think you've heard some of the history regarding it, specifically relating to Omaha, but then generally, as well statewide, how this has come to light. I recall every Labor Day how this was greatly promoted, at least within the city of Omaha, from the radio to the TV to the newspapers would report on it, and you would see the firefighters in their garb and the boots out, collecting for a very worthy charitable cause. And what happened was, people looked at the statute or they weren't aware of it, as you heard, and then there was a question of, well, what's a state highway? I think most people knew that, but what's a roadway? And then we kind of looked at some things. Well, can we pass an ordinance by home rule charter and allow for this or not allow for it? And we tried that avenue and ran into some glitches there too, if you will. Typically the professional firefighters would do their gathering over the Labor Day weekend, and that would be it, but then we...as we had an ordinance, we were confronted by groups that would come in and they would do solicitation on public streets and roadways every weekend or every other weekend. And so it just got to be too much and we had a lot of complaints, locally. And so I think we've tried to sort this out here down at the state Legislature; I know Senator Pedersen introduced some of those bills that were mentioned on the prior years. And so that's basically the history of it and I think if this is good legislation and if you allow the local community to look and see what would be safe for their community, what would be advantageous for their charitable groups, etcetera, I think we could come up with a good ordinance to keep everybody safe without being too much of a burden or a hindrance on our citizens. So for those reasons we support LB278. [LB278]

SENATOR FISCHER: Thank you, Mr. Cheloha. Can you tell me, is LB278 the same bill that's been introduced before? [LB278]

JACK CHELOHA: I can't tell you if it's absolutely the same but it's very similar. It's always...I've supported it for Omaha a number of times because it always had the local option or local control for each municipality. [LB278]

SENATOR FISCHER: We had a question earlier on the bill, the...oh, let's see, line 15

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and 16 on the bill where it talks about charitable or community betterment purposes. Do you see a problem with the term "community betterment purposes" in there? You might just think about that. [LB278]

JACK CHELOHA: I will. [LB278]

SENATOR FISCHER: And if we need to tighten it up, if you could offer suggestions that would be good. [LB278]

JACK CHELOHA: I will. Thank you. I appreciate that. Typically, whenever you see the term of our "community betterment," I think of the definition under the charitable gaming act or the keno games, and so maybe we could look at that for a definition. [LB278]

SENATOR FISCHER: Okay, that would be helpful. Depending on what the committee does, I could see this...I would encourage Senator Mello to look for a consent calendar. [LB278]

JACK CHELOHA: Okay. Right. [LB278]

SENATOR FISCHER: Yes, Senator Gay. [LB278]

SENATOR GAY: Senator Fischer, thank you. Also when you're looking at that, on...do you have the bill in front of you? [LB278]

JACK CHELOHA: I do. [LB278]

SENATOR GAY: On line 17 on page 2, just read that paragraph. "Any ordinance enacted pursuant to this subsection shall be a general ordinance"--and I guess I'm not familiar with the ordinances; I've never had to do that--"which shall not exclude or give preference to any individual or the members of any organization, association, or group. Any ordinance whose terms or provisions do not strictly comply with this subsection is void." What would that mean though if...wouldn't you have to give it to everybody that requested this? [LB278]

JACK CHELOHA: Right, but yet at the same time, Senator Gay, you could set up some reasonable parameters, if you will, for those groups that qualify, whether you want to have a certain fee, if you will, or a license fee. Also you would need to maybe want to look at if they have public safety knowledge or any type of training or even if...you know, in Omaha we have our health and safety council which might be able to offer that to certain groups just to be familiar with how traffic flows work and things along those lines. So I think we'd be able to write some rules and regulations within a general ordinance that that way you would still have it open where you wouldn't be subject to a lawsuit for discrimination but yet you'd still have some careful thought in terms of who's eligible.

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[LB278]

SENATOR GAY: Because that's what concerned me, like Papillion Baseball Association might want to do this, or you flood the market... [LB278]

JACK CHELOHA: Right. [LB278]

SENATOR GAY: ...and now you have every weekend somebody is out there trying to do this, and it would really hurt the MDA instead of help them. [LB278]

JACK CHELOHA: Sure. [LB278]

SENATOR GAY: So that's my concerns, but you kind of addressed it there then. [LB278]

JACK CHELOHA: Okay. [LB278]

SENATOR GAY: Thank you. [LB278]

SENATOR FISCHER: Senator Campbell. [LB278]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Cheloha, a couple of questions. One is would the city ever get into a situation where it would require the organization to carry liability insurance? [LB278]

JACK CHELOHA: That would be something that we may want to consider for our ordinance, and I think that may be prudent to include that. That's a good point. [LB278]

SENATOR CAMPBELL: I just know from the city of Lincoln, at times, there were several events, parades, closing blocks, I'm trying to think of other examples, in which there was required a liability to hold the city harmless in case of situations. And since you've been following this bill so closely, what precluded the bills in all those years to languish on General File. [LB278]

JACK CHELOHA: Well, typically what happened, I don't believe any of them were ever prioritized, and if they came up for either consent calendar or General File debate early in the session, there was a particular senator from my city who didn't care for these bills and he liked to talk about them a lot, so I'll leave it at that. [LB278]

SENATOR FISCHER: Other questions? I would encourage you to think about that tonight and possibly work with the league and come up with some ideas and contact committee counsel tomorrow morning. [LB278]

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JACK CHELOHA: Sounds good. [LB278]

SENATOR FISCHER: We are going to Exec on this tomorrow afternoon, and if we get it out, as I said depending on what happens with the committee, it could be a consent calendar bill. [LB278]

JACK CHELOHA: Okay, great, and I appreciate that. Thank you. [LB278]

SENATOR FISCHER: So thank you very much. Next proponent, please. Good afternoon. [LB278]

LYNN REX: Good afternoon. Senator Fischer, members of the committee, my name is Lynn, L-y-n-n, Rex, R-e-x, representing the League of Nebraska Municipalities. And we too support LB278 and we would hope that the committee would advance this measure. In past years, as Jack Cheloha indicated, there's just no time for debate, and so I do think that this is very important. I do want to indicate that the individual representing the muscular dystrophy organization wanted you to know, Senator Campbell, that they do carry \$2 million of liability. In terms of the type of model ordinance that the League would draft for municipalities across the state to basically have enabling legislation on the local level, we would have that requirement in there, as well as safety training and other sorts of things. So I'd be happy to respond to any questions, and we really do hope that this bill is advanced. It's really important for the individuals who rely on these charitable contributions. [LB278]

SENATOR FISCHER: Thank you, Ms. Rex. Do you believe that under the local city ordinances, then it would cover safety training, it would cover any liability coverage that would be required; should we leave that up to the locals and not address it here? That might be something you want to discuss, too, this evening. [LB278]

LYNN REX: Well, we codify over 160 municipalities in the state of Nebraska of the 530, but certainly, even if you want to include that, I mean in this statute, we support that. That's what our municipal ordinance would...our model ordinance would require that in any event, that you'd have the training component as well as you would have the component for liability coverage, because that's...pardon? [LB278]

SENATOR FISCHER: Do you have that model ordinance now, or..? [LB278]

LYNN REX: Well, we don't have one for this because we don't have the authority to do it yet. But we would definitely do that and we would support having it in this bill, as well, if that would help get this advanced this year, because it is important. [LB278]

SENATOR FISCHER: Okay. Thank you very much. [LB278]

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LYNN REX: Thank you very much. Appreciate it. [LB278]

SENATOR FISCHER: Other questions? Senator Louden. [LB278]

SENATOR LOUDEN: Yes, as I look at this...okay, I don't have any problem with the firemen doing it because where I come from we do it in a big way. They are volunteer firemen. They pull a truck up there, put on the red lights there along the highway, and everybody stops and you throw it in the boot and that's it, and they've been doing it for a long time that way, and it doesn't seem to bother anybody. Anyway, when I look at this, the first part is "Except as otherwise provided in subsection (3) of this section." Then when you get into (3) they talk about a municipality, what they can and can't do, and a state highway system and devoted to contributions for charitable betterment. Now are we getting into something here that could actually be unconstitutional, the way it is? If we're going to do this, why don't we just repeal the whole works and either start over again or else repeal the whole thing and not say nothing about it? Then it isn't illegal. [LB278]

LYNN REX: Well, I think part of the reason, Senator, is because municipalities, and I would imagine the Department of Roads, as well, although I don't speak for them, would not want... [LB278]

SENATOR LOUDEN: Well, the municipalities still could pass an ordinance to do this. If there wasn't nothing in state statutes to prohibit, they can still control what goes on in their town, can't they? [LB278]

LYNN REX: Well, unfortunately no. Because Nebraska is a grants of power state, we can only do those things that the Legislature allows expressly or is implied or necessary to effectuate corporate powers. So unless the Legislature gives us the authority, Senator, we're not allowed to do that. If we were in Iowa, you would be correct. Unless the Legislature prohibits it, a municipality in Iowa could do it. [LB278]

SENATOR LOUDEN: The Legislature is giving you guys powers to catch dogs? [LB278]

LYNN REX: Apparently not enough of them, but indeed that's an issue. [LB278]

SENATOR LOUDEN: Well, what I'm wondering, as an example, I just wondered if this needs a lot more work done on it to come out right so that these people can solicit contributions. Because what this is kind of set up for is so you're not hitchhiking someplace. I mean, that's included in this bill, is hitchhiking and besides contributions. And then we went ahead and then and enlarged the contribution part. But as I look at the bill I'm wondering if part of it up there is you can't solicit a ride or employment or business, you know, and you can't be out there doing stuff and that's what that was addressed, and somewhere along the line contributions is just one word in there. Then

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as we add to this bill then we start going, a part on contributions and the municipalities mixed up in all of it, so I'm wondering if we need a better job of bill drafting here. [LB278]

LYNN REX: Well, frankly, I think that this bill has been through at least three or four extensive hearings in the past, as well floor debate, and the Urban Affairs Committee, which is where this bill went previously, tightened this up significantly over the years and made sure that there was language in there to assure that there would not be discrimination, which is why it has to be broadbased and that's why they used the term "general ordinance," Senator Gay. So essentially I think this bill, frankly, is ready to go, with some minor changes, and it is important because there are charities and others that rely on this. You could even tighten it up if you need to, to tighten up charitable contributions or the charitable organizations to be 501(c)(3)s if you need to do that. There are ways to tighten this up. But I do think this is an excellent draft. It has been well-vetted over a period of years, and, frankly, should have probably passed several years ago. [LB278]

SENATOR LOUDEN: Well, okay, but did we ever get an opinion from the Attorney General on the whole thing after it was drafted, or if it made it to a stage or two? [LB278]

LYNN REX: That's a good question. I'll check and get back to you. I don't know the answer but I will check and get back to you. [LB278]

SENATOR LOUDEN: Yeah. Okay, thank you. [LB278]

LYNN REX: Thank you very much for the questions. [LB278]

SENATOR FISCHER: Other questions? I see none. Thank you, Ms. Rex. [LB278]

LYNN REX: Thank you very much. [LB278]

SENATOR FISCHER: (Exhibit 1) Any other proponents for the bill? I would like to read into the record, we have a letter from Amy Miller, the legal director of ACLU, in support of the bill. Are there any opponents to the bill? Anyone in a neutral capacity? I see none. Senator Mello did waive closing. With that I will close the hearing on LB278 and open the hearing on LB560. Welcome, Senator Lathrop. [LB278]

SENATOR LATHROP: Thank you, Madam Chair. [LB560]

SENATOR FISCHER: Nice to have you back. [LB560]

SENATOR LATHROP: Good afternoon, members of the Transportation Committee. Am I the last thing up today? [LB560]

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SENATOR FISCHER: You are the last one up today, so... [LB560]

SENATOR LATHROP: Good. [LB560]

SENATOR FISCHER: And everyone is leaving so it's going to be... [LB560]

SENATOR LATHROP: This shouldn't take me any longer than 45 minutes. [LB560]

SENATOR FISCHER: Exactly. You get 45 minutes for an opening. [LB560]

SENATOR LATHROP: Grea. Steve Lathrop, senator from District 12. That's L-a-t-h-r-o-p. I'm here today to introduce LB560. And I'd call this my predatory towing bill and I call it that because that's what it's called in the business. We have, as a statutory scheme, given to those who tow and store vehicles the right to lien that vehicle, which means once they pick it up off of the street or out of a parking lot they get to keep it until you pay whatever is required to release the vehicle. That authority we've given these people through the lien statute I believe is being abused, and it is being abused because the charges have gone to the place now where they're charging more than it costs to tow a vehicle to the lot. And the right to impose a penalty upon people is the state's alone; we can't delegate that duty to a tow company. And tow companies are now charging not just what it takes to tow a vehicle from a private property, but they're charging more than that. And to the extent they charge more than that, they're imposing a penalty, and for people who have had their vehicles towed they don't get their car back until they pay the cost to tow the vehicle, and then they pay a penalty--not to the state and not to the school district, as required by the constitution, but to somebody who we've given a license to tow vehicles out of private lots. This is a significant problem, not only in Lincoln but in Omaha and other metropolitan areas. The issue was brought to me by somebody who's a student down here in Lincoln where the practice is very prevalent. I will tell you, in my experience after I became aware of this subject, I was outside of a bar in Omaha and I saw one of these signs at 72nd and Blondo, and the sign said, you know, no parking here, customers only, violators will be towed, you'll have to call, like, Dan's Towing or something. Minimum charge, \$185. Okay, to tow, to get your car out of the tow lot, plus they charge you to store it and an administrative fee, and pretty soon we've just given somebody a license to pick cars up out of lots across the city and the state and charge whatever they want. There's no...we don't...we've never regulated these people so they're charging whatever they feel like. My bill basically provides that the maximum should be \$100 plus a \$25 administrative fee. I think that's still too high. It probably ought to be no more than \$100 because it's hard for me to imagine that if there's an accident at 17th and Vine Street and the police call somebody to tow--the city council has already entered into an arrangement with somebody--it isn't going to be \$185 to tow that vehicle. It's going to be some other lower, much lower rate. And so as an amendment I would propose either that we amend mine to simply no more than a flat \$100 or that we amend it to say that in the event your

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vehicle is towed from a private lot in a city which has entered into a contract with a tow company to tow vehicles, that the rate shouldn't be any higher than the city pays to tow vehicles in a like situation. Now that may be making it too involved and it might be a lot easier just to say you can't charge more than \$100, but we have to stop the practice of tow companies imposing a fee for towing, a fee for charging, and a penalty, which is the responsibility of the state and not tow companies. And so that's what the essential purpose is of LB560 and I'd ask you to advance this, and yes I am serious about this. I think it's a problem and people are...it's what they call predatory towing. They set up a schedule and they run around the city and pull cars out of lots and then charge more than they should to get the car out. [LB560]

SENATOR FISCHER: Thank you, Senator Lathrop. Are there questions? Senator Louden. [LB560]

SENATOR LOUDEN: Yes. When you put the language in you just mentioned Senator Lathrop, will that...that would exclude these cars that are out along the highway in some place. I guess when you spoke of that, I had some personal experience with that. I had a son and daughter-in-law got in a wreck. And of course it totaled out their car, you know. Well, there's laying a pile of junk. So one of the people that didn't live that far away did the towing and that sort of thing. I said, yeah, get the thing out of here. I don't need it; it's wrecked, you know. So he towed it back to his place. Well, then time we got people healed up and everything, about ten days went by, well, pretty soon there was, like, about a \$500 bill against the thing for towing and salvage and everything else. And of course I knew the guy and I told him, you know I just told him, you're in so many words, you're crazy, I'm not going to pay that. You can have the outfit first, and that's how we settled. But then I found out that this happened along state highways. State patrolmen calls these guys in to tow this and you end up with a issue just like you have. Now when you put that flat fee on there, will that help us out there in the countryside? [LB560]

SENATOR LATHROP: Well, I don't know that it will help your situation because this relates to the authority of these tow companies to tow vehicles out of private parking lots... [LB560]

SENATOR LOUDEN: It won't have anything to... [LB560]

SENATOR LATHROP: ...so in my law office I could put a sign up or I could call one of these people up or respond when they come and solicit, because it's really more setting up a paper route for these folks to come and look to see if there's a car in a parking lot. And they put the signs up on the side of the building. They're supposed to be in a conspicuous place. And then they come like they're on a route and they go through these parking lots looking for cars to tow. And that's fine; it's an enterprise. And if the landowner wants the cars gone, I understand that too. But at the same time it's about

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the fee they can charge. [LB560]

SENATOR LOUDEN: Okay. But this bill then wouldn't do anything for cars out along a rural highway or anything like that? [LB560]

SENATOR LATHROP: No. That's a contract that the cities or the State Patrol enter into. I'm not exactly sure...I know that inside the city, the city of Lincoln or Omaha would enter into a contract with ABC Towing, for example. [LB560]

SENATOR LOUDEN: My understanding is, out in the rural areas, the patrolman, it's his discretion who he wants to call. [LB560]

SENATOR LATHROP: Right. So I don't know what...how they fix those rates. [LB560]

SENATOR LOUDEN: Okay. But this wouldn't affect anything outside of a municipality? [LB560]

SENATOR LATHROP: Not outside of a private parking lot. [LB560]

SENATOR LOUDEN: Okay. Thank you. [LB560]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB560]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Lathrop, the majority of these vehicles that you're talking about are repossessed, is that the reason, right? [LB560]

SENATOR LATHROP: No, this isn't a repossession. This is...I'll give you the classic example and the pages will understand this. They live in an apartment complex in Lincoln. They go to school here and there's a sign on the side of the apartment complex that says, parking for tenants only, violators will be towed. So you stop by to see your friend, you go in, you come back out and your vehicle is gone. And you call up whoever the tow company is down here and you say, where's my car, and they say we got it; it's going to cost you \$100-whatever to get it out. And the problem I have with it is that they are charging more than they ought to, to tow it, and that's really a penalty which isn't theirs to collect. [LB560]

SENATOR STUTHMAN: In other words, those vehicles that I see a lot of time by the City-County Building out here on 10th, you know they're usually every time I go by they're dragging one of them out of there. And they're just...they're there at a time they shouldn't be parked there and they just... [LB560]

SENATOR LATHROP: Well, that's a different situation, and the protection that's in place

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right now is the city of Lincoln will let out for a contract each year--at least that's how Omaha does it. They have the tow companies compete and bid for who gets to be the tow company that drags cars out of No Parking spots on the streets--and after accidents. They fix a prevailing rate and then they get a monopoly on it. Okay, that's different. It's...the situation is if you ran a bar someplace and you said I'm tired of these people parking in my parking lot and walking over to the apartment complex over there; I'm going to have them towed. Which is fine; it's your property. If they're not there to go to your business they ought to be towed. It's just what the charge is after they hook the car up and then leave with your vehicle. [LB560]

SENATOR STUTHMAN: Okay. Thank you. [LB560]

SENATOR FISCHER: Senator Gay. [LB560]

SENATOR GAY: So in that situation you gave I could charge 350 bucks. There's no limit on the upside? [LB560]

SENATOR LATHROP: There is no limit. And as I said... [LB560]

SENATOR GAY: Or I could cut a deal with you. [LB560]

SENATOR LATHROP: ...on the side of a place that I saw, \$185 to tow it, to get your car--minimum--to get your car out of a place in Omaha. [LB560]

SENATOR GAY: So you could cut a deal with you and I'll say, hey, I'll--could they do this--I'll split half of every car I tow out of (inaudible)? [LB560]

SENATOR LATHROP: I'm convinced, although I don't know this as a fact, I'm convinced that they go around and they say to a property owner in Lincoln, perhaps next to the apartment complexes the younger people live in, and say I'll put my sign up; you don't have to do a thing; I'll keep your parking lots clear. And all of that's fine, that's private enterprise and I understand that, but then to go on your route and be snatching cars and charging people more than you'd charge the city to tow them away from the same intersection seems wrong to me, and that's what I'm aiming at. [LB560]

SENATOR FISCHER: Other questions? Senator Campbell. [LB560]

SENATOR CAMPBELL: Thank you, Senator Fischer. Senator Lathrop, if the city of Lincoln sets a contract with Capital Towing and they set an amount, but they don't really set that amount in ordinance that says in all of the city of Lincoln you can only charge. So what you're saying is that you have to have a state law because the cities would not be empowered to set a city limit. [LB560]

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SENATOR LATHROP: The cities only set a contract for what they ask that towing company to do every year, which is pull people out of No Parking zones and to clear away debris after an intersection collision. So they don't really regulate. They don't regulate at all what is charged for towing people out of parking lots. [LB560]

SENATOR FISCHER: Senator Gay. [LB560]

SENATOR LATHROP: It's so bad that they call...there's a name for it: it's predatory towing. And... [LB560]

SENATOR FISCHER: Did you coin that? [LB560]

SENATOR LATHROP: No, I didn't. I mean when I started looking into it, my aide said, yeah, it's so...it's bad, not just in Nebraska but across the country, and they have a name for it and it's called predatory towing. [LB560]

SENATOR FISCHER: Senator Gay. [LB560]

SENATOR GAY: I could see where it could be abused, that's for sure. But now in the case you're using where a city or a county that has a large volume of towing, they bid it and it goes to the lowest bidder. [LB560]

SENATOR LATHROP: Right. [LB560]

SENATOR GAY: Not the highest bidder. They're not out to make money. [LB560]

SENATOR LATHROP: Exactly. [LB560]

SENATOR GAY: Okay, in the cases I've been involved with. Now a business though, where do we cross the point, I guess--I see what you're saying--but where do we cross the point? Is this how you came up with the \$125 of what is...how do we know it doesn't cost more to tow...? You know, I don't know. Where do we get...where we're getting involved in the free market of towing versus predatory? And is that where you have the cap on it at \$125? [LB560]

SENATOR LATHROP: Well, first of all, we don't know if the tow company is giving something back to the landowner, okay? [LB560]

SENATOR GAY: Right. [LB560]

SENATOR LATHROP: But the guy who had his vehicle towed and we'll call him Drew, okay? Drew, the kid who has his car towed from an apartment complex, doesn't get to enter into or look for the cheapest guy to tow his vehicle and then pay him. And so to

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the extent...I mean, we just have to make a policy decision: How much money do these guys get and...or the other thing is take away their right to have a lien. So then they'd have to sue in county court, and at that time they'd have to come in and prove (A) that they had a right to tow it, and (B) what a fair charge is for the tow. And because we give them a lien and we've given them essentially a license to keep the car, I think we have something to say about what they charge. [LB560]

SENATOR GAY: So by removing the lien provision you could make it more competitive that... [LB560]

SENATOR LATHROP: By removing the lien provision, if you towed my car I'd walk out to ABC Towing, to their lot, and say, I've got my keys, open the gate, I'm leaving, and if you want any money from me for towing my vehicle, you can sue me in county court where you'll have to prove the fair and reasonableness of your charges. And we circumvent that whole process where somebody reviews what the fair and reasonableness of the charges are by giving them a lien, I guess is the point. [LB560]

SENATOR FISCHER: Other questions? I have one. I have three sons and they all had vehicles towed when they were students at the university... [LB560]

SENATOR LATHROP: It's not retroactive. [LB560]

SENATOR FISCHER: ...as did our legal counsel from the same lot, by the way. But how much does it...how much does a tow truck driver make an hour? [LB560]

SENATOR LATHROP: I don't have any idea. [LB560]

SENATOR FISCHER: You know, because I'm looking at \$125. Maybe that company...maybe that's not too much. You know, I'm looking at what plumbers make... [LB560]

SENATOR LATHROP: Well, I suppose we'll hear from them today. [LB560]

SENATOR FISCHER: Okay. [LB560]

SENATOR LATHROP: Except that, you know, if the charge is \$150 or \$185 to hook up to your car and drag it a mile down the road, I don't know. I don't know what they're worth but it probably isn't \$500 an hour, because that's about what they could make if they're on a route and going into neighborhoods or into businesses within a mile of the place and towing vehicles. [LB560]

SENATOR FISCHER: But if it's more than a mile in the city, you know. If you're driving around Omaha and your...you know, if you're the owner of a company and you're

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paying a driver I don't know what an hour, maybe we'll find that out, and then for them to hook it up and get it out. I mean, I can see where it would easily take an hour from the time they would leave a lot until they would get the whole thing hooked up and hauled back. [LB560]

SENATOR LATHROP: Oh, no. No, no, no. Senator, I can tell you...and all you... [LB560]

SENATOR FISCHER: Can they hook that thing up fast? [LB560]

SENATOR LATHROP: We should make these people be expert witnesses today. They will tell you that they can pick that car up and tow it in the time it takes to go in the house and pick up a CD out of your friend's apartment and come back out and the car is gone. They're shaking their head yes. I think...no, it's not an hour-long process. [LB560]

SENATOR FISCHER: Okay. [LB560]

SENATOR LATHROP: They do it in...they're very efficient at it. [LB560]

SENATOR FISCHER: Okay. [LB560]

SENATOR LATHROP: So...I suppose we'll hear from the other side here shortly. [LB560]

SENATOR FISCHER: Okay. Thank you very much. [LB560]

SENATOR LATHROP: Anyway, that's my bill. [LB560]

SENATOR FISCHER: Any other questions? Thank you. Could I ask how many people are here to testify on the bill, if you'd raise your hands? We have four. Okay. Proponents, please; first one. And good afternoon again. [LB560]

LYNN REX: Yes, good afternoon, Senator Fischer. My name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We do support this measure. We support the limitation on page 8 relative to the caps on the amount that could be charged. Municipalities all across the state have heard comments very similar to the stories that Senator Lathrop referred to you, and there is a concern about what amount can be there. And I think there is also some lack of clarification in terms of how much a municipality can regulate. So for that reason, because municipalities really can't regulate in the general domain other than their own contracts that they have for this, it is important to have something in state law to do this very thing. And I'd be happy to respond to any questions that you have, and I also really want to underscore the importance of the language on page 10, Section 14. I think that provides the adequate

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exceptions for this act. [LB560]

SENATOR FISCHER: Are there any questions? I have a question. How...why should we regulate? Why should we regulate this? Why should the state step in and regulate a business on what they can charge? We don't...obviously, we don't regulate the price of gas at the pump. We don't regulate what a doctor can charge, which one of my sons just had an office call in Valentine, Nebraska, was \$95, which I'm sure it's a heck of a lot more in the city. We don't regulate what an attorney charges an hour. We don't regulate what a dentist charges. We don't regulate what a plumber charges or an electrician. Why should we regulate what a tow truck driver is going to charge? [LB560]

LYNN REX: I think this is fundamentally different because in all the cases you just referenced I, as the consumer, get to select. I get to choose. Even where I go buy my gas. And I know one of the things that we've talked about before on other days, other times, we've...I know Senator Hudkins, on one of the gas bills--it was before Revenue Committee a couple of years ago--the night before that hearing she toured Lincoln and found out that there was a significant difference in the price of gas between northeast Lincoln and southeast Lincoln to the tune of, I think, 10-15 cents a gallon difference. So I get that choice. But when your...when you go to a function--and I've never had my car towed. I've had a number of people that I know and a number of people that have though. But you go to a function and you come out and your car is gone, then what? In one situation... [LB560]

SENATOR FISCHER: But you have chosen to park on someone's private property that's marked No Parking. You have chosen to park there, and maybe you're not breaking the law because you're off of the city street where it says No Parking, but you're on...you have chosen to pull in to a private lot--my kids parked in a church lot and so did our legal counsel, by the way--but you've chosen to go into a private lot and park there with a sign that's up that clearly says, you know, no parking, no trespassing, violators will be towed. So you have made a choice. [LB560]

LYNN REX: Well, first of all, assuming that there's signage. I know in our office building, which is at 1335 L Street, we've had, over the years, several city officials that have had their cars towed and they were parked in our parking lot. [LB560]

SENATOR FISCHER: Do you have sign up saying you're going to tow? [LB560]

LYNN REX: Yes, we do, but they were there for our purposes. So I'm just suggesting to you that then they go down... [LB560]

SENATOR FISCHER: Did you reimburse them for their...? [LB560]

LYNN REX: Pardon me? [LB560]

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SENATOR FISCHER: Did you reimburse them for their towing charges? [LB560]

LYNN REX: Absolutely. Absolutely. We drove down there. We stood with them waiting to get it, and one particular individual was told they would wait the weekend before they could get their vehicle. In another case they needed to get their laptop and other equipment that was in a trunk, and they were told, no, you won't do that. And so this particular individual, even though this person was not from Lincoln, they called the Lincoln Police Department and had the Lincoln Police Department come down to the towing company and say, open it up. I mean, this is really predatory towing. And I really do agree with that terminology. [LB560]

SENATOR FISCHER: But what's the difference here...but what's the difference if it's private property and the owner of that apartment complex has decided I want to have--I live in an apartment here in Lincoln and they tow away people that are in the parking spaces that shouldn't be there and I happen to appreciate that. And they have signs up that says that. [LB560]

LYNN REX: Then I think that's very appropriate if they do that. But I do think that they're does need to be a state law that governs the amounts. And it's regrettable, but I think that when you have an abuse, it needs to be addressed. And I'm not suggesting that all towing companies abuse it but I can tell you unequivocally some do, and enough do that it is a major complaint throughout the state, from city to city. [LB560]

SENATOR FISCHER: Okay. Thank you. [LB560]

LYNN REX: Thank you very much. [LB560]

SENATOR FISCHER: Other questions? Senator Louden. [LB560]

SENATOR LOUDEN: Did I hear you correctly? You said that you had people towed off of your parking areas and they were people that were there with business with you people? [LB560]

LYNN REX: Let me rephrase that. The League did not ask that they be towed. They were towed. [LB560]

SENATOR LOUDEN: How come? [LB560]

LYNN REX: I don't know. [LB560]

SENATOR LOUDEN: Do you...well, I mean somebody...if that was your... [LB560]

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LYNN REX: They were not asked...it was not requested by the League that they be towed. We pay for that space and those individuals were towed and our staff spent time to go down and help them get their vehicles back. [LB560]

SENATOR LOUDEN: Do you have a contract with somebody to keep your place clean of violators then, or what? [LB560]

LYNN REX: No, we don't. [LB560]

SENATOR LOUDEN: I can't believe why... [LB560]

LYNN REX: I think in the 30 years that I've been with the League there's one time that we did contact a towing company to tow a car that had been there for over two months. Other than that we have not done that. Even though we've got the private parking, private property sign up and everything else... [LB560]

SENATOR LOUDEN: Well, couldn't that person... [LB560]

LYNN REX: ...for football Saturdays people park there. We don't tow them. We don't do that. [LB560]

SENATOR LOUDEN: If that is the case, that is a grand theft auto. [LB560]

LYNN REX: Well I would suggest to you that...perhaps Senator Lathrop can address this in his closing, but perhaps that's why he was trying to say that the penalty and who sets penalties in this state, that's your prerogative as a Legislature. And when you have folks that are out there just trying to tow out vehicles, and I will assure you once you go out there, in one particular case they denied that they towed it from our parking space. Well, that's where that car was and I really don't think this mayor had any particular reason to lie about where he parked because he always parks there. [LB560]

SENATOR LOUDEN: How are we going to tell, on this, the difference between auto theft and predatory towing, I guess? What would be the difference, unless that landowner has a contract with somebody to keep the lot cleaned up? [LB560]

LYNN REX: Well, frankly...I mean I just think that, under the circumstances, this bill addresses that by making it clear when...that there is actually going to be an amount, a cost, a top amount that will be charged in these situations. [LB560]

SENATOR LOUDEN: Well yeah, but they can steal that car and say, oh, I was towing it. If they got caught, why, they say, well, here I'll just send my charges, otherwise if they don't caught they can go strip the thing. How are you going to decide between that? And there's going to be a period of time there that it could go either way. [LB560]

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LYNN REX: That's a good question. I'm sure Senator Lathrop will address that in his closing. (Laugh) [LB560]

SENATOR FISCHER: (Laugh) Good answer. [LB560]

LYNN REX: And I will say this: In one instance there actually was an elected official who went out and when they saw that their car was getting towed from the place that that person can properly park because it's rented by the League of Nebraska Municipalities--we own our building but we rent the parking--and he was there, saying please don't take this; I'm supposed to be here. They towed it anyway and they were not requested to do that by us or anyone else. And actually I really was not that passionate about this until I started hearing Senator Lathrop testify to it, and I know that Jack Cheloha from the city of Omaha will also come forward and testify in support of this measure. We do support the bill, but I do think that there have been a lot of abuses, and abuses that need to be addressed, and you are the only ones that can do that. [LB560]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB560]

SENATOR STUTHMAN: Thank you, Senator Fischer. Ms. Rex, I have a real problem with it sounds like no one that had authority to call someone to tow that vehicle did that. Does somebody just drive around and say I don't have a vehicle behind me and there's one I should just hook on and pull away? [LB560]

LYNN REX: Well, that would certainly be a logical conclusion. That's the conclusion that some of us have reached. [LB560]

SENATOR STUTHMAN: Okay. Thank you. [LB560]

SENATOR FISCHER: In your parking lot do you have special stickers to show you can park there? I mean how did they know which vehicle to tow? Why didn't they take yours? [LB560]

LYNN REX: Well, I don't know but I can share this with you: They have no business taking anything off of that parking lot, Senator. [LB560]

SENATOR FISCHER: But I mean how did they pick the ones that were the visitors and not yours or people that work there? [LB560]

LYNN REX: This is total speculation: I would guess because they had license plates that did not begin with the number 2. That's just total speculation. [LB560]

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SENATOR FISCHER: Okay. Other questions? I see none. Thank you. [LB560]

LYNN REX: Thank you very much. [LB560]

SENATOR FISCHER: Next proponent please. Good afternoon. [LB560]

JACK CHELOHA: Good afternoon, Senator Fischer and members of the committee. My name is Jack Cheloha. The last name is spelled C-h-e-l-o-h-a. I'm a registered lobbyist for the city of Omaha. I want to testify in support of LB560. As Senator Lathrop referred to this bill, predatory towing has been a significant problem in the city of Omaha for a number of years. I've worked for the city of Omaha now for about 15 years. When I'm not down here doing this job, I work on our city council staff. And I've fielded a number of calls from citizens where they've complained about their vehicle being towed from a lot. There was a number of times there was a question of whether the sign was properly posted as state law requires or whether the sign was visible or if the lettering was faded, etcetera, etcetera, etcetera. Numerous complaints about that. Additionally, our city prosecutor has fielded a number of calls and complaints regarding this. In Omaha, a city roughly of 400,000 people, we have numerous universities and colleges, etcetera, apartment buildings, and most of the landowners are pretty good about posting their parking lots in regards to not allowing people to park there. But however, there's a number of them where, as I've mentioned, either the signage is not up or it's faded so badly or been warped or knocked down by snowplows or something where it just come to the point where, did they follow the statutory requirements? It appears to me, without having the statute book in front of me, at some point in time landowners probably came to this very same committee or some committee of the Legislature and said, gosh, we're tired of those dirty rotten scoundrels parking in my parking lot; I have a parking lot where I want my patrons or my tenants or whoever to be able to park freely without having that spot impeded by some other car. And so with that, the Legislature passed a bill that set forward what other parameters: Let's regulate this; let's say you can keep people out of your private lot as long as you post signage and you're, in fact, welcome to tow them if you want at the owner's cost as long as you notify them that this was a private lot, you would be towed, and at least tell them where to get ahold of their vehicle afterwards. I think, in particular, I like Senator Lathrop's amendment on page 5, Section 4, where it requires that "Signs posted on the private property"--this would be line 11 and 12--"shall state who to contact for information regarding a towed vehicle." We've had trouble, if you will...I don't know how to call them but they're either upstart towing companies or newly developed towing companies or something like that where people don't even know who to contact anymore to retrieve their vehicle. And as you know, for most people a vehicle is probably going to be the second most expensive thing they purchase in their lifetime, and so they have a vested interest in trying to retrieve that property. In terms of the number that a private company is allowed to tow, obviously that's up to the legislative body to think about it and look at and maybe determine what's fair. In terms of regulation on various transportation companies, I know for instance cab

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companies are regulated and their rates are set, I think statutorily. I'm not certain on that but it could be...maybe it's even through the Public Service Commission. I'm not sure who does all that. I guess I should listen more closely when I come to these committee hearings. But I think this is probably fair game for regulation along those lines too. With that, as we fielded a number of these complaints, the city of Omaha, we do issue a contract for those tows that we need as a result of auto accidents where the police contact somebody or if somebody parks in a No Parking zone on the street. I want to say...I'm not certain but I think our bid came in at about \$85 a tow, but I'm not certain on that. I'd have to double-check. We did attempt and we do have an ordinance currently passed, an attempt to regulate towing companies right now where we set a statutory ceiling of \$150 per tow for those who take them off of a private lot. I know there was a lot of debate and a lot of phone calls lobbying one way or the other on that, and ultimately where the elected leaders came up with \$150 I'm not certain or how they ended up with that, but that's what we set. And it seems to me though that all it did was allow certain companies just to make that their absolute point no matter what then. So I'll just let you think about that a little bit. But we appreciate what Senator Lathrop is trying to do here. At least in our city we've had enough complaints where it's worthy of trying to ask you, the state Legislature, to do something on this, and for those reasons I want to support this bill. Thank you. [LB560]

SENATOR FISCHER: Thank you, Mr. Cheloha. Are there questions? Senator Janssen. [LB560]

SENATOR JANSSEN: Thank you, Senator Fischer and Mr. Cheloha. I've got actually...I missed the opening; I saw a lot of it on TV but I kind of stopped for a Twix and a Mountain Dew on the way, so I missed a part of it, so I'm kind of asking these questions a little bit possibly for the close, as well, and making some comments for clarification. And first off, I come from Fremont and the city council, and we do have a contract. We have one person. It's not nearly the number costwise that it is, and as far as I know predatory towing is not an issue in my community. It seems to me--and these are some things I came up with--the owner of a lot should most likely be the only person, I would think, that would be able to call a towing company to have property removed from their lot. I almost wonder if a tow truck is perusing that lot, they're not a customer of that business, why should they even be in that lot would be my question. Maybe they should be subject to a tow if they're coming through there in that lot. Why are they on that private property? They have no business there. I'm sure I'm going to hear from the towing truck side too, so I'm throwing these out there for both sides actually. And then what do you do in the case if somebody goes out and they overimbibe at one of these places, a bar, and rightfully they leave their vehicle there overnight. Now this may be a great customer of mine if I own that establishment, and now I have just upset this great customer of mine because through no fault of mine I said, go ahead, get a cab, go home and be safe; oh, by the way, here's a \$185 whatever. And I have no problem with the fees. I agree with Senator Fischer, I mean I don't want to get in the business of

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regulating how much they charge for that. We do at the city council in Fremont when I was on that because that was under a contract. I'm not trying to regulate how much they charge. But I'm sorry there's no real question in there for you. I just kind of wanted to throw that out there. [LB560]

JACK CHELOHA: Oh, okay. No, I appreciate your comments. Thank you. [LB560]

SENATOR FISCHER: Other questions? Senator Campbell. [LB560]

SENATOR CAMPBELL: Thank you, Senator Fischer. So Mr. Cheloha, basically you think this is better handled by state statute than it is empowering the municipalities through their ordinances. [LB560]

JACK CHELOHA: Well, thank you for that question. I mean, typically our mode of operation is to try and fight for local control and to try and set what we think would be best, locally. And with that, I don't know if we're on necessarily on shaky ground, but under our home rule charter we did move forward and try to establish some regulation of these towing companies in Omaha. And because they had a hand in terms of drafting the ordinance, no one has challenged it, and so we've been able to operate under that. But I guess I'm here because I think it's fair for you to look at this because on one hand the Legislature authorized private owners to be able to remove these vehicles. On the other hand maybe you should look at the other side and set a rate, especially to the point now where we've been hearing from those people that get towed and have no say in what the rate will be. Maybe it's time to get involved with that too. That's our argument for why I think it's fair for you to regulate it and set the rate. [LB560]

SENATOR CAMPBELL: Thank you. [LB560]

JACK CHELOHA: Thank you. [LB560]

SENATOR FISCHER: Thank you, Senator Campbell. Other questions? Did I understand you correctly to say that Omaha already has an ordinance that deals with this? [LB560]

JACK CHELOHA: Right. We did pass an ordinance I'd say maybe four years ago or so where we did set a ceiling of \$150 per tow. And what went into that, I mean I worked at some but I didn't intimately work on the ordinance. But there was a number of factors that went into it, whether the towing company had a downtown storage facility or whether it was out more in the outside of the city, and with that it affected whether they owned the lot or rented the lot. And so there was a number of factors that went into it. Ultimately we wanted to set some number just because we had such a high volume of citizens' complaints that we felt we were being responsive to our citizens by trying to enact something. [LB560]

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SENATOR FISCHER: And you said that...four years ago? [LB560]

JACK CHELOHA: About four years ago. I think that's right. [LB560]

SENATOR FISCHER: Have you heard from any of the tow truck owners, that they want to revisit that, as of yet? [LB560]

JACK CHELOHA: No. No. If anything, Senator Fischer, we probably heard more from the citizens that think that the rate we set was too high because companies have accepted that number and that's what they charge. [LB560]

SENATOR FISCHER: Do you know if Lincoln has an ordinance or any other city? [LB560]

JACK CHELOHA: I do not. And as Lynn Rex testified from the League of Municipalities, I don't believe any other city does. [LB560]

SENATOR FISCHER: Since Omaha was able to set up their own ordinance, do you know if other cities are able to set up their ordinances that would deal with this? Why are you here? [LB560]

JACK CHELOHA: Well...right. [LB560]

SENATOR FISCHER: Why do we need a state law? [LB560]

JACK CHELOHA: Well, I think I'm here because...for a couple of reasons. We want to vigorously defend our ordinance and ability to operate under home rule, but yet at the same time powers are granted the city by the state government, which the Legislature is part of that, and so there's a fine line there of what we did, whether or not it's legal and constitutional and things on that matter. But because of where it set, no one has challenged it and so that's the law of the land, at least in the city of Omaha. Other cities may not feel they have that right to do that. The only one arguably who may be able to is Lincoln, under their home rule charter. [LB560]

SENATOR FISCHER: So if we would go with this bill the way it is and set the fee at \$125 per tow, you have to change your ordinance? [LB560]

JACK CHELOHA: I'm not certain on that, because if you look on page 10... [LB560]

SENATOR FISCHER: So you guys get to do what you want no matter what the state does? [LB560]

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JACK CHELOHA: Well, not necessarily, but under Section 14 of the bill it does say that this...starting on line 4, the Towing Regulation Act shall not apply to the towing of a motor vehicle under certain, you know, one, two, three parameters. Number (2) is by any government agency if the parking or storage of the vehicle constitutes a nuisance and the lawful procedures...you know. So there may be a exceptions where Omaha could still operate under their existing ordinance, you know, and so... [LB560]

SENATOR FISCHER: So Omaha is going to get 150 bucks a tow and Lincoln only gets 125? [LB560]

JACK CHELOHA: But we don't take that money. And what we're doing is we're regulating these private tow companies. That's all we're doing, Senator, and they may have different operation costs based on the city...that's all. [LB560]

SENATOR FISCHER: Okay. Thank you. [LB560]

JACK CHELOHA: But we don't gain anything from this. [LB560]

SENATOR FISCHER: You never do. You never do. [LB560]

JACK CHELOHA: That's right. My pockets are always empty. [LB560]

SENATOR FISCHER: As are mine. [LB560]

JACK CHELOHA: That's right. [LB560]

SENATOR FISCHER: Questions? I see none. Thank you, Jack. [LB560]

JACK CHELOHA: Thank you. [LB560]

SENATOR FISCHER: Are there other proponents for the bill, please? Any other proponents? Are there opponents to the bill? Step forward, please. Good afternoon. [LB560]

SARA SCHWARTZTRAUBER: Good afternoon. My name is Sara Schwartztrauber, S-a-r-a, and the last name is spelled S-c-h-w-a-r-t-z-t-r-a-u-b-e-r. And I, along with my husband, own Capital Towing here in Lincoln. The first thing I really want to say is that we've been doing this about 22 years. We've worked very, very hard to get rid of the perception that tow truck drivers and towing companies are junkyard dogs. And I'm really offended with the things that have been said here today. In a half an hour we've been knocked back ten years. We've been called car thieves. I can guarantee any private property that we go on to tow a car, we have authorization to do it. We don't just drive around and pick which cars we want to steal. As far as \$100, the first question I'd

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like to ask is where that figure came from? You know, what criteria was used to set the \$100 fee? And how did they come to the conclusion that we're charging more than it costs to tow a car, and if we do it's a penalty to the owners? I look at it more as a profit to my company. I'm not here to break even. So if I charge more than it costs me to do the job, I'm doing it because that's what I'm in business to do. One hundred dollars is not a lot of money for us to take care of your \$50,000 vehicle. People don't think twice about paying somebody \$85 to come out and look at their \$1,000 refrigerator but they don't want to pay me \$75 to tow their \$50,000 vehicle. Somebody asked what a tow truck driver makes. I have guys that make anywhere from \$10-14 an hour. On top of that, I pay their health insurance, they have 401(k)s, they have paid vacations, they have paid uniforms. We don't treat them like they're nobodies and are minimum wage. It takes a lot of training to tow cars. They're not just people that can't do any other job. One hundred dollars to tow a car...I mean, I can start with workmen's comp fees. People don't even know the fact that for a tow truck driver we pay anywhere between \$12 and \$18 for work comp per \$100 a payroll. A normal commission on a tow is 28 percent. If a guy is not on the clock and he's on commission it's 28 percent. So of that \$100, right off the top \$28 is going to go to the driver. Another \$6-10 is going to go to workmen's comp. I pay the city of Lincoln \$5,000 a month in rent. That doesn't include the \$10,000-12,000 a month I pay for general liability insurance to cover 17 tow trucks. One hundred dollars leaves me about a 6 percent profit range. Now I understand there's probably companies in Lincoln that take advantage of it. Don't get me wrong, I understand that. I'm not one of them and I don't need to be punished because there are a few towing companies that take advantage of the situations. I have the city of Lincoln towing contract. We've had it for about 13 years. I also have the University of Nebraska towing contract. Yes, those amounts are enormously greater than what it costs to tow a car off private property. The reason is because when nobody comes to pick up those cars, the city of Lincoln gets us the title. The city of Lincoln sells those cars at auction. I don't have to pay somebody to deal with all of that. I have one employee that's about a \$35,000-a-year employee; that's all she does is track down the owners of abandoned cars and title them. It's a 40-hour-a-week job. It's also against the law for people to abandon their cars at our property but we get thousands of them a year--thousands of them. I'll go to a scene of an accident and it's a 1989 Toyota; I never see the owner. I have to pay somebody to dispose of that car. Nobody does that for me. There is a portion of this law that says we have to notify the last known owner and lienholder within 30 days that we have their car. If that car is from Arizona, it can take me six weeks to find out who owns it. Now I've lost the window. That needs to be changed. If it's an out-of-state car we cannot do it in 30 days. But my biggest problem in this whole thing is the pricing. Nobody talked to us. Nobody asked us what it costs us to do these jobs. And why do we need to be regulated? You know, just as was said, nobody else is regulated. It has in here \$15 for storage. Okay, I don't...I can live with \$15. But what about if I have to store it inside? What if it's a semi and it takes up four times the room another car does? What if I have to tarp it because all the windows are broken out? There is no concessions in this bill for anything other than a flat fee. One hundred

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dollars for a tow is fine. Does that include if I have to dolly it? Does that include if I have to winch it out of a house? There is no concessions for the amount of time spent on the tow, the distance. There's nothing. It's a flat fee. I can't do it for that. These rates don't make sense without at least talking to the people in the industry and seeing what it takes to do the job. [LB560]

SENATOR FISCHER: Thank you very much. Are there any questions? Senator Stuthman. [LB560]

SENATOR STUTHMAN: Thank you, Senator Fischer. Sara, you heard the testimony before when an individual, the tow truck was backed up, hooked on, and the individual came out and said, wait a minute, wait a minute, that's my vehicle, and they just wheeled off and pulled it away. [LB560]

SARA SCHWARTZTRAUBER: Correct. Nebraska state law gives us the right to charge once we are fully and completely attached to the vehicle. [LB560]

SENATOR STUTHMAN: And you will remove the vehicle even if... [LB560]

SARA SCHWARTZTRAUBER: Absolutely. If they're not prepared to pay it then it gets impounded. Yes. [LB560]

SENATOR STUTHMAN: Okay. But you also made a statement that you have an order to remove a vehicle and you don't remove a vehicle unless you have a directive, correct? [LB560]

SARA SCHWARTZTRAUBER: Correct. And that's exactly what it's called is a directive. I have about 400 accounts just in Lincoln. Most of them are apartment buildings that got tired of there not being any place for their tenants to park. They got tired of the vandalism in the lot. They were worried about their tenants having to park two blocks away. You know, we have a lot of college girls. They like to park right outside their apartment, and it would get to the point there were so many guests in the lot there was no room for the tenants to park. Those are what they call the predatory lots. Every lot--and by the way, I think it's a really derogatory term--but every property that we patrol in Lincoln I have a complete sheet made out by the management or the owner. They set the rules; I don't set them. They tell me, I only want you to tow between midnight and 6 a.m. and I only want you to tow if they don't have a permit or if they are parked outside of the lines. Every owner sets their own rules. I don't set them. We have never towed a vehicle off of private property because we felt like towing it. Every single car we tow is ordered towed by the property manager or owner, whether it's right at that minute or whether because we have a contract with them to patrol the property. [LB560]

SENATOR STUTHMAN: I can relate to that because I have a parking spot at my

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apartment and...; [LB560]

SARA SCHWARTZTRAUBER: I bet you like to park in it. [LB560]

SENATOR STUTHMAN: And I would like to park in it, yes, but an individual has parked in there quite a few times and so the apartment owner just told me, he says if it's parked in there again just call this number and I will have it removed. Well, fortunately, it wasn't in there again, so. [LB560]

SARA SCHWARTZTRAUBER: We have one property that we do patrol, for example, and it's University Towers. We're contracted by the University Towers Condominium Association. They're on 14th and P. They have the third floor of the building. If they didn't have us patrolling that, those people would never have a place to park, and they pay a lot of money for those parking stalls. I believe they pay about \$150 a month to have their parking stalls. Every single one of those stalls has a sign right in front of it that says "tenant parking only, owners will be towed," and I bet I pull 20 cars a week out of those stalls. Every single stall has a sign on it. Now they keep saying that the vehicle owners don't have the right to check prices and to choose who they want to tow. Well, they have a right not to park there. It's private property. So when they pull in and see a sign that says you're going to be towed if you park here, and they choose to park there anyway, then aren't they making the choice? [LB560]

SENATOR STUTHMAN: But there might have not been anybody parked there and there was a place to park. [LB560]

SARA SCHWARTZTRAUBER: Doesn't matter. Somebody might come home and want that place. [LB560]

SENATOR STUTHMAN: Okay. Thank you. [LB560]

SENATOR FISCHER: Other questions? I see none. Thank you very much for being here today. [LB560]

SARA SCHWARTZTRAUBER: Thank you for your time. We hope this gets really looked at a lot closer. [LB560]

SENATOR FISCHER: Thank you. Are there other opponents, please? Good afternoon. [LB560]

JO ANNE HITZ: (Exhibits 2 and 3) Good afternoon. Jo Anne Hitz, J-o A-n-n-e, last name H-i-t-z. I am with the Professional Towers Association of Nebraska, also operate Hitz Towing of York, Nebraska. I'm giving you a simple little handout that describes to you the possibilities of places where vehicles may be parked on, I call it, quasipublic

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property, where they may be removed. I've also given you a list of vehicles that could possibly be removed from quasipublic property. I guess a concern of mine, being in York, is obviously we don't have a lot of apartment buildings so primarily our towing is vehicles that get left off the interstate at different restaurants, motels, at the truck stop. People pull vehicles in there and just abandon them. It's not unusual for me to haul off a tractor trailer that's been left in a parking lot for two weeks. I'm not going to go out there...I'm not even going to turn my key on my \$325,000 piece of equipment for \$100. So there's different types...I think the focus has been on just small motor vehicles, and I think you need to know that there's a range of vehicles that are left on public property, all kinds of different kinds of public property for various reasons and various situations. A lot of times they have mechanical failure. It's one thing to go tow a vehicle that has keys that you can quickly and easily put it on your truck and get it out of there. It's another thing if it's missing a wheel, if you have no keys, if it's stuck in the snow, if they've pulled off into a lawn. There's so many different kinds of situations and none of that is accounted for in this bill. So therefore the Professional Towing Association is adamantly against, opposed to what's proposed in this bill. There's a lot of extenuating circumstances that aren't taken care of. There's a lot of equipment that's required to move a lot of these vehicles. As Mr. Lautenbaugh said, in an earlier issue, once these things are set in stone and they're law, it's so hard to get them changed. And my fear is that if something ever did get set, it would be so difficult for to come back and ever get some sort of a rate increase if they did get that far and get this. There are so many other laws right now pertaining to length and weight restrictions that are from vehicles that were built back in the '80s that need changed now, and those laws can't be...it's difficult to get laws changed that are so nonapplicable to what we're doing now. There is what he is describing as predatory towing; in the industry is what we call nonconsensual towing because you did not consent to have your vehicle towed. Somebody made that decision for you; that's all the same terminology. And this nonconsensual towing is usually a private property towing issue. We are not talking about any kind of a public property towing. Public property is--or lawful...unlawful act. That would be anything that law enforcement or anything that happens on a public street, public right-of-way. That would all come through a law enforcement-type tow. That is not what he's talking about here. He is simply talking about vehicles that are left on private property, probably for quasipublic use. I think I've made it pretty simple for you. Also I gave you a pamphlet that's from the Towing and Recovery Association of America. This is actually a national organization that lobbies for towing rights on the national level through Washington. They do have a municipal code that discusses a lot of the things that you have listened to today, and when you're so bored that you need something to go to sleep on, just throw this under your pillow and you'll for sure put you to sleep. But it does discuss a lot of different types of towing situations and it discusses rates structure also. [LB560]

SENATOR FISCHER: Thank you, Ms. Hitz. [LB560]

JO ANNE HITZ: Thank you. [LB560]

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SENATOR FISCHER: Are there questions? Senator Campbell. [LB560]

SENATOR CAMPBELL: Thank you, Senator Fischer. Ms. Hitz, are there any other cities or towns in Nebraska of your knowledge that have an ordinance like Omaha? [LB560]

JO ANNE HITZ: I did some calling around. The only thing I can find is that Omaha is the only municipality at this point in Nebraska that has a private property towing ordinance, and their rates are...yeah, in their ordinance. [LB560]

SENATOR CAMPBELL: Thank you. [LB560]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB560]

SENATOR STUTHMAN: Thank you, Senator Fischer. Jo Anne, in your illustration you stated that at truck stops or something there will be a tractor and a trailer may sit there for two weeks. Why would an individual leave one there? Did they just leave, walk off, the driver just says I'm done? [LB560]

JO ANNE HITZ: (Committee Clerk notes testifier nods head yes.) Semi load of pork in the summer, 90 degree weather, reefer unit turned off, sleeping on the ground. Yeah. I mean, he stripped his things out of the truck and walked away. Turned the truck off and...I'm not going to go tow that for \$100, I don't care if it's around the block. Why people do it is beyond me, but this is...there's never a dull moment in this business, and I challenge Mr. Lathrop to ride with me someday. He would get an education from the other side. (Laughter) [LB560]

SENATOR FISCHER: He's shaking his head no. (Laughter) [LB560]

SENATOR STUTHMAN: Jo Anne, I think you testified a couple years ago on some other towing bill, didn't you? [LB560]

JO ANNE HITZ: Um-hum. [LB560]

SENATOR STUTHMAN: Did the towing bill of the length and stuff, did that ever get settled? Are you satisfied with what we have now? [LB560]

JO ANNE HITZ: No. No. The length of our trucks are 40 feet for towing tractor trailers. We can't meet length law legally. [LB560]

SENATOR STUTHMAN: You can't... [LB560]

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JO ANNE HITZ: No. [LB560]

SENATOR STUTHMAN: ...hook the tractor trailer and your tower... [LB560]

JO ANNE HITZ: No. [LB560]

SENATOR STUTHMAN: ...you can't hook that altogether. [LB560]

JOANNE HITZ: No. We cannot lawfully tow a tractor trailer. [LB560]

SENATOR STUTHMAN: We dealt with that a year ago, didn't we? [LB560]

JO ANNE HITZ: I know. [LB560]

SENATOR STUTHMAN: We still need it longer, huh? [LB560]

JO ANNE HITZ: Um-hum. [LB560]

SENATOR STUTHMAN: Okay. Thank you. [LB560]

SENATOR FISCHER: Other questions? What do you tow most of the time in York? Do you... [LB560]

JO ANNE HITZ: You mean personally, or...? [LB560]

SENATOR FISCHER: Yes, you personally. Do you mostly tow cars or are you out there getting motor coaches and SUVs and pickups and pork in a trailer that's leaking all over the ground? [LB560]

JO ANNE HITZ: All of it. All of the above. You know, and the cost of our equipment has increased so much because when fuel costs went up last year it caused manufacturing to go up. The cost of our equipment has gone up 30-40 percent. These things concern me that we would set a rate because you don't know, with the economy as volatile as it is, we have no idea where things are going to go. Is there people out there...are there unscrupulous businesses out there charging what they can charge? Of course there are, but they are in every occupation on the face of the earth. Is there...are we opposed to some sort of regulation? I don't think our association is necessarily opposed to putting some kind of a cap on it to prohibit or to stop that. I'm not sure that that's the answer though. I'm not sure that there ever really is a way to avoid that. [LB560]

SENATOR FISCHER: How long does it take you, if you leave York, you drive out to the interstate, and say you stop at Bad Bart's there, and you're going to hook up to a car, how long does it take you to hook up to a car...drive out and hook up to a car? [LB560]

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JO ANNE HITZ: If I've got the keys, 15-20 minutes. [LB560]

SENATOR FISCHER: If you don't have the keys. [LB560]

JO ANNE HITZ: If I don't have the keys and if it's one of these all-wheel drive and... [LB560]

SENATOR FISCHER: Most likely it's going to be locked up. [LB560]

JO ANNE HITZ: Yeah. It's a real...you have to use skates and you've got to have the right equipment and it could take... [LB560]

SENATOR FISCHER: How long? [LB560]

JO ANNE HITZ: Just the other night I went to pick up a drunk that was refusing to cooperate in an all-wheel drive vehicle. It took probably an hour to hook up to the vehicle, plus...and this also is not accounted for, but the distance that somebody might have to travel to go get to...you know, it was a two-hour call. [LB560]

SENATOR FISCHER: Okay, how long is you're going to hook up to a pickup, a three-quarter ton pickup? [LB560]

JO ANNE HITZ: With or without the keys? [LB560]

SENATOR FISCHER: Without. All of these are without. [LB560]

JO ANNE HITZ: It's going to be the same. It's going to be the same. If I have no keys, it's complicated. [LB560]

SENATOR FISCHER: Okay. And then if you get anything bigger than a three-quarter ton pickup, how long is it going to take? [LB560]

JO ANNE HITZ: For me to hook up to a tractor trailer it probably takes at least an hour for me to hook up all the safety features and remove the drive line, hook up all the safety lights, plus your time, however...where you're going out and back. You know, it's a minimum of two hours for me to go on a tractor trailer call. [LB560]

SENATOR FISCHER: Do you have a lot of problems around the..or within the city of York, or is it most likely to occur out by the interstate? [LB560]

JO ANNE HITZ: In York, actually we get a lot of abandoned vehicle problems around the interstate. In town, probably more this is going to be apartments. People have lived

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in a house. They move out, they leave their vehicles behind. This is all that, trying to clean up those public nuisances. And so the property...the actual property owner doesn't hold the title to the vehicle that's on his property because he rented it out to somebody else. [LB560]

SENATOR FISCHER: But you don't see a lot of people parking where they're not supposed to park. [LB560]

JO ANNE HITZ: It's not an issue in York. [LB560]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much. [LB560]

JO ANNE HITZ: Thank you. [LB560]

SENATOR FISCHER: Anyone else in opposition to the bill? Anyone here in the neutral capacity? Senator Lathrop, would you like to close? [LB560]

SENATOR LATHROP: Sure. It was a stirring discussion and really took a lot longer than I ever thought it would. You know, these people perform a public service. That's fine and you have a good one come in and talk about how they always do it the right way. That's not all of them. And here's the reason it's our problem. The reason it's our problem and we need to do something is we give them a lien. Okay? We give them a lien and they get to keep your car until you do what they say. You don't have a judge out there when you go to the tow lot to pick your car up that sorts out what's a fair fee or what they should charge you or can charge you or how...you pay whatever they say you got to pay or you don't get your car. You used an example, Senator Fischer, of your son going into the doctor's office. If the doctor sends him a bill for \$500 for a 15-minute visit, he has a choice. He can say I'm not going to pay it; sue me. And then when the doctor sues him, then the doctor has to establish, in front of the judge, that the charges are fair and reasonable. That doesn't happen when we give them a lien. They just automatically get to set their price and then they get to keep your car. And if that all sounds good, we might as well let the owner of the property burn it, right? Why not let him keep the car after they tow it? Because at some point it becomes unreasonable. Maybe \$100 isn't enough but perhaps what the statute ought to say and an amendment to this should be is that nobody can do this unless the city has enacted an ordinance authorizing them to do that and setting the price they can charge. At least, a city council may be better suited than the Transportation Committee to fix what that price should be. But I can tell you after what we've heard today, it's appropriate and necessary that somebody set the price so that the tow companies or the unscrupulous tow companies are not free to set the price and to have the state's help with the lien statute that let's them keep it until it's paid, so. [LB560]

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SENATOR FISCHER: Questions? I see none. Senator Lautenbaugh. [LB560]

SENATOR LAUTENBAUGH: You know there's no way your car is still outside, right? [LB560]

SENATOR LATHROP: That's right. (Laugh) These guys can't get into the state parking lot. I know we have State Patrol. [LB560]

SENATOR FISCHER: I don't think the people that were here today would have any intention of getting in for your car. [LB560]

SENATOR LATHROP: Certainly not. They'd never touch my car. [LB560]

SENATOR FISCHER: Any questions? I see none. Thank you very much. [LB560]

SENATOR LATHROP: All right. Thank you. [LB560]

SENATOR FISCHER: With that I will close the hearing on LB560 and close the hearings for today. [LB560]

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Disposition of Bills:

LB60 - Placed on General File.
LB111 - Placed on General File.
LB278 - Placed on General File.
LB560 - Indefinitely postponed.

Chairperson

Committee Clerk