

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

[LR143 LR152 LR187]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Friday, September 11, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR187, LR152, and LR143. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Charlie Janssen; Scott Lautenbaugh; and LeRoy Louden. Senators absent: Galen Hadley. []

SENATOR FISCHER: (Recorder malfunction) ...Transportation and Telecommunications Committee. This is our first interim study hearing of the season, and we are opening with three resolutions today. But, first of all, I would like to begin by introducing the committee members that are present at this time. My name is Deb Fischer. I am chair of the committee, and I am from the 43rd district. My home is Valentine, Nebraska. On my far right is Senator Kathy Campbell from Lincoln. Next we have the vice chair of the committee, Senator Arnie Stuthman. He is from Platte Center. On my immediate right is our committee counsel, Mr. Dustin Vaughan. We are just being joined by Senator Tim Gay from Papillion. On my left is our committee clerk, Ms. Laurie Vollertsen, and on the end of the committee hearing table here is Senator LeRoy Louden, and he is from Ellsworth which is God's country just south of me (laughter). We will be hearing the resolutions in the order that they are listed on the agenda. I would ask that those who are wishing to express their opinions and testify on these resolutions come to the front of the room and be ready to testify as soon as someone finishes testifying, and that's in order that we can keep the hearing moving. I would ask also that you complete the yellow sign-in sheet, and that you bring that up and hand it to our clerk here on my left before you sit down to testify. For the record, at the beginning of your testimony, I would ask that you state your name, and please spell your last name and also your first name if it can spelled in several different ways, and try and keep your testimony concise and not repeat what someone else has covered. If you don't want to testify, but you do have an opinion to express on any of these, as chairman, of course, I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

am always anxious to get information on these resolutions. I would also encourage you to copy any committee or all committee members on that and also the introducers of the resolutions that are introduced, so please feel free to do that at any time. It doesn't have to be today; it can be any time during the year. And at this time, I would also like to announce, we have been joined by Senator Charlie Janssen on my far right and Senator Janssen is from Fremont. With that, I will open the hearing on LR187, and Senator Steve Lathrop is here to open on that, so welcome, Senator Lathrop. []

SENATOR LATHROP: Thank you, Madam Chair and members of the Transportation Committee. My name is Steve Lathrop. I'm the state senator from District 12 in the Omaha, Ralston, Millard area. And I'm here today to testify or to introduce LR187. I've been here before, and I've had a chance to talk about the subject matter in the past, and I appreciate the committee's willingness to set this matter for hearing during the interim. Let me define the problem or what I perceive to be the problem. By law, we...and first maybe make a distinction the ability of the city, any particular city to tow people from the streets, from people who park illegally on the streets--that's not what this concerns at all. This is all about those who tow from private lots. And to understand the problem or what I perceive to be the problem, I'd begin by telling you that our laws give the tow operators a lien, so that when they pull a car out of a private parking lot there is a lien, and the person whose car has been towed is not getting the car back until they paid the fee. And the fee is typically...includes the cost of towing and it includes storage. No matter how long your car has been there, they're going to charge you a day of storage, and they're going to charge you for each day that your cars remained in the tow lot until you've paid whatever fee they set. And the problem as I see it is there is nothing to stop those to whom we've given a lien from setting an exorbitant price before they will allow you to get your car back. Now you can say, yeah, but those people shouldn't have been parked in that lot. Typically, it's a private parking lot, okay? And it can be a grocery store lot or an apartment complex, and you can say they shouldn't have parked there. The problem with that logic...the problem with that logic is, is that you're giving a tow company the right to impose a penalty. And by our own constitution, the state's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

constitution, any penalty that's been imposed goes to the school district, right? So the tow companies are only permitted to charge a fair and reasonable amount. Anything that exceeds a fair and reasonable amount is a penalty, and it isn't the responsibility nor have we given to tow lot companies the right to impose a penalty on people who park unlawfully in a private parking lot. But they do, and they do it by charging whatever rate they want to set. It is clearly going to be over \$100 to have your car towed from any lot in Lincoln. It's going to be...I saw a sign up in Omaha. I may have mentioned this when I introduced my bill last session. I saw a sign in Omaha at 72nd and Blondo on a building that said, the minimum fee is going to be \$185. The difficulty with that is...the difficulty with it is, is that they are imposing a penalty. And the penalty, to the extent they're charging more than what's reasonable is a violation of the Constitution. And whether these people appreciate it or not to the extent they've charged more than what's fair and reasonable, they could be sued...they could be sued in a class action to recover all that and pay it to the school districts which is where penalties belong. Why has it happened? It happened...and why is it the Transportation Committee's problem or the problem of policymakers? It's a problem because we've given them a lien, and I can tell you that I practiced law for nearly 30 years now, and we have liens for doctors and hospitals, and we have liens for construction people, and we have liens for all manner of different things. But we don't have any where you can't...or you don't have a forum to resolve whether you've been charged a fair amount. This is the only circumstance I can think of where they can keep your property until you pay whatever they say is the going rate. What's the solution? I come here today with an idea for you. I don't think as I listen to folks talk, and I got e-mails when I introduced this as a bill. I don't think the problem exists outside of those communities that have what I would call cities of the first class or metropolitan communities. So if we go to Valentine, I don't even know if they have parking meters in Valentine, okay? They don't (laughter), so you can park in Valentine for no cost. But if you go to Omaha, if you go to Lincoln, if you go to Hastings and cities of the first class, the likelihood is they're going to have parking meters, and the likelihood is that those municipalities are going to negotiate with tow companies or bid what they're going to compensate or what they can charge to tow a car off a city street

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

in a city of the first class. My suggestion, and what I would offer today as a solution is this: that for...have a statute that applies to cities of the first class and cities of the metropolitan class, and say that tow companies that tow out of private lots can't charge any more than the bid amount or the lowest bidder charges to tow somebody from a parking meter, right? So then we have at least some process where the rate is set, and there is some oversight. Otherwise, there is nothing in the existing law that stops somebody from towing your car, driving it three blocks down the street to their tow lot, and insisting that you pay \$200 plus \$25 a day for storage or whatever other fees that they want to tack on. And you can stand at the window and argue with them, but you're not getting your car back. And that...it is the lien that gives them the unfair advantage, and we've given it to them. We created that lien. They have a right to hold that property until the owner pays. And it would be easy to dismiss this idea as well, those people shouldn't park there, but I can tell you, all that is is recognition that we are allowing tow companies to fine people, and that's not their job. So my suggestion and the bill I'll introduce in the next session in January will be to limit the amount that these companies can charge as they tow from a private lot to whatever they'd get if they towed from the street adjacent to that private lot as negotiated or as determined by the municipality. So I'd be happy to answer any questions. [LR187]

SENATOR FISCHER: Thank you, Senator Lathrop. Are there questions? Senator Stuthman. [LR187]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Lathrop, thank you for introducing this legislative resolution. I think there is a real problem with the situation that you're describing. I've never been towed until last week (laughter), and what you're relating to is what had happened. I came down to support a constituent on an appeal process with HHS, and I wheeled into a parking lot, and it had...all in front of there it said, reserved for Region V staff, so I thought I must be in the right place (laughter). I didn't look at the little sign as I turned in. Two hours later I came out and I looked, and I said, I am sure I parked in this parking lot. My red truck isn't there anymore, so I went

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

back in and yes, it got...I parked there at 1:45 and at 2:18 they towed it out already. But I was fortunate that I was not assessed the amount of fee or anything like that so.

[LR187]

SENATOR LATHROP: Well, yeah, I guess I don't get to ask the question, Senator Stuthman (laugh), or I might. But I think that's a pretty typical example then and illustrates the problem I have, and why it has become a problem across the country, and they refer to it as predatory towing which is these people get a contract. They set up these...they put a sign in the lot, and then they go cruising for people that are in there. That's fine. The property owners deserve to have their lots filled with customers and not people that are going someplace else. But at the same time, if we're going to give them a lien, I think we have to have some way to regulate...in a fair way...regulate what they charge. [LR187]

SENATOR FISCHER: [LR187]

SENATOR STUTHMAN: And I think that's very true because, you know, this parking lot was only 40 percent full to start with, didn't have any more in there. I was, you know,...it wasn't that their customers couldn't find a place to park. I was just shocked when I came out and my truck was gone, and so. [LR187]

SENATOR LATHROP: Well, it certainly...when I introduced this, there was a great deal of interest among students at the university who faced the problem with apartment complexes and so forth. And of course, they shouldn't be there, but, you know, it's about whether we give them the license to hold your car until they pay whatever they want.

[LR187]

SENATOR STUTHMAN: And the charge continues to increase the more days that they don't get it back too, so. [LR187]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LATHROP: Right. And... [LR187]

SENATOR STUTHMAN: That's a real problem for the students because, you know, they're on a very limited budget, but I think we need to. We need to try to address this and I really appreciate the fact you brought it. [LR187]

SENATOR LATHROP: Well, I appreciate your support. [LR187]

SENATOR FISCHER: Thank you, Senator Stuthman. Other questions? I would like to announce at this time that we have been joined by Senator Scott Lautenbaugh. He was caught in traffic, not in a towing incident (laughter), and he is from Omaha and Washington County, Blair. Senator Louden. [LR187]

SENATOR LOUDEN: Yes. Thank you, Senator Lathrop, for bringing your LR forwards, and this is a problem that I'm not familiar with, but I know does happen. But in our part of the country, it's more with wrecked automobiles along the highway, and usually, if there's a wreck there, and several years ago my son wrecked a car, and usually the towing expense takes care of whatever the cost of the car was. I mean, there was a \$250 towing expense on this car. And I told him, well, keep the thing then (laughter), and I'm wondering if your legislation you're talking about...my understanding is, if you're going to try to set up some way or another that there would be towing and storage would be regulated either taking it from what the cities charge or should there just be some type of regulation? And also, should some consideration be given for some of these cars that are wrecks along the road, and these towing companies when they pick them up they can choose whatever they want to. And usually it's either a patrolman or a sheriff or somebody like that will contact some towing company. Now whether there's something goes on on that side of it, I don't know or whether they just pick people at random or whoever they think will clean it up the quickest. But this is something that I'm wondering if it should be extended into wrecks along highways also. [LR187]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LATHROP: I have to tell you, Senator Loudon, I appreciate the question. I'm not as familiar with the process of when law enforcement calls. I suspect that in the city of Omaha which is where I'm from and what I'm familiar with, that the city has a bidding process, and they will award a contract to pick up cars and to pull them from parking meters based upon a competitive bid process. And so I don't know what they do out on the side of the interstate or along a state highway outside of a political subdivision. I don't know the answer to that. I'm certainly willing to visit with you about it or try to work with you if that's a concern, but the point I was trying to make and use in Senator Stuthman's experience as an example, if they charged him \$200 to tow him out of the lot, but if he had parked at the parking meter and let it expire, and the city had a competitive bid process and somebody agreed to do it for \$100, that seems to be the fair way to set the price for towing somebody out of a private lot. [LR187]

SENATOR FISCHER: Senator Gay. [LR187]

SENATOR GAY: In the parking meter situation now, they don't just come and tow your car out of there. You pay your ticket and then you move on, don't you? [LR187]

SENATOR LATHROP: Maybe a parking meter was a bad example. I parked out here outside the capitol today, and if I would have parked in a handicapped zone without a sticker or if I would have parked in a place where you can't be there for more than ten minutes or you can't be there past five o'clock at night, they would tow. And that's... [LR187]

SENATOR GAY: In those exceptions. [LR187]

SENATOR LATHROP: ...that's...and those people typically in a municipality or a city of the first class, they will go through a competitive bid process to be the tow company that does that. And I think that's a fair way to set the rate rather than to have me introduce a bill that says they can't charge any more than \$85. Just let them charge whatever it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

would cost to tow somebody off an adjacent street, and the competitive bid process with a municipality will set a fair rate. [LR187]

SENATOR GAY: So in front of the fire hydrant, whatever. There's reasons for that because of public safety or access. [LR187]

SENATOR LATHROP: Exactly. [LR187]

SENATOR GAY: But I guess looking at this and it's...you know, I appreciate you coming with a solution. But if I'm bidding on a big contract for a city the size of Lincoln, let's say, bids are going to be fairly low. How do you know that covers the cost of monitoring a parking lot of my apartment complex of, you know, maybe the costs are different, and how would that bid get through the...how do you see it getting out to the towing public...? [LR187]

SENATOR LATHROP: I don't think that's any... [LR187]

SENATOR GAY: Here's what the rate you could charge because those rates will fluctuate. [LR187]

SENATOR LATHROP: I appreciate the question. I appreciate the question. I'll give you two scenarios. One is, a private parking lot. What takes place right now is the tow company goes in, and they say to the grocery store, we will tow people out of the parking lot that don't belong there. Senator Stuthman gets towed 20 minutes after he parks his car or 30 minutes. That's because they're...they are running the traps. [LR187]

SENATOR GAY: Patrolling it and... [LR187]

SENATOR LATHROP: And it's...and patrolling, and it isn't any different when people are parking in front of fire hydrants in Lincoln. There are people who are running the traps

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

and driving up and down, looking for folks...tow trucks that are looking for somebody that's parked in a way that's unlawful, and then they tow them off. So I don't see where the expense or the circumstances are any different. [LR187]

SENATOR GAY: Well, I guess what I'm saying is I've got customers to keep happy. I tell my customer or whoever it is, in 15 minutes or 20 minutes I'm going to...they're going to be upset. I don't want to do that. I would assume you call up. Hey, I've had a car sitting here for nine hours now; it's not a tenant, come and get this car. But what you're saying...implying, and it probably happens--I'm not questioning that is people just going around making some bucks, yanking these cars out of here. [LR187]

SENATOR LATHROP: That's exactly right and an apartment complex may be a better example where they have stickers, and if you don't have a sticker they yank you... [LR187]

SENATOR GAY: Well, I take too many cars though. I think that was the example...I think that was an example where they didn't have stickers, but we used last year that they were just going around the parking lots and taking the cars without any rhyme nor reason except to try to make a buck maybe, and I think we agree that's wrong. But I was just trying to say, I'm with you a little bit. I was just trying to say, how do we get it where everyone's coming out a little bit a win...? [LR187]

SENATOR LATHROP: I just think...I think that if you are the city of Lincoln or the city of Omaha, for example, and you say, we're now going to decide who gets the contract. It's a big deal when they award that contract in Omaha. I know that because there's a lot of revenue to be made if you get the contract. So it's not like there isn't profit in it if...there are tow companies, they submit a bid and say, I'm going to...I'll charge the person whatever it costs, some say \$50 to put my truck under it and... [LR187]

SENATOR GAY: There is some profit in it or you wouldn't do it. [LR187]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LATHROP: Yeah. [LR187]

SENATOR GAY: There would be some, just not excessive. Is that what you're...?
[LR187]

SENATOR LATHROP: Exactly. And, yeah, we need something because the person who has their car towed doesn't have an opportunity to disagree about whether the fee has been reasonable or not. [LR187]

SENATOR FISCHER: Senator Lautenbaugh. [LR187]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. I guess my concern is and maybe you can shed some light on this because I'll admit I don't know anything about the towing business; I'm not in the towing business. Are the economics of running a towing company different in Blair than they are in Lincoln? Are there economies of scale that the smaller municipalities might not...or I should say operators in smaller towns might not be able to avail themselves of? [LR187]

SENATOR LATHROP: I expect the answer is it's cheaper to run a tow lot in Blair than it is in Lincoln because if you tow it somewhere, you're going to put it on property that probably didn't cost you as much as it would in the middle of the city of Lincoln. [LR187]

SENATOR LAUTENBAUGH: I think I'm asking this poorly. What I'm getting at is...you're right. The city contracts are a big deal in the larger cities, and I assume the successful bidders have a fleet of tow trucks, and they can keep a person busy out with the volume of city work that's going to be there, and you can have the guy all busy...all day busy doing that kind of thing, presumably. I don't know if private property is going to work the same way, and so the cost might not be the same. I mean, if you're having to send one guy out or one person out every time, you know, twice a day, that might cost a lot more

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

for the tow company operator than having someone on the prowl for the city all day. I just don't know the answer to that, but I can (inaudible)... [LR187]

SENATOR LATHROP: Well, I think my response to that would be is I think they prowl the streets, and they prowl the parking lots. That's how Senator Stuthman gets picked up in 20 minutes is that they are...they are running the traps, and they run the traps through the apartment complexes, and they look for people that don't have stickers, and they don't have to be called...I mean, that's one way to do it. But typically, they go in and say, we'll put the signs up. We're going to be the exclusive guy for towing out of your parking lot, and we'll go in there day and night and tow people out of there. [LR187]

SENATOR FISCHER: Senator Campbell. [LR187]

SENATOR CAMPBELL: Thank you, Senator Fischer. Senator Lathrop, a little change here from the question. I know your office has been contacted and ours was too. When you talk about a solution, will you look at the notification deadline in your legislation? I mean, and now they have so many days that the tow company has to notify you that they have your car, and some people have not realized that their car has been there, and they let it ride, not realizing how much it costs per day. Will you look at any notification change? [LR187]

SENATOR LATHROP: Absolutely. I'll look at anything that improves the situation, and that's certainly one of the things that's happening in other states is they've tweaked the notification requirements. But for me, it's about the reasonableness of the fees. That's the primary thing. If we give them a lien, what they charge ought to be reasonable, and I'm offering a way to kind of let the process set a reasonable fee. [LR187]

SENATOR FISCHER: Senator Janssen. [LR187]

SENATOR JANSSEN: Thank you, Senator Fischer. Senator Lathrop, I recall this bill,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

obviously, from the last session, and I've got a question for you that...and where I kind of had my rub last year is when we talked about setting prices. And coming from Fremont, city of the first class, we did do a competitive bid, just as you said. We do have parking meters there unlike Valentine, so got that. But...and I think it was kind of...I thought it was low, and I thought, that's a great deal for the city at the time. And they bid it competitively. Obviously, they can make money, and it was a small operation even for Fremont, a fairly small operation. But I was okay with doing that because I was, I guess, taking care of the public money; that was on public grounds. Where it kind of rubs me is when we're setting prices for a business that's not ours and telling them that this is how much you have to charge for your business. And as Senator Lautenbaugh said, and I think he brings up a good point...those contracts, it was lucrative to this one company in Fremont because now they knew that they could have this truck staffed, and that was probably going to provide enough business for that one person. But to have the additional person, I don't know, and maybe you can answer that, but also, I'd just like to open up, and I know you're open, as we all are, to different ideas on legislation, if this was something to move forward, looking at...even though I'm not in favor of the government setting prices for private industry on private lots. If you were to use that as your mechanism, maybe it not be the same, but it's recognizing there is a difference between public and private and say it's...yes, this is the bidded contract in Lincoln, but on private land you can go up to no more than 25 percent higher than the government bid or whatnot, something like that. [LR187]

SENATOR LATHROP: Sure. I think that's something that we can talk about if you want to make it 110 percent of what the contract amount is in the city. Here's the problem, and that is, I appreciate...I appreciate the idea that we shouldn't be as a policy maker setting the price that somebody who is an individual running a business charges for what they do except that we've given them a monopoly. By giving them a lien on your car, they now have a monopoly on what it's going to cost to get your car out. At any other time, we'd send them over to Public Service Commission and let them set the price where they have hearings, and they talk about what it costs to run the business

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

and those sorts of things, and we're doing nothing except to say, you get a tow truck. You can have a lien, and you can go out and find cars that are parked improperly, and you can charge what's reasonable, and you can get a bump on top of it which is really nothing more than a fine or a fee and keep it. And so my solution...my solution is just to try to say, you know, if people are going to bid on a contract, and by the way, these people don't have to do this. If the bid to tow people in Fremont is \$25 a car inside the downtown area, whatever you guys came up with, and that isn't enough money, these guys don't have to do it. But my guess is, they're still going to. I expect that they would, and really what we get back to is we're giving a monopoly by allowing them a lien on my car. And there isn't any forum where I can argue about whether that was fair and reasonable. So in a sense we've said, you can keep somebody's car because you've taken it off a lot where they didn't belong, and then you can set whatever price you want. And we either need to do...to get rid of the lien so that I can go get my car or you can...Arnie Stuthman can go get his car out of the tow lot, and the lien company can file a lawsuit against me or the tow company can file a lawsuit and let a county court judge sort out what's a fair amount, or we can permit them to continue with a lien and have some method...and I've offered one idea...some method for determining what that rate ought to be. But we shouldn't give them a lien and then tell them they can charge whatever they want which is what the law is right now. [LR187]

SENATOR JANSSEN: You could certainly have a lien on something...I have a lien on my house, I still get to live in it and use it. Would that be something similar to a car? I can get my car and use it, but there's still a lien on that? [LR187]

SENATOR LATHROP: You can live in it; you can use it, and you can go to the district court and have a determination made about whether the guy is entitled to the lien, whether the lien amount is reasonable, but not with a car. You're not going to get...you can't even get to the courthouse to argue with them because your car is in their lot. [LR187]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR JANSSEN: I'll catch a ride with Senator Stuthman (laughter). [LR187]

SENATOR FISCHER: Other questions. I see none. Thank you, Senator Lathrop. [LR187]

SENATOR LATHROP: Thank you. It was a pleasure. [LR187]

SENATOR FISCHER: Always a pleasure. [LR187]

SENATOR LATHROP: I'll stick around for a little bit. [LR187]

SENATOR FISCHER: Okay, great. Is there anyone here who would like to address the committee on this resolution? We don't do a pro and con during interim studies hearings, and so we just ask you to step forward whenever you are ready. Good afternoon. [LR187]

MIKE CALE: Okay, thank you. My name is Mike Cale. Last name is spelled C-a-l-e. I have recently for the first time experienced the unfairness a towing company has on you if they tow your vehicle. Current towing laws are vague, and towing companies are pushing these laws to the limit. I will give a quick scenario of what happened to me and what I hope can be added and changed to the current law. We bought our daughter, who graduated in June, 2009, a car for graduation. The car is still in our name, but we allow her to drive. In July, 2009, she was parked in an apartment complex without a permit, and it was towed. The towing company towed the vehicle three miles from 1400 Superior to approximately 100 Cornhusker. This was her mistake so we told her she needed to come up with a \$130 tow bill and pick it up herself. After 17 days and her not being able to come up with the funds needed, my wife and I gave in and went to pick up the vehicle. At that point, we discovered there was a \$17 per day storage fee on top of the \$130 tow charge. We now owed them \$420 for a vehicle that originally was towed approximately three miles. The car is not worth much more than that. If I would have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

been informed sooner by the towing company of its storage fees, I would have went down there and picked up the vehicle immediately. When I asked why they did not notify me, they told me they have 30 days before they are required to notify the owner. The scary part of this is if I would have waited until we received notification from the towing company, the bill would have escalated to around \$700. I propose the notification law be changed from 30 days to 5 days, and a majority of the states or a lot of states currently require towing companies to notify the owner by certified mail within five days. I would also like a more reasonable limit on fees. The towing company here in Lincoln currently charges \$17 per day for storing the vehicle in a dirt parking lot. The current law states the owner shall be charged reasonable cost. That is very vague, and this towing company is pushing that language to the limit. I can park my vehicle at a well-kept airport parking lot for \$8 per day, and airports are not known for their bargains. When I asked the towing company why they charged so much for storage fees, their answer was, other towing and storage companies in other states charge much more. I think that is how they justify their cost and allows them to sleep at night. The tow charge also is outrageous. Again, the law states the owner shall be charged reasonable cost; \$130 charge to be towed three miles is not reasonable. I would like to see the cost of the tow be based off miles towed and more in line with the average cost of a normal tow. Thank you. [LR187]

SENATOR FISCHER: Thank you very much, Mr. Cale. If you would like to wait, there might be some questions for you. Any questions? Oh, Senator Louden. [LR187]

SENATOR LOUDEN: Yes. This all happened in Lincoln. Is that right? [LR187]

MIKE CALE: Correct. [LR187]

SENATOR LOUDEN: Okay. What do you think when you...well, you say \$8 a day, would that be reasonable? I mean, if they're putting it on a dirt lot, they should be...have some responsibility to the care of that car because there are some cars that if you left

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

them sit out there for several days like that, there could be some weather damage or something like that. And did they say whether or not they had any liability on that, or was that car insured by them when it was on their lot, or do you know? [LR187]

MIKE CALE: That I'm not sure of. But I definitely felt the \$17 for what they did for the storage was outrageous. [LR187]

SENATOR LOUDEN: Okay. Now, one time as I've been mixed up with some of this...there was a car towed like that, and it set there for oh, four or five days, and the windows happened to be rolled down, and nobody bothered to roll the window up or anything. And, of course, you had weather...that's the reason I'm asking about the weather damage. What condition did you find your car in when you did go pick it up? [LR187]

MIKE CALE: It...dusty. It was in a dirt lot. [LR187]

SENATOR LOUDEN: But the windows were rolled up, and... [LR187]

MIKE CALE: The windows were up. [LR187]

SENATOR LOUDEN: ...and there wasn't any storm damage to it or anything? [LR187]

MIKE CALE: No. [LR187]

SENATOR LOUDEN: Yeah. Okay, thank you. [LR187]

SENATOR FISCHER: Other questions? I have a question for you, sir. Senator Lathrop suggested figuring out what these companies could charge by a certain percentage of what the towers have a contract with with a city, say. You suggested perhaps charging based on the miles that it was towed. Would you put a time factor in that too for the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

driver and the worker to be able to load up the vehicle on their tow truck? We're just looking for ideas. [LR187]

MIKE CALE: You know what? I would have...the \$130 was an extremely expensive...I would have paid that and walked away and never would have heard from me. But when I get there and find out the storage fees are really what upset me about this whole thing, and the thing is, you get there, there's nothing you can do. You got your hands tied. If you don't pay them, tough. My daughter, who plays softball, went there to try to get her batting bags out of the car, and they won't even let her get in the vehicle. It was a Sunday. She had a tournament the following Monday so they just have you, and there's nothing you can do. You feel helpless. And that's why I'm here today so. [LR187]

SENATOR FISCHER: So you would like to see perhaps this committee address storage fees also besides just towing fees? [LR187]

MIKE CALE: Yes. And also, the other part of it is just to be notified...if I'd have been notified before...if I'd have been notified after a reasonable time, this would have never happened either. I'd have went down there and picked the vehicle...we thought we were doing the right thing, teaching our daughter a lesson. Hey, you messed up, you shouldn't have parked there. And this is your penalty. Well, I didn't expect to find out I was going to get charged \$420 for two weeks of it being in storage. [LR187]

SENATOR FISCHER: Your suggestion on the notification was to change that from 30 to 5 days with the registered mail? [LR187]

MIKE CALE: Correct. [LR187]

SENATOR FISCHER: Okay. [LR187]

MIKE CALE: And that was just what I saw other states doing that seemed fair. [LR187]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Great. Thank you very much for being here today. Senator Stuthman, you have a question? [LR187]

SENATOR STUTHMAN: Thank you, Senator Fischer. I don't remember in your early testimony, was this on a private lot? [LR187]

MIKE CALE: It was an apartment complex, yes. [LR187]

SENATOR STUTHMAN: Apartment complex so that would have been a private lot, right? [LR187]

MIKE CALE: Correct. [LR187]

SENATOR STUTHMAN: It wasn't a public parking lot. [LR187]

MIKE CALE: Correct. [LR187]

SENATOR STUTHMAN: And she didn't have a sticker to allow to park there. [LR187]

MIKE CALE: Correct. [LR187]

SENATOR STUTHMAN: Would you suggest the fact that, you know, in a first occurrence or something like that, that there would just be a sticker put in the window, you know, saying if you're caught violating the second time, you know, then you will be towed? Because this was the situation with myself too. I mean, it was plenty of parking space there, and within 33 minutes my vehicle got towed. And I mean, I wouldn't have minded if they had put a sticker on there and say, your...it's improperly parked, you know, please take note that, you know, you will be towed if you park here again. [LR187]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

MIKE CALE: That would have definitely helped, yes. [LR187]

SENATOR STUTHMAN: That's...that might be the common sense approach, but that might be not what happened so. Okay. Thank you. [LR187]

SENATOR FISCHER: Do you see a problem, Mr. Cale, with government regulating what businesses can do on private property? [LR187]

MIKE CALE: You know, I think normally the answer to that would be yes. But in this case, I feel if there's something that's not done, there's nothing the average person can do other than, you know, hope your daughter doesn't make a bad decision and park the vehicle in an apartment complex. But once they have your vehicle, if there's something that's not written and clear as far as what they can charge, they just charge whatever they want to charge. [LR187]

SENATOR FISCHER: I have three sons who attended the university, and, yes, we contributed to the towing industry here in Lincoln, Nebraska. Okay, thank you. Senator Lautenbaugh. (Laughter) [LR187]

SENATOR LAUTENBAUGH: That's tough to follow up. Thank you, Madam Chair. [LR187]

SENATOR FISCHER: I was finding it tough to follow myself (laughter). [LR187]

SENATOR LAUTENBAUGH: I guess I would have some concern about the one free spin, you know, because I don't know how the tow truck driver would actually track how you'd keep track of how many times they had parked there illegally. I mean, who would give the warning? Who would be charged with keeping track so if they'd know if it was the second time around? But I don't know how we could do that. And I'm struggling with

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

this whole thing obviously, but I really struggle with that. That's not a question so I apologize. [LR187]

SENATOR FISCHER: Sometimes we just go off on things, you know, and I'm sorry about that (laughter). Are there any questions from the committee? I see no more. Thank you, Mr. Cale, for coming down today. Appreciate it. Is there anyone else who would like to address this resolution? Anyone else? Senator Lathrop, would you like to offer any comments in closing? Senator Lathrop waives his closing. With that, I will close the hearing on LR187. We will open the hearing on LR152, and Mr. Vaughan, would you give an opening for that, please? Good afternoon. [LR187]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record, my name is Dusty Vaughan spelled V-a-u-g-h-a-n, and I am the counsel for the committee. I almost forgot my name there. LR152 was introduced to conduct a comprehensive exam of Nebraska's highway funding structure and to analyze any possible funding alternatives. I don't think there is any question that Nebraska has reached crisis level in how it funds its highways. A few...before we start, and I know there's a lot of comments so I'm going to be very brief, but I think there needs to be a few main points that stress the magnitude of the situation that we're in. One in addition to system preservation, Nebraska has many capital expansion projects that are being put on hold due to inadequate funding. The cost of seven of the highest priority state projects is roughly \$730 million. Every year that these priorities are left off the construction program, the cost goes up. Currently, two of those projects are on the department's five-year plan out of the seven, one of them being the \$6 million I-80 expansion between Lincoln and Omaha, and the other one is actually the Wahoo bypass. Two, Nebraska is at the point where funding will be inadequate to preserve the current highway system sometime in the next two years. The Department of Roads estimates it takes \$286 million to preserve the current highway system every year, a number that rises with inflation. Last year's construction program was \$317 million. Granted, the current year is significantly

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

higher, but that's due to the stimulus funds from the federal program. Department is here, and I believe you can ask Director Fredrickson about this, but I believe the number will be closer to what it is this year for next year's construction program so we're getting very close to that system preservation level, hitting what our construction program is. Three, because Nebraska employs a revenue-sharing structure that the local governments rely heavily upon, they're in the same predicament as the state, and they're also falling behind on street and road maintenance and construction. I have seen some cities and counties that rely exclusively on our highway allocation fund. That's basically where they get all their money from. Even our bigger cities, I know can rely up to 50 to 60 percent of their highway...their highway and street dollars come from the state and federal fund. So they're in the same boat as us. If nothing gets fixed, they'll continue to fall behind just like the state does. Four, Nebraska's historic reliance on the gas tax is no longer sustainable under current economic conditions. With demand for gasoline stagnating over the past several years, higher gas tax revenues to increase consumption is a thing of the past. We've talked about this several times before. Smaller, cheaper, more fuel efficient vehicles contribute less to the gas tax revenue because they have used less gas. They also contribute less to sales tax revenue because they're cheaper. This is not meant to imply that the gas tax does not have a place in our funding structure. Obviously, we've relied heavily here in Nebraska on the gas tax. I believe it's roughly 60 to 65 percent of our revenue comes from our gas tax. It simply means that the historic method of increasing revenues to increase consumption can no longer be relied upon. And with that, I will take any questions, Senator. [LR152]

SENATOR FISCHER: Thank you for the introduction, Mr. Vaughan. At this time, I would ask that Director Fredrickson be our first testifier. And as all the committee members know, we do have a joint hearing with the Appropriations Committee in November that is required by statute, and at that time the director will go through a more thorough presentation, I would assume, on the needs assessment. But welcome, Director Fredrickson. Welcome as...to your new position. Welcome to the committee. I appreciate you being here today. As I said, we'll have our big report from you in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

November on the needs assessment, but I do appreciate you coming today to give us a little...give the committee here a little heads-up on the situation we're in, so welcome.

[LR152]

MONTY FREDRICKSON: (Exhibit 1) Thank you, Senator Fischer, and good afternoon also to the members of the Transportation and Telecommunications Committee. My name is Monty Fredrickson, M-o-n-t-y F-r-e-d-r-i-c-k-s-o-n. And I am the director, state engineer-in-training, they tell me, of the Nebraska Department of Roads, and I'm here to testify on LR152. I think Dusty has explained the purpose of LR152 so I will quickly attempt to summarize the traditional funding structure that we have in the state and how the Department of Roads has responded to these funding issues. Over time, the traditional user fee-based highway funding model has served Nebraska very well and has allowed the department to construct and maintain the state highway system, primarily on a pay-as-you-go basis. Highway user revenues in Nebraska are comprised of motor fuel taxes currently set at 26.4 cents per gallon; registration fees on motor vehicles at \$15 per vehicle, and a state sales tax rate of 5.5 percent on purchases or leases of new and used motor vehicles. In fiscal '09, highway user revenues generated approximately \$535 million. The Department of Roads current State Highway Cash Fund appropriation, based on our share of highway user revenues, is set at \$368 million for fiscal year 2010. Attached to the testimony is a flow chart depicting the receipt and distribution of state highway user revenues to the Department of Roads, cities, and counties. That's labeled attachment 1. We have also included a ten-year history of how the cities and counties have fared under the current revenue system, and that is labeled attachment 2. The fuel tax has long been a primary highway revenue generator for most states, cities, and counties throughout the country. However, with the decline in gallons consumed and as a result of higher fuel prices and alternative and more fuel efficient vehicles, the fuel tax as a primary revenue generator is resulting in diminishing returns. In Nebraska, fiscal '07 appears to have been the high water mark for motor fuel tax revenue with \$332 million collected. Fiscal '09 saw \$315 million collected. The federal funding component of our budget has also added to the uncertainty surrounding our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

construction program. The current transportation act known as SAFETEA-LU expires at the end of this month. Passage of a new multiyear act is currently not expected any time soon so funding will hopefully be sustained by continuing resolutions until an act is approved. Because of Federal Highway Trust Fund solvency issues and an \$8.7 billion rescission currently in SAFETEA-LU, Congress may have to address federal highway funding issues even before a new act is passed. In response to uncertain revenues and higher construction costs, the Department of Roads has proceeded with two major administrative actions. First, the department, with the advice of the State Highway Commission, chartered a funding distribution team to review the existing processes for allocating funds for highway construction. The team developed new or refined methodologies and funding priorities that are now being used to determine the makeup of the one- and five-year highway program. A copy of the funding distribution team report is provided to you as attachment three. Second, the department has shifted resources to our top priority, highway construction. We have reduced our operating budget by \$16 million each year of the current biennium. We will continue to seek savings wherever necessary to maximize our construction program. I share these two administrative actions as examples of how the department has continued to look internally to better allocate funding and reduce costs. Obviously, another way to increase highway construction is to increase revenue. I'm sure others will testify with ideas on how to increase revenue to the State Highway Trust Fund through increased user fees, general funds, bonding, or other sources. Increasing revenue is a decision of the elected policy makers. Whatever the level of funding the Legislature and Governor see fit, I can assure you the Department of Roads will deliver to the citizens of Nebraska the best surface transportation program possible. I would like to point out that there are certain statutory programs existing that are not related to highway construction and are subsidized by highway user revenues. One such example is the highway beautification program. The Department of Roads is statutorily required to oversee the regulation of outdoor advertising signs along the state highway system. While a statutory fee of \$15 is charged for those permits, it does not cover the administrating costs of this program. As a result, highway user fees are necessary to offset a \$290,000 a year shortfall in that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

program. This concludes my testimony, and I would be glad to answer any questions.
[LR152]

SENATOR FISCHER: Thank you, Director. As I said earlier, we will have our report from the director in November on the needs that we face in the state, but I do appreciate your comments and information on our funding. Are there any committee members that have questions on that funding? Senator Stuthman. [LR152]

SENATOR STUTHMAN: Thank you, Senator Fischer, and congratulations on your new position. [LR152]

MONTY FREDRICKSON: Thank you. [LR152]

SENATOR STUTHMAN: I would...I have a concern, and I would like to have an answer as far as, you know, we've been doing a lot of new construction in roads, rebuilding them totally, and within a year or two, it gets half redone again. Is that at the expense of the contractor or is that at the expense of the state? [LR152]

MONTY FREDRICKSON: I can go both ways. There's been some jobs on the interstate where the mix did not meet our specification. In those cases, we require the contractor to take it back up and put it down at his expense. I can't think of too many cases where we've redone it because we made a mistake, but it is possible that we made some kind of a mistake and that particular solution didn't work out; then it would be our cost.
[LR152]

SENATOR STUTHMAN: But you would say the majority of the repair, remodel, warranty work within a year or two of construction is at the expense of the contractor. [LR152]

MONTY FREDRICKSON: Most definitely. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR STUTHMAN: Okay, thank you. [LR152]

SENATOR FISCHER: Other questions. Senator Gay. [LR152]

SENATOR GAY: Thank you. You talked about the statutory programs that exist that are not related to the construction but subsidized by the revenues. Do you have a list of those? [LR152]

MONTY FREDRICKSON: We can get you one. [LR152]

SENATOR GAY: I'd like...yeah. [LR152]

MONTY FREDRICKSON: There's seven or eight...yeah, would you like us to furnish that to the committee? [LR152]

SENATOR GAY: Yeah, I'd like to see that. [LR152]

MONTY FREDRICKSON: Great. [LR152]

SENATOR GAY: Thanks. [LR152]

SENATOR FISCHER: Senator Campbell. [LR152]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Fredrickson, a couple of years ago the decision was made to take out those capital projects that the department did not feel they could reasonably put in a one and five program anywhere because it was felt that it was misleading to the public, that we weren't going to ever get to them.

Obviously, my concern on that list continues to be the south beltway for Lincoln, and the question I have is, will...at what point does the department review that list and say hum, maybe it's time to put one of those projects back on. How often are you reviewing that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

capital list? [LR152]

MONTY FREDRICKSON: Annually so we not only prioritize projects annually, but we review and select the projects that get into the one-year program annually. So as you all probably know, as soon as next year there will be very few improvements to the highway system other than preserving the highway system. Now granted, many of those projects that we call system preservation look like brand new projects to most people because in many cases we're replacing a bridge or widening a bridge, putting a new deck on it, putting a whole new surface on the road and maybe even shoulders so that looks like a new road, but it is called system preservation, for the most part, and we're very near to that point. [LR152]

SENATOR CAMPBELL: As a follow-up to that question, do you foresee any additional stimulus money that would come that we could apply to any of those capital projects? [LR152]

MONTY FREDRICKSON: Well, funny you should ask, we just submitted six applications for what's called a Tiger Grant Stimulus Discretionary Program. There's a nationwide competition, and every state will submit their best projects that can be shovel ready within the next year or so, so we did submit six projects that fell into the class that we could get them ready fast enough. So that's the only program I know of at this point. [LR152]

SENATOR CAMPBELL: Could you provide a list to us of those projects? [LR152]

MONTY FREDRICKSON: You bet. [LR152]

SENATOR CAMPBELL: Thank you. [LR152]

MONTY FREDRICKSON: Thank you. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Senator Gay. [LR152]

SENATOR GAY: Hey, you talk about system preservation. I mean, obviously, you can see they're doing Highway 370 in my district right now. How do you measure yourself around compared to the other states on...is our system preservation much better? I mean, do we have more since we're in a climate here? I mean, how do you relate that needs preservation and how you get into this project? You don't need to get into detail if there's some document you could send me, too. I can read that. But how do we relate to our peers? Are we number one, number 50? [LR152]

MONTY FREDRICKSON: Why don't we get you such a document? It's a little bit subjective. The best way to measure how well a state takes care of its existing roads and bridges is the condition of those roads and bridges in terms of smoothness or stability. So not every state measures that the same, and we'll get the committee such a list. I think we're above average in those, and we think we do a good job trying to maintain the existing system as best we can. [LR152]

SENATOR GAY: I think our roads are fairly...very good. I mean, okay, I'll look for that. Thanks. [LR152]

SENATOR FISCHER: If I recall on that, Director, doesn't Nebraska rank pretty high on the percentage of our roads that meet that quality and the safety standard for our state highways? I seem to recall in the last two or three years seeing a ranking on that, and our percentage was up there pretty high, wasn't it? [LR152]

MONTY FREDRICKSON: Well, yeah, I think that...you have to be careful with some of these performance measures. I think that one says 81... [LR152]

SENATOR FISCHER: Yeah, but, now wait a minute. Is that your book that you put out?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

[LR152]

MONTY FREDRICKSON: Yes, yes, but (laughter) you have to understand what you're reading (laughter). That was... [LR152]

SENATOR FISCHER: (Laugh) Now wait a minute, Director. This is your first time here before our committee. Are you questioning if we can understand what we're reading here? No (laugh). [LR152]

MONTY FREDRICKSON: Not directed to you, but, obviously, the novice. [LR152]

SENATOR FISCHER: Of course (laugh). [LR152]

SENATOR GAY: That smoothness at 81 percent is not accurate there. [LR152]

MONTY FREDRICKSON: It is, but that means that 81 percent of the roads in that category in Nebraska meet the good category, and so there are parameters that say what's good, and you have to put numbers on everything. And the range of good highways for Nebraska might not be quite the same as the range of good ones for Arkansas. We'll try to get you the most straight up comparison. [LR152]

SENATOR FISCHER: Okay. I'm trying to walk a fine line on the...since this resolution deal is with...suggestions for highway funding compared to our discussion on needs in the future. But you know this committee is excited about roads and realizes the importance of roads in the state and wants to be informed, obviously, so any information you could get us is always appreciated. Senator Lautenbaugh. [LR152]

SENATOR LAUTENBAUGH: Thank you. And I apologize for this also is not a discussion of funding, but yet this is still a (inaudible) question. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Senator Lautenbaugh is no longer recognized. No, Senator Lautenbaugh (laugh). [LR152]

SENATOR LAUTENBAUGH: But this does flow from your comments. Are there hard and fast criteria that say something is preservation versus new construction because I would love to have you preserve Highway 133 into four lanes instead of two, but (laughter) how do things get on those...what is the difference, and is it defined somewhere? [LR152]

MONTY FREDRICKSON: We have a definition. I'll try to state it as best I can. Preserving means reconditioning those portions of a roadway or bridge without changing their dimensions. [LR152]

SENATOR LAUTENBAUGH: Okay. [LR152]

MONTY FREDRICKSON: So you can melt four inches of asphalt off a road that's wearing out and put four inches back. That's system preservation. You can go into a bridge and mill two inches off the deck and put it back with a new stronger concrete. That's system preservation. You haven't widened the bridge. By the same token, if you drive down to Rulo, you will see what that bridge looks like and it's 20 feet wide, and it's not in good condition so we have it slated for replacement. That is also a system preservation project because there's no other way to fix that deficiency. [LR152]

SENATOR LAUTENBAUGH: Okay. [LR152]

SENATOR FISCHER: Senator Louden. [LR152]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. And congratulations, Monty, on your elevation to director if you think congratulations is in order (laugh). [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

MONTY FREDRICKSON: Thank you. (Laugh) I'll let you know. [LR152]

SENATOR LOUDEN: And we've had discussions here in the other end of the state here not too long back so I mostly will address this. You talk about a \$290,000 shortfall with this highway beautification program. Now, if that's much shortfall, how much was the total cost of that highway beautification? I mean, that's got to be big bucks if you're short pretty near \$300,000. Is that correct? It would...would this be a \$3 million or \$4 million project that you're...? [LR152]

MONTY FREDRICKSON: No, no. Do you guys remember the total? Our right-of-way guy isn't here. I don't think it's near that much. I think it's the other way that you're thinking that it costs us \$500,000...I'm going to use that because I think that's pretty close to administer the program, and we only get \$210,000 in fees. [LR152]

SENATOR LOUDEN: Okay, and in other words, this \$15 fee, is that a one-time permit to put up a sign and that sign could stand there for ten years or something like that? Is that what...? [LR152]

MONTY FREDRICKSON: It's an annual fee. [LR152]

SENATOR LOUDEN: It's an annual fee. [LR152]

MONTY FREDRICKSON: But it's... [LR152]

SENATOR LOUDEN: Well, now, and is that all with your beautification, is that all that that's used for or where do you come in with some of your plantings and that kind of work, landscaping and stuff that you put along these highways, and some of the seed that you use for flowering and that sort of thing? Does that all come in on this highway beautification? [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

MONTY FREDRICKSON: No, no. This...the main highway beautification is a little bit misleading. It comes from Lady Bird Johnson's original legislation in 1972. [LR152]

SENATOR LOUDEN: Okay, and this is mostly just monitoring signs is what this... [LR152]

MONTY FREDRICKSON: It's about billboards that are off the highway right-of-way. [LR152]

SENATOR LOUDEN: Okay, now while I'm talking about landscaping, are you still...whenever you have some reconstruction or whatever, and you have to redo the shoulders, and you have some dirt work that's been turned over, and you go in and seed that, do you still use these...this evening primrose seed in there in part of your mix? [LR152]

MONTY FREDRICKSON: I can't tell you what the seed mixture is these days but... [LR152]

SENATOR LOUDEN: Can you look at that because I've been after them because that is getting to be an invader in the Sandhills where you put that along the highways. Now it's going out into the pastures. That's that evening primrose, and that is...should be considered a noxious weed, and it probably will be one of these days. And the state of Nebraska has done a great job of planting that all over the state (laughter). And when I asked a few years ago about that, the guy told me well, go and harvest that seed because it was real expensive. They were buying that seed. I said, you know, you're missing the bet here because it... [LR152]

MONTY FREDRICKSON: Well, I hope we took your advice and took it out, but we will get back to you. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LOUDEN: Okay, good enough. That's all the questions I have at this time. Thank you. [LR152]

SENATOR FISCHER: Other questions. Director, you made mention in your testimony that gas consumption is down, and we hit our high water mark a couple of years ago in the revenue that we receive due to our fuel tax here in the state. Do you anticipate that that will be what we're going to see in the foreseeable future? [LR152]

MONTY FREDRICKSON: I don't know that I'm a good predictor of that. Probably our finance director is better because he monitors those things, but I just think common sense would tell you the big gas guzzling cars are going to the junkyard whether they're towed or not, and so (laughter), you know, it's going to be harder and harder to generate the same revenues that we're used to three or four years ago. [LR152]

SENATOR FISCHER: And in our opening on this study resolution, it was pointed out that we are at the maintenance and preservation point. At least that's the view of myself and my committee counsel. Do you agree with that? [LR152]

MONTY FREDRICKSON: I do. We've got a few jobs going on right now that are in the program and one or two high priority bridges that just have to get done. Otherwise, next year we're looking at all system preservation projects except for the project...or except for the work that's already underway on the interstate, the six-lane interstate. And by this time next year, there will be one piece left of that interstate, and I do not know at this point whether we'll have enough money to finish that. So it'll be a trade-off of priorities. [LR152]

SENATOR FISCHER: And just could you give us a brief description on how those priorities are set within the department and with the Governor, please? [LR152]

MONTY FREDRICKSON: Sure and that's in the funding distribution team report as well.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

The flow chart is basically...there's a few programs that we just have to spend a certain portion of our federal money on, and safety planning and research are those categories. So approximately \$19 million, \$20 million of our funds are committed to those programs; can't spend them anywhere else. The next priority is high priority bridges. Obvious, I hope to all of us that we have to make sure those are safe, and that...we're talking not just repairs here. That doesn't fall in the high priority category. It's a serious deficiency that we need to address within the next year. Then comes the system preservation for all 10,000 miles--interstate expressways, two-lane highways, bridges. That's where the big chunk of the money is. That's where the \$286 million estimate is for us to maintain the system as it is today so that's the next priority. We're almost there that that's all the farther we'll get. Now we established...the third priority is finishing the six-lane interstate from Lincoln to Omaha, knowing that quitting in the middle wouldn't be a great thing. Next after that is what we call three R type projects, and those involve widening shoulders on a few roads where the traffic volume warrants it so it's a little bit of an expansion. And then lastly is the big capital improvements that Senator Campbell mentioned that you've all got a few that you're familiar with. [LR152]

SENATOR FISCHER: On the system preservation that you spoke about, could you remind us what the state and the citizens in this state have invested in that highway system? [LR152]

MONTY FREDRICKSON: The current value of that system is \$7.5 billion. [LR152]

SENATOR FISCHER: Do you know how Nebraska ranks in maintaining the system that we have? I guess this kind of goes back to the question on the quality of the roads. What percentage of our bridges are not deficient? What's the quality we have on the highways now due to safety concerns and that type of thing? I guess I'm asking you, you've been with the department since the seventies. Are we doing a good job in maintaining the system that we have? [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

MONTY FREDRICKSON: Oh, definitely. Unfortunately, the days of being able to maintain the system at what most people would consider an acceptable level and now expand it...we went through 20 great years. We got the interstate built and we got several miles of four-lane roads built, and now it's just not possible with the circumstances we have. So compared to other states, I hope you would agree, we're pretty lucky with what we have, and so now it's everybody's challenge to say, how do we continue to get a little bit better? [LR152]

SENATOR FISCHER: On the SAFETEA-LU funds, do you see us ever getting the money we were promised, first of all, and if we don't get that, what's Nebraska's share in the upcoming year? Do you have that information? [LR152]

MONTY FREDRICKSON: Well, we will... [LR152]

SENATOR FISCHER: I doubt that we're going to get that money from the...a year or two ago that...that was ahead of the reauthorization, but where do you think we are in the SAFETEA-LU funds? [LR152]

MONTY FREDRICKSON: We will...we will get all the money we were due out of SAFETEA-LU because the end of SAFETEA-LU is the end of this month. And the only thing that will mess that up is that rescission of Congress. If they don't repeal that before the 25th of this month, then we and every other state will be in trouble. That's a \$65 million hit to us, and that's not good. So hoping they take care of that, then there used to be a great difference between what Congress authorized each state and then what they annually allowed you to spend, so you kind of had an IOU in the bank. Over the last nine years, we've had eight rescissions plus or minus that have dwindled that IOU to almost nothing. Most of our categories now, there's no balance there so we get approximately \$225 million a year of federal funds for both state, cities, and counties. And we have to spend all of that annually, and there's no left over. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Thank you. Other questions. Appreciate you being here today and once again congratulations from the committee, and we look forward to seeing you in November. [LR152]

MONTY FREDRICKSON: Thank you very much. Yes, we will be here. [LR152]

SENATOR FISCHER: So thank you. Thank you. Next testifier who would like to come forward. Good afternoon, Mr. Mayor. Welcome. [LR152]

CHRIS BEUTLER: (Exhibit 2) Madam Chair, how are you? [LR152]

SENATOR FISCHER: Good. How are you doing? [LR152]

CHRIS BEUTLER: My name is Chris Beutler, and I'm testifying as mayor of the city of Lincoln today, and I would start out by thanking the committee for addressing this funding issue in what appears to be or what hopefully will be a very comprehensive way. Senator Stuthman, good to see you again. Senator Loudon. Senator Stuthman, I'm sorry you've had this recent sorry experience in Lincoln (laughter) with regard to the towing incident. If it's any consolation to you, I have suffered that demeaning experience also (laughter). [LR152]

SENATOR STUTHMAN: But I did make a few more friends. [LR152]

CHRIS BEUTLER: Ah (laugh). The other consolation is that there is a city sales tax that pertains to those towing fees so (laughter) I've come to take a kind of broadened view of that matter (laugh). I guess I also wanted to say once again that the people in the city of Lincoln, the community of Lincoln, is feeling some considerable sorrow this week with the passing of Senator Raikes in that untimely accident. He was a great citizen and a great member of this Legislature, and he's going to be very much missed. Maybe it's not totally irrelevant that he's brought up today in the sense that before him in that seat was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Senator Warner, who a quarter of a century ago took on the solution of tremendous highway funding problems, and the Transportation Committee resolved those hard problems in those days. He was succeeded by Senator Raikes who took on and resolved for better or for worse two of the knottiest, largest problems in the area of education. And now succeeded, Senator Campbell is in that seat in a great tradition, and this committee, Madam Chair, I think is faced with the most important, the largest, and the knottiest problem that the Legislature has before us today, and that is the funding of our highway infrastructure and how that will go forward in the future. I just want you to understand at the beginning as we testify about what we hope you will think about and not think about and take a hard look at, I want you to understand that the levels of difficulty and the types of policy challenges that you're facing, we understand those, and we empathize with the burden that you may well be feeling and trying to get your arms around this very large problem. It's not easy to resolve. I don't have the broad, clear solutions. But there are some things that we wanted you to know the people of Lincoln feel. We think it's very clear that the entire state both urban and rural will benefit from the work you're doing, should benefit from the work you're doing. As the Legislature defines and implements new and more sustainable methods of highway funding, it will and should benefit all communities of all sizes in all parts of the state, and we want to step into the future altogether. Our statewide road system, we understand is fundamental to the future of Lincoln, and the city of Lincoln is poised to do its part in funding both the state and the local systems. It is from this vantage point that I'm here today both to encourage the committee to take full advantage of this opportunity for a truly searching examination of funding alternatives during these next few weeks when you have staff and yourself engaged in the activity. And we're hoping that you will think about the alternatives, not just as practical means to a near end or a short-term solution, but as part of envisioning what it is that we all want, and we all need to do for a 21st century transportation system in Nebraska. Our transportation system, the network of highways and streets and railroads and public transportation and even walkways and bikeways really does serve as the backbone of our economy. It connects our communities, and it provides truly access to the American dream of opportunity for all.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Having said that, we all know that this system is at some serious risk at this juncture in our history for a combination of reasons. But the bottom line is that increased revenues are needed to pay for necessary upgrades, both at the state and local levels. In my opinion, this new funding will best be supported by the public when it's clear that these funds make possible a transportation system that will lead to increased economic development and jobs. People need to recognize the connection between this infrastructure and jobs and competing in the world economy in the future years of this century. Any new funding must reflect the ever-changing realities of those economies and the way in which employers conduct businesses or consumers buy products or workers get to their jobs, families build their homes, and kids go to school. All these things need to be considered. In short, our roads and transportation systems must be prepared to serve the changing Nebraska of the 21st century. Economic competitiveness relies upon innovative solutions that connect our cities and our regions and our rural areas. I suggest to the committee then that the ultimate question being addressed by the committee is now just about the revenue problems of our present highway system but how to pay for the evolving roads and transportation system throughout Nebraska that is agile enough to meet the needs 10 and 20 and 30 years down the road. Again, I certainly don't have any easy answer to that question. I know your staff is preparing all kinds of options and alternatives for you that we would be glad to cooperate in the exploration of at any time and to any extent you think appropriate. But there's no doubt from the underlying rationale of this interim study that we are at a turning point when it comes to paying for roads. We are at a national, a state, and a local turning point. The day of reckoning is coming quickly in Lincoln. For example, I think they have passed out to you a chart that illustrates in just very broad terms the declining value of the gas tax for Lincoln. In approximately five years, our share of the state gas tax will not even cover our operating and maintenance costs let alone pay for street resurfacing, major reconstruction, or building any new streets. We give you that chart just as a general picture of the state revenue sources as compared to our maintenance and operation. Obviously, we have other local sources of funding. But I want to emphasize the magnitude of the needs that we face in our community in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Lincoln. I continue to remind Lincoln taxpayers at the local level, as Monty continues to remind us at the state level, that our road infrastructure is the largest asset that we have. Our engineers estimate we have invested nearly...or perhaps over a billion dollars in our own streets and roads, and we obviously cannot allow those assets to deteriorate...should not allow those assets to deteriorate. With that in mind, the Public Works Department was asked by me to figure out a gap number, the gap being the difference between what we'll need to maintain and build new roads to accommodate growth, and what we actually have to pay for it. In doing so, I asked them to be realistic and to distinguish between what we might like to have and what we really need to have. They have come up with a figure that we do need over the next 12 years to not only keep up with growth but to also catch up with growth that we have gotten behind on in the last few years. Analysis found that there was \$91 million per year on the needs side, and \$40 million per year on the revenue side. That's \$51 million a year is the difference which is a pretty significant number in any count. We continue to update those gap numbers. We are working on making those more and more accurate and more and more specific, but you can see, in any event, the number is huge. This is just one example of many that this committee, I know, has heard repeatedly about over the last few years with regard to the broken link between existing formulas and revenue sources and ever-increasing demands. The city of Lincoln has been before you and other legislative committees several times over the last few years emphasizing our local road needs. Growing communities struggle to keep pace with the increasing costs associated with building and maintaining road infrastructure. Lincoln has done several things locally to help ourselves dig out of this hole. The city of Lincoln has recently issued two sets of highway allocation bonds providing over \$62 million of road financing. We've applied nearly \$9 million of stimulus funds plus another \$6 million or \$7 million in one-time funds into the problem. The city has also increased its local wheel tax in 2004, again 2007, and again in 2010. Last year you may recall, we were a strong proponent of LB85, the urban growth bill, legislation that passed allowing us and other municipalities to dedicate sales tax revenues from new growth areas towards revenue bonds to build and maintain new roads. We thank you for getting that...making that available to us. While this will

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

certainly help in the future, the urban growth bonds do not help the city with additional revenue, of course. It just gives us the ability to bond a portion of our sales tax dollars. But these efforts, although very important, have not been enough to get the job done as the costs of building roads continues to outpace inflation. Lincoln continues to grow, and we continue to fall further and further behind. We have got to find together with you and the federal government long-term solutions. The problem is destined to simply grow and grow and grow without getting...if we do not get our hands around it. The work of the committee, of course, will be informed also by what has been done in the past to take a serious and comprehensive look at our transportation system and our funding methods. I think it's instructive to take a look at just one of those many examples, the final report of the transportation task force for Nebraska's future which was done back in 2004. This task force was composed of a highly experienced and wide-ranging leadership, private leadership team appointed by Governor Mike Johanns, and a detailed report was produced after an extensive series of educational hearings, twelve public hearings around the state, and independent analysis, and the reports stated quite clearly back at that time that some type of change needs to occur within our current structure of transportation, planning, and financing if Nebraska is to continue to compete in a very dynamic global marketplace. The task force's charge was to look at all aspects of our transportation system in Nebraska including roads, railroads, and public transportation. Specifically, the report found certain common themes underscoring this need for change, among them being the link between improved transportation and economic development, the struggles of local government to generate the revenues needed to maintain and expand infrastructure and the need to augment the highway trust fund through new funding options; this report now five years old. These themes, of course, were not new then, and they're not new now, obviously, but then and now we are looking at structural problems. Yet what is even more obvious today is that we are in crisis, and we've made little headway so far on reforming the basic system. So now we think more than ever is the time to act, and that this committee through this study could take the lead. I recognize, based in part on my own experience, that the Unicameral can't snap its fingers and make transportation infrastructure funding challenges in the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

state go away altogether all by yourself. But it can take an even more proactive approach to bridging the gap between where we stand today with an ever dwindling set of resources for our roads and highway system with interim funding approaches that will help meet immediate road funding needs. First of all, the city of Lincoln supports any effort to protect, and all efforts, to protect the integrity of the Highway Trust Fund. This is and has been an effective and unique mechanism that can be adapted still to future needs and financing approaches. The city of Lincoln also encourages this committee to look at allowing more local options such as an expanded local option sales tax authority or other sales tax proposals whether increased local sales tax authority or the dedicating of new sales tax revenues to help pay for expanded bonding programs for major projects. The city of Lincoln also urges this committee to ensure that this year there is a fix to the field tax wholesale pricing issue to minimize and reverse the current adverse effects on counties and cities. At the same time, we all know we must be attentive to what the Congress is likely to do in its authorization of the new federal transportation bill in the next year or so. It sounds from what Monty had to say, that it may not be much for a little while anyway. But Nebraskans can and must aggressively seek its fair share of federal dollars and commitments from this process. We have been further hampered at the federal level by the current cloud over the idea of earmarking. Earmarking has supplied substantial road infrastructure funding to the city of Lincoln, and we are very sorry, for one, to see that the bad reputation of some earmark is bleeding over to earmarking that's being done for quite good purposes in this state. But we need, obviously, and we need significant federal dollars to maintain and improve our road system, and those...that system itself must be repaired, and we are advocating for that at the federal level by going to Washington. We've been to Washington every year for the last three years talking to our representatives about the road infrastructure issue. But I think the same deteriorating situation that hurts us at the state level obviously is hurting us at the federal level in terms of the declining revenues under the current formulas, and they too have major reform on their hands. So there are lots of things going on in conjunction with these ideas of financial reformation relating to road infrastructure. People across the country, of course, are seeking out and using new

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

means of transportation, trying to get a handle on lowering their costs by using higher mileage vehicles, using less carbon incentive fuels, going all electric. These trends are probably going to continue while the user-based system such as the gasoline tax will hopefully continue to be the centerpiece of federal legislation. Americans clearly are driving less, and there should be diminished expectations for returns or expectations of increases in the growth of the Federal Trust Fund. As a result, I think we all have to be willing to discuss and think about new proposals that would open the doors to other financing mechanism heretofore unused at both the state and federal level. I'm going on a little long here, Senator, and I'm sorry about that. I appreciate your patience. I think I've probably indicated to you all of the thoughts that my people had asked me to pass along, and I would only end by encouraging the committee one more time to grapple with this problem big time and to see if you can't get your arms around it, and again, I pledge to you the maximum flexibility and the maximum cooperation in terms of finding a solution that may not be ideal from the point of view of Lincoln alone, but might be a good and viable and thoughtful solution for the state of Nebraska as a whole, if not for the permanent future at least for the near future until the federal government has sorted through some of its dilemmas. Thank you. [LR152]

SENATOR FISCHER: Thank you, Mayor Beutler. And I do appreciate the support of the city of Lincoln on a couple of my proposals over the last couple of years to try and deal with this situation. So I appreciate you being here today and hearing your ideas. Are there any questions by committee members? Senator Stuthman. [LR152]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you for your testimony, Mayor Beutler. Would you say there would be a chance that we should be looking for any type of funding other than a user fee for the Roads Department? [LR152]

CHRIS BEUTLER: Well, again not having had staff or myself delve down into the details of what may be necessary to do as opposed to a preference, I think that we all need to keep our minds open to all different kinds of revenue. Obviously, at least from my

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

perspective, the closer the revenue can be identified to those who use the roads, the better. We...that's a principle I use as much as I can and in as many areas as I can in local government. But whether that's going to be possible or not I can't say. [LR152]

SENATOR STUTHMAN: That's the way I feel also. I feel that, you know, we need to have the user fee as maximum and as much as possible. But if that doesn't supply enough revenue, you know, we've got to find something else. Because we need to really work on the infrastructure because that's what brings wealth to the communities. [LR152]

CHRIS BEUTLER: Absolutely. [LR152]

SENATOR STUTHMAN: Thank you. [LR152]

SENATOR FISCHER: Mayor Beutler, can you tell me how Lincoln funds its roads. You mentioned a number of ways. The two new highway allocation bonds you had, I believe you said it was \$62 million. You mentioned increases it seemed like every two years on your wheel tax. Looking ahead at those urban growth development bonds to be able to issue for these areas, do you have a breakdown, a percentage on what's used. Do you use property taxes, I would assume also part of your General Fund from property taxes you would use for roads. [LR152]

CHRIS BEUTLER: We're applying some property taxes, some sales taxes, a lot of wheel...all of our wheel tax, obviously. [LR152]

SENATOR FISHER: What is the wheel tax at now in Lincoln? [LR152]

CHRIS BEUTLER: We increased it this year, Roger. [LR152]

ROGER FIGARD: It was \$49 and it's slated to go (inaudible). [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Is...could you repeat that. [LR152]

CHRIS BEUTLER: For the record, I know you will want to know that that's Roger Figard who is our...who's in our Public Works Department, our chief roads person. [LR152]

SENATOR FISCHER: Is that total...did you say \$49 right now? Is that total per vehicle, total for four wheels? How does that work? [LR152]

CHRIS BEUTLER: You know, Senator, we...I know we have a chart... and I don't want to try to quote it, least I make a mistake. [LR152]

SENATOR FISCHER: Maybe we'll switch that and take it away from you. [LR152]

CHRIS BEUTLER: ...and I don't want to try to quote it, lest I make a mistake. But let me get over to you specific information as to where all of our roads funds come from because have that very handy. [LR152]

SENATOR GAY: Would that be all the available sources too that they could tap? Could you ask. [LR152]

SENATOR FISCHER: Could you include all the available sources, such as what was passed this year with LB85. Could you include that in as a possibility for the future that you could tap into to... [LR152]

CHRIS BEUTLER: Absolutely, absolutely. [LR152]

SENATOR FISCHER: ...get funding... [LR152]

CHRIS BEUTLER: Absolutely. I think it would give you... [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: ...or something like that too. [LR152]

CHRIS BEUTLER: I know we have the information and I think it would give you a good picture of how a larger urban community finances its roads. [LR152]

SENATOR FISCHER: On your chart I would assume this is very similar not only to other urban areas but also on what counties are facing, too, and also what we heard at the state level. So I wouldn't say this is unusual. This is what we're looking at trying to figure out how do we address the challenges presented by that... [LR152]

CHRIS BEUTLER: Yeah, I don't... [LR152]

SENATOR FISCHER: ...gap that we continually see widening. [LR152]

CHRIS BEUTLER: Yeah, I'm definitely here whining here, Senator. But I'm no whining... [LR152]

SENATOR FISCHER: You did a pretty good job this time not whining. [LR152]

CHRIS BEUTLER: ...because our problems are any bigger than anybody else's. I think it's a broad, broad and deep problem. [LR152]

SENATOR FISCHER: It is. Our challenge is trying to figure out what we can do with limited funds available at the state, looking at the economy, where we are within the state and the forecast, what they are projecting for not just the next several months but possibly the next several years and what we're seeing at the national level. So there I agree with you, there are no easy solutions here. We've been trying three years to work on this. And it...my personal opinion is it becomes more frustrating every year and the more I learn on it. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

CHRIS BEUTLER: Well, just remember about the Little Engine that Could, Senator.
(Laugh) [LR152]

SENATOR FISCHER: Not that I'm whining though. Senator Gay, did you have a question? [LR152]

SENATOR GAY: Yeah, Mayor, Mr. Mayor, I guess the question would be, how much do you think that...there should be some responsibility, more responsibility maybe or what's your opinion of cities and counties picking up more responsibility than having the state...this always works its way down. But at what point is local government better government? And you've done some things to help yourself. But that would self-prioritize some of these projects that...we don't know all the projects that are needed. But local people could decide their local projects and have more options to take care of your own problem. How do you think that would go over out in... [LR152]

CHRIS BEUTLER: Well, I'm not sure exactly what you're thinking about, Senator. But let me just say this. Right now the two main sources of revenue for the cities unless you would feel comfortable, Senator, allowing us to go to a local occupation tax, which the committee did not feel comfortable with four or five years ago. However, that's an option. And that option is before us or is available to us now. But this committee has discouraged us from going to that option. Having said that, the two main sources of revenue for us are obviously our property tax and our sales tax. And the sales tax we cannot increase anymore. We are levied at 1.5 cents, so what we have we have. And by the way, that went down this year as compared to last year. So that means it's the property tax that realistically we would have to raise to fund something as expensive as road infrastructure. And I think Lincoln is no different than any other community in that we resist mightily the imposition of anymore property tax. So what would be a fair trade-off from my perspective is if you were willing to give us more tools or be more liberal in your thinking about allowing us to use tools that are even now available to us

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

but discouraged. And then left it to local control to be accountable for the use of those tools. But right now the only major tool we have is the property tax and that's difficult. [LR152]

SENATOR FISCHER: Could I ask you where you are in your levy right now with property tax in the city and if you also know the county levy. [LR152]

CHRIS BEUTLER: The city is at 28 cents and the county is about the same. [LR152]

SENATOR FISCHER: Counties can go up to 49 cents, correct? [LR152]

CHRIS BEUTLER: I'm not sure. I don't remember exactly what the county cap is. [LR152]

SENATOR FISCHER: For the total levy for school districts, counties, NRDs. Most of my counties are up above 47 cents right now. But it...I guess when you ask for more tools, as you know I am no fan of property taxes whatsoever. But you already have that tool for property taxes. What difference would an occupation tax make to you? What is an occupation tax? Are you...is it...you know, to me a tax is a tax is a tax is a tax. So what difference is an occupation tax? Is it just another name so people, I'm a devil's advocate here with you, Senator, you know. [LR152]

CHRIS BEUTLER: Yeah, you've done that before, Senator. [LR152]

SENATOR FISCHER: I know. (Laugh) And so it's fun to have you back, by the way. But is it just another name so people don't get so worked up that it's not a property tax. You know, what's...you have an option with your property tax. You have an option with LB85. What else can we do? What's an occupation tax do? [LR152]

CHRIS BEUTLER: Well, I don't that they're the same. And it goes back to Senator

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Stuthman's question with regard to the closeness of the tax to the use. The occupation tax we're talking about would be an occupation tax on distributors of gasoline and petroleum products. So that occupation tax would be very close to a gas tax. And... [LR152]

SENATOR FISCHER: Would you support raising the gas tax to meet the needs then? Why don't we just raise the gas tax instead of calling an occupation tax on the, I assume it would be the wholesalers or the, you said the deliverers of it. To me that's wholesalers. [LR152]

CHRIS BEUTLER: Yeah, the city has already supported the increase in the state gas tax. [LR152]

SENATOR FISCHER: How high do you think it needs to go to meet the funding needs that we have? [LR152]

CHRIS BEUTLER: You know, I really can't answer that. I'd be glad to explore that with you. But I think that is a question that's going to have to be explored in the context of a broader question now that the revenues are dipping so precipitously, you will get into the question I think of the fairness of a tax once it becomes heavily levied. There's a diminishing return, I think, to the acceptability of a tax once it becomes too high. [LR152]

SENATOR FISCHER: You mentioned early in your comments to us that funding must reflect changes in society. That Nebraska's changing, and a changing Nebraska, the twenty-first century, we need to be agile enough to meet those needs. What do you see changing with regards to highway funding for the twenty-first century? I took it that you're not talking specifically or exclusively about roads and bridges anymore. [LR152]

CHRIS BEUTLER: Well, I think you're right. In that part of my remarks I was intending to indicate that there's a broad societal change going on. Not only that, but as Omaha and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Lincoln get bigger they become more into the urban category. And when you start looking at things like the stimulus money for the expansion of the rapid train system, now a coalition of people are envisioning the funding of that across Iowa, almost to Nebraska. Well, what about Omaha and Lincoln? Shouldn't they be on the extended rapid railroad transportation system of the Midwest, you know, if you're going to be a part of the regional economy of the Midwest. These are the types of things that I think the state (laugh) has to start thinking about. The state made no application for getting involved with that at this point in time. Maybe that's the right decision for this point in time. But it won't be the right decision for very long because we're changing. [LR152]

SENATOR FISCHER: I think I saw a map of that, a graph somewhat. Nebraska wasn't included in any of the priority planning if I remember that correctly. In fact, we were just kind of listed as a state that has a southern route. And this didn't come from Nebraska by any means. It came from a national group. But there, when you said Nebraska didn't apply for any or didn't receive any funds, that...I would assume we didn't receive any because we're not considered a priority for it. Lincoln and Omaha are on the edge, I believe, of that hub area that they are trying to cover with that railway system. But we can talk about that later. [LR152]

CHRIS BEUTLER: Yeah, well, I wasn't trying to imply in any way, Senator, that we should be critical or that we should be critical because we didn't apply. It may be that the circumstances of the moment didn't really call for us to apply. I just gave that as an example of a changing dynamic I think in the... [LR152]

SENATOR FISCHER: Right. [LR152]

CHRIS BEUTLER: ...the system. [LR152]

SENATOR FISCHER: But also, this is a hearing on funding. So we need to look at all funding possibilities too. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

CHRIS BEUTLER: Yeah, yeah. [LR152]

SENATOR FISCHER: So I'm sorry to dominate. I just...I miss Senator Beutler so much. Senator Campbell. [LR152]

SENATOR CAMPBELL: Thank you, Senator Fischer. I just wanted to make a comment on the mayor's comments. Encased in those comments he also referred to the local option sales tax which some people have talked about. And I'm sure the mayor has all kinds of statistics of what they would pay for in Lincoln. But as a dedicated, by a vote of the people saying, okay, we want to dedicate this amount to that, what that would pay for, the reaction is a little bit different when you talk to people saying, would you rather do that than the property tax. And a lot of people say yes, because that affects all the people who may travel to Lincoln, through Lincoln, through Columbus, through...you know, if those communities decided that was how they wanted to cover it. That is an avenue that has been discussed in Lincoln and the mayor did allude to that. So I just wanted to make sure that we didn't lose that point because some people think that's much more favorable than the property tax increase. [LR152]

CHRIS BEUTLER: Exactly. [LR152]

SENATOR FISCHER: I think people across the state will, at least who visit with me, favor a sales tax over a property tax anytime, no matter where you're from in the state. How much would a half cent bring in, in Lincoln? [LR152]

CHRIS BEUTLER: A half cent on the... [LR152]

SENATOR FISCHER: Yeah, what does a half cent bring in, in sales tax? [LR152]

ROGER FIGARD: Forty million, I think. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

CHRIS BEUTLER: Yeah, it's \$40-some million for a whole cent, 20 million? Okay.
[LR152]

SENATOR FISCHER: Other questions. [LR152]

CHRIS BEUTLER: We would even mind if we were required to dedicate that all to road purposes. [LR152]

SENATOR FISCHER: I would think that would have to be part of the deal. [LR152]

CHRIS BEUTLER: I suspected you thought that. [LR152]

SENATOR FISCHER: (Laugh) Senator Louden. [LR152]

SENATOR LOUDEN: Yes. Thank you for being here today, Mayor Beutler. [LR152]

CHRIS BEUTLER: We don't plant very many flowers in the city either, Senator, along our roads, (Laugh) just for... [LR152]

SENATOR LOUDEN: I said after sitting here and listening to you for an hour, now I know why I usually voted for your bills early on in (inaudible). (Laughter) [LR152]

CHRIS BEUTLER: You mean you got sleepy after a half hour? (Laughter) [LR152]

SENATOR LOUDEN: Anyway, getting back to the business at hand here. Do you...when you have your developers build these divisions out here, do they pay for the construction of those roads in there and all the concrete and stuff that's laid out there? Or who pays for that road construction to bring it so that those subdivisions can come into town? [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

CHRIS BEUTLER: You you, it's a complicated system. But they pay for a lot of it. They pay for the residential streets, they pay impact fees. It doesn't cover nearly all the costs but a significant... [LR152]

SENATOR LOUDEN: That's what I'm wondering. When you let a developer go out there and subdivide an area there, like on what, 14th Street or something, there's a whole lot of concrete, you know, and some of those streets out there anymore. [LR152]

CHRIS BEUTLER: Yeah. [LR152]

CHRIS BEUTLER: Who paid for that? Did that have to come out of the city's budget money or did those...was there a way that you recovered that from fees from the developers as they developed that? [LR152]

CHRIS BEUTLER: Yeah. We try to recover a portion of it from the developers. But there are just some things that are never...have never been considered fair in terms of pushing that cost off onto the developers. If you just take an item, for example, like the south beltway, which we need very badly, I think you're probably familiar enough with Lincoln to know we have Highway 2 kind of running through the south part of Lincoln with a lot of traffic that goes west around Lincoln, basically, but it travels down Highway 2, which is increasingly through heavily, heavily populated part of south Lincoln. As the developers build south, the burden on Highway 2 is becoming tremendous and there are bottlenecks in several places now with growing delays at certain times of the day. So what we really need is a south beltway to carry that traffic that's not really going to the city around the city and relieve the pressure on Highway 2 and to help with the transportation of all those new developments in the south part of Lincoln. The developers are not called upon and really there's no way they could come up with the \$200 million or so that it will take to build the south beltway. And so development and growth calls upon us to build these kinds of major facilities from time to time that the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

developers really can't be expected to pay for. [LR152]

SENATOR LOUDEN: Well, very true. But on the other hand, if they're going to do the development out there, they probably need to have some planning for some type of as you say beltway or something. The land hasn't been set aside for that beltway because you've developed over some of the original beltway sighting. Am I correct there, that where that beltway was going to be at one time that's been developed now. And you're farther out than where that beltway would have been built here if it had been built ten years ago or so. [LR152]

CHRIS BEUTLER: Well, Senator, I'm a little bit embarrassed because I think maybe you know more of the history of this thing than I do. [LR152]

SENATOR LOUDEN: Well, I've been around here for... [LR152]

CHRIS BEUTLER: But certainly the current pathway of the beltway is being secured both to the south and to the east and provision has been made to protect that into the future. But that's about all we're getting done at this point in time. [LR152]

SENATOR LOUDEN: Well, and my observation has been that's the reason you're...what is it, 120th Street or clear out there east of town here, and the Waverly Interchange is going to be probably the bypass around Lincoln off of the Interstate. [LR152]

CHRIS BEUTLER: Right. [LR152]

SENATOR LOUDEN: I mean, that...and you're already developed part way out there. So this is the reason I'm wondering what you do to check some of the development or plan as they develop that to leave an area through there. Otherwise, you'll just build another beltway and in 15 years it's going to be like Highway 2. When Highway 2 was

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

first put in that was supposed to be to get around the south side of Lincoln, you know. And now look at it. It's just another street to downtown Lincoln. And I'm wondering where your planning come in on taking care of that stuff? Because that's a significant cost for the city of Lincoln to do something like that. [LR152]

CHRIS BEUTLER: Well, we have an ongoing and, how shall I put it, loud debate on the appropriateness on charging developers versus a general expense to the community. Impact fees were imposed just a few years ago, upheld by the courts. But they're still not accepted by many portions of the development community and... [LR152]

SENATOR LOUDEN: Well, I understand, what was that, \$35,000 per lot or something like that, what the impact fee is. [LR152]

CHRIS BEUTLER: Yeah, it varies depending upon the type of improvement and the size of improvements and that sort of thing. But it's still in all it's a relatively minor portion of the overall costs of our system. [LR152]

SENATOR LOUDEN: Now, and this occupation tax, you have an occupation tax on phones, telephones don't you? [LR152]

CHRIS BEUTLER: We do. [LR152]

SENATOR LOUDEN: And what is that money used for? [LR152]

CHRIS BEUTLER: That money goes into our General Fund. [LR152]

SENATOR LOUDEN: That's just...it's just another phone tax then. It isn't set aside for street repair or anything like that. [LR152]

CHRIS BEUTLER: No. No. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LOUDEN: Okay. Well, that's...and as I look at this chart you have here, as it goes out here and you talk about your wheel tax. Now does this include your wheel tax on here? If the wheel tax is on here, would this gray line be a little bit higher than what it is on this chart? [LR152]

CHRIS BEUTLER: The wheel tax, none of the local taxes are on there. It wasn't designed to be a chart to give you the whole picture but just to give you a kind of baseline of maintenance that we have in the city and to show you what comes from the state... [LR152]

SENATOR LOUDEN: From your gas taxes. [LR152]

CHRIS BEUTLER: ...as a percentage of that. Yeah. [LR152]

SENATOR LOUDEN: Okay. [LR152]

CHRIS BEUTLER: That doesn't mean we don't have local and federal money on top of that that's helping us out with the overall picture. [LR152]

SENATOR LOUDEN: To bring this gray line up... [LR152]

CHRIS BEUTLER: So it's...there's a limited lesson to be taken by this but I think an important one. [LR152]

SENATOR LOUDEN: Well, that's what I'm wondering, if this was something to blow smoke with? (Laugh) [LR152]

CHRIS BEUTLER: No, I think it's real but... [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LOUDEN: It's real, but is it...the line can be changed with some of your other revenue. So as far as maintaining your streets in Lincoln. [LR152]

CHRIS BEUTLER: Yeah. But then the other line could be changed also by adding on those things we need to do to accommodate the growth of the city as opposed to just current operations and maintenance. [LR152]

SENATOR LOUDEN: Okay. This black line is kind of a wish list then? [LR152]

CHRIS BEUTLER: No, the black line is based on historical figures. [LR152]

SENATOR LOUDEN: Okay. [LR152]

CHRIS BEUTLER: And includes our historical growth and the history of construction costs and maintenance costs. It's a...insofar as it applies to past years, it's based on real figures, insofar as it's applied to future it's based on our historical experience. [LR152]

SENATOR LOUDEN: Then about in 2030 you figure it's going to cost you 40 million bucks for your operation and maintenance. And you'll have to find some way... [LR152]

CHRIS BEUTLER: We'll have to take that out of local funds. [LR152]

SENATOR LOUDEN: It's got to...you got to find it some way or another. [LR152]

CHRIS BEUTLER: Yeah. [LR152]

SENATOR LOUDEN: Okay. Thank you, Senator Beutler. [LR152]

CHRIS BEUTLER: Okay. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Other questions? See, you're the first one up so we just...and I just went on and on and on. So thank you for being here today, appreciate it. [LR152]

CHRIS BEUTLER: Well, thank you for being so liberal, Senator, with your time. [LR152]

SENATOR FISCHER: Oh, please, I'm offended now. (Laughter) Good afternoon. [LR152]

DAN PARK: Good afternoon to you, Madam Chairman and members of the committee. My name is Dan Park, D-a-n P-a-r-k, and I'm the chairman of the Legislative Committee for the American Council of Engineering Companies of Nebraska. I suspect rule number one, and I didn't know, was never follow an eloquent mayor and former longtime state senator. So I'll do my best, especially since I forgot my reading glasses. So bear with me and we'll try to get through this. Our association appreciates that this committee has convened these series of interim studies really across the state. Your commitment to study the issue attests to the fact that we cannot ignore this any longer. We all know that time are tough, but neglecting the fundamental need for adequate transportation and how it transcends almost every facet of our lives is to put our state at a distinct disadvantage. As you've heard today, our transportation system is not keeping up with ordinary demands. Our current funding system is producing flat to declining revenue for our roads, while at the same time inflation is eating away at the buying power. We need to look at developing funding mechanisms that provide the needed funds to meet our agreed upon goals. Such a plan must be sustainable and adaptable so that road funding does not become an annual legislative battle. We need a stable twenty-first century system, as Mayor Beutler indicated. The Department of Roads, as we heard from the director, is attempting to keep the preservation of the highways in good order. The current system does not allow us to embark on a capital...a major capital improvements program, as we heard from the director. Clearly, we need new tools in the toolbox to fund our transportation infrastructure. Options need to be explored that

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

provide both short-term and long-term sustainability. First and foremost the Highway Trust Fund must be...remain intact. We need to protect our current system of gas...to the variable gas tax. However, the variable gas tax that we have really does nothing more than ensure that we're able to deliver the program that we set out in the budget. It's intended to periodic minor correction to account for the variations in the gas tax receipts, as you know. However, the system does work and is the envy of 49 other DOTs that don't have it. And we would certainly oppose any discussion eliminating the variable gas tax. As important to our current funding system, now is the time that we consider implementing new forms of increasing revenue to fund our transportation needs in Nebraska. We believe that bonding is one of those tools that would be an alternative financing only if a dedicated revenue funding source is identified to repay the bonds. Diverting funds from the current gas tax is simply robbing Peter to pay Paul. Bonding would be a hedge against future construction related inflation and could defer further delays. In fact, funding a tool that's being used...bonding I should say is a tool that's currently being used in 42 states. In addition to bonding, states are looking at other forms of generating new revenue. Iowa, for example, recently went through their TIME-21 initiative, which they looked at their needs and they looked at a series of potential revenue sources, new revenue sources to increase revenues, which included increasing their vehicle registrations, implementing a severance tax on ethanol, creating transportation improvement districts, tolling, and private/public partnerships. Many of these solutions have been implemented by the Iowa Legislature, not all, but they're generating tens of millions of dollars of new monies for Iowa DOT. We must consider innovative funding solutions. Moving from a variable gas tax to a fixed gas tax is not the answer. Strong consideration should be given to gas sales tax or increased and expanded vehicle registration fees or other stable or sustainable approaches. We believe that you should also look at rediverting transportation derived revenues from other sources back to the Highway Trust Fund. Local...we've heard this and we're a believer of this too. We've heard a lot of discussion just from the mayor. Local approval for local general sales tax option is something that we believe would help the cities and counties with their program. And it's been proven very successful in many states. Very

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

simply we need to invest more in transportation. And the heart of the solution is going to be new revenues and a bold leadership on your part. There is no one solution and there certainly isn't any easy solution. But action must be taken now or Nebraska risks getting further behind. We cannot afford to wait to see what the federal government's direction is headed...where they're headed. A transportation system that works takes a long time to develop and requires a steady investment of dollars. It cannot be subject to annual General Fund political discussions. Your predecessors saw to it that our transportation funding system was dedicated and was flexible. We urge you to take new and innovative steps now, as difficult as they may be, to move Nebraska's funding system into the twenty-first century. Thank you again for your time and interest. I'd be happy to answer any questions as long as they're easy questions. Thank you. [LR152]

SENATOR FISCHER: Thank you, Mr. Parks. Are there any easy questions? Senator Louden. [LR152]

SENATOR LOUDEN: Yes. My questions are always easy. [LR152]

DAN PARK: Yes, sir, Senator. [LR152]

SENATOR LOUDEN: You mentioned the gas tax formula. Now, the way that is now the Department of Roads comes up with their needs and then they'll come up with what the revenue will be to take care of those needs and then you raise the gas tax accordingly. Is that more or less a simple... [LR152]

DAN PARK: We have the experts here from the department. But my understanding is that's correct, based on what the projected income is, that they recommend an adjustment. [LR152]

SENATOR LOUDEN: That's the simple way of doing it. But nobody has had the intestinal fortitude to do that. They've always come up with estimating their revenue and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

bringing their needs back down to the revenue so the gas tax didn't raise. Is that...would that be a correct... [LR152]

DAN PARK: I can't comment on that. [LR152]

SENATOR LOUDEN: Okay. To me that's kind of how it's been going on for several years. Some of the increase in usage has always raised our revenue enough so we didn't have to play with it and there was some folks that more or less went at that. And you mentioned Iowa, you know, their different revenue sources, you know. And you said a severance tax on ethanol. I introduced that bill, I think, last year or the year before. And good Lord, the Farm Bureau come unhinged, you know, and a few other people over the deal. (Laugh) And gosh, I thought it wasn't that bad of an idea, mostly because it took water in order to produce ethanol. But you'll have everybody on your neck with a severance tax on ethanol. Myself, I thought it was a good idea because where I come from we don't grow any ethanol anyway. [LR152]

DAN PARK: You notice I didn't throw a lot of easy solutions out there. There are very difficult. [LR152]

SENATOR LOUDEN: And also the bonding, I've myself have never been a fan of bonding because somewhere along the line you got to service a bond. So where you going to get the money to service the bond? You just as well raise your taxes and go from there. What do you think if you wanted to increase tax on gasoline, what is your estimation would be probably all that the market would bear as far as an increase. At the present time we're at what, 26.5 cents or whatever it is. Could we increase it 5 cents? [LR152]

DAN PARK: You know, I can't really answer that. All I know is as a consumer, like you, I put gas in my gas tank as often as everybody else does. And it seems like on a weekend it can sometimes change 10 to 15 cents. And we're at the mercy of whatever

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

that is. And so I think the public is used to seeing movement, you know. But what they're willing to accept, you know, I don't have the answer for that. But personally for me if gas was \$2.37 and it went to \$2.40 I probably wouldn't flinch because I wouldn't know if it was an increase in the gas tax or if somebody had raised it, you know.

[LR152]

SENATOR LOUDEN: Well, a case in point is... [LR152]

DAN PARK: You raise it \$1 they're going to know. [LR152]

SENATOR LOUDEN: ...I see on Casey's down here it's, what, \$2.33 a gallon I think. And out in Scottsbluff the other day it was \$2.69. And on the way...I drive across Nebraska a lot. And usually here, this is the first time I've known this summer it would run around \$2.59 a gallon until you get to Lincoln. And for some reason it's always about 7 or 8 cents a gallon cheaper in Lincoln. And I think that's because that's where the seat of government is, so they try to keep it a little bit lower there (laughter). [LR152]

DAN PARK: I don't know. [LR152]

SENATOR LOUDEN: There has to be a reason for it to be a little bit cheaper in Lincoln then because they're all Casey's. I mean, you got Casey's clear across Nebraska, so they're all buying their gas from probably the same supplier. So I have a hard time understanding why we have a 20 cent difference in cost. [LR152]

DAN PARK: Don't know, don't know. Yeah, I don't understand that either. [LR152]

SENATOR LOUDEN: Okay, good enough. I thought you was an engineer, from the engineers. I thought engineers figured all that out. (Laugh [LR152])

DAN PARK: Not that...we don't determine how the gas goes up and down. No, no.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

(Laugh) [LR152]

SENATOR LOUDEN: Okay. Okay. Some of...what were some of the other ways you mentioned in Iowa for the increase in tax besides the ethanol? [LR152]

DAN PARK: I didn't bring the whole scheme of things, but they looked at a multitude of things. The ones that I noted, they looked at increasing vehicle registrations. That they did, that they did. In their case it was, I believe, it was on pickup trucks that they felt weren't being properly, and you may know more...legal counsel is nodding his head. But I'm not picking on pickup trucks. But in the case of Iowa, apparently, senators felt that that's wasn't where it needed to be to be fair and they targeted that and they raised that to some level they felt was appropriate, which generated a substantial amount of money. But vehicle registrations is one, tax on ethanol is something else that they looked at. I understand, Senator, that's one of those things that in some respects it seems to make sense but I'm sure can be very controversial. I don't believe they did that. But the one that jumps out at me is, the one that they've done is they've increased the vehicle registration. There were a few other things they did. I could get the information to you. They have talked about increasing the gas tax, but that has not passed the governors desk yet. I think after two years they're going to bring it before the governor again this year. And so that was a part of it also. [LR152]

SENATOR LOUDEN: Okay. I'm wondering if they did any of that because of...on the weight of any vehicle or something like that, if your pickup is pulling trailers and that sort of thing or where their thinking was on pickup trucks. [LR152]

DAN PARK: I can't say. I don't believe that was a factor but I don't know that. [LR152]

SENATOR LOUDEN: Okay, thank you. [LR152]

DAN PARK: Thank you, Senator. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Other questions? Mr. Park, when you mentioned the bonding and I believe you also said we need to preserve the trust fund, so we need another revenue source. Where is that revenue source going to come from? Obviously, you are suggesting to us that as senators we should increase registration fees. We should...not to put words in your mouth, we need to increase the gas tax, we can put on a sales tax increase. We can let Lincoln implement an occupation tax. So I would assume you and a lot of other people in the audience today are looking at a group of politicians saying we need roads. And this group of politicians up here is looking back at you saying, boy, we're with you on that, we're with you on that. You know you're talking to the Transportation Committee. We understand the needs in this state for infrastructure. And then you folks out there look at us and say, well, you can, you know, you can raise registration fees, you can do this, you can do that or tax ethanol, you know. And we politicians up here are going, whoa, wait a minute, because we hear from home nobody...nobody wants to be taxed more. [LR152]

DAN PARK: Um-hum. [LR152]

SENATOR FISCHER: Nobody wants a fee increase. We saw that last session, we couldn't get even a possibility of an increase for Game and Parks on parks entrance fees passed in this body last year. So now we have different recreation areas closing down and low maintenance. So maybe we've heard from home enough on that too that maybe we should do it more. So what do you want us to do? Bottom line it. [LR152]

DAN PARK: I don't think I mentioned occupation tax and I certainly wasn't recommending... [LR152]

SENATOR FISCHER: No, the mayor did. [LR152]

DAN PARK: ...and I certainly wasn't recommending to the body that you raise any tax. I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

simply... [LR152]

SENATOR FISCHER: Possibilities. [LR152]

DAN PARK: I simply was trying to lay out the fact that these are some of the things that other folks are looking at. And I certainly wasn't even debating on the fact that they were good things or bad things. [LR152]

SENATOR FISCHER: I'm just picking on you. [LR152]

DAN PARK: No, no, no. [LR152]

SENATOR FISCHER: You're in the chair so I'm just picking on you. (Laugh) [LR152]

DAN PARK: That's okay, that's okay. But no, seriously, I...you know, as I said there are no easy solutions. And you're in a very difficult spot. I mean the needs are great and as I said when I started these are challenging times for everybody. I don't like a tax increase anymore than anybody else. I just think that the time has come, when you heard from the director the program is going in a direction that no one finds acceptable. And we get to the point where we find out the program is in trouble, it's really too late, I mean we really have a problem. Because as you know as well as anybody, you don't correct it overnight. And so, you know, personally I not in my text but the local option, I'm personally (inaudible) local option. I've seen some communities, and Phoenix probably isn't a good example because it's such a large metropolitan area. Colorado Springs is a good example, very comparable to Omaha and Lincoln. I'm very familiar what they did down there. And they had very similar issue, very, very conservative community. And I've had those folks in to talk to the Omaha Chamber at one time a few years back. And there was an argument that they could not get something like that passed. But the community united, they put together a very specific program. What they took to the voters, and they said for one-fourth cent sales tax or whatever it was at the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

time I believe this is what you get. And it...70 percent approval. But they had the authority to take it to the voters. And I'm not certainly saying that I would automatically even vote for something like that. But I think that having that option available to the communities, the cities and counties is something that I think, personally, I think would be possibly a step in the right direction. [LR152]

SENATOR FISCHER: So you think that you possibly could support an occupation tax if the proposal would go before the voters? [LR152]

DAN PARK: No, I never used...no I never said occupation tax. I said sales tax, let's earmark... [LR152]

SENATOR FISCHER: Sales tax. [LR152]

DAN PARK: Sales tax. [LR152]

SENATOR FISCHER: I'm sorry, I misunderstood you. [LR152]

DAN PARK: No, that's okay. Sales tax. [LR152]

SENATOR FISCHER: A sales tax increase within a municipality or are you thinking statewide a sales tax increase? [LR152]

DAN PARK: I think in the...yeah, I've seen it, it's been proposed different ways. I think in the case of Colorado Springs I think their legislation allowed them to look at an area, I think that the city and the county, it was more of a metro wide area, I believe. It's been a few years since I've seen that but I believe that's how it worked. [LR152]

SENATOR FISCHER: So you could have a city and a county work on an interlocal agreement then to work it out. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

DAN PARK: Um-hum. That's what they did. And I...these numbers are old so please don't hold me to them, but I think at the time I think it was in the case of the Colorado Springs area I'm thinking it was a half cent, it could have been a quarter cent sales tax. But it generated something like \$60 million for the metro area that was earmarked specifically for projects. And what they did was they took it to the taxpayers said, if you vote for this, this is what's going to be built. Now I'm not saying that's all, you know, all I'm saying is I think that could possibly be a tool in a toolbox. That doesn't help the state with their problem, that might help the cities and the counties. [LR152]

SENATOR FISCHER: Okay, thank you. Senator Gay. [LR152]

SENATOR GAY: On that option I've always thought, you know, everyone kind of...several of us were local officials as well. But they come, they look to the state, the state looks to the federal, everyone is looking how can I get this money without making a tough decision. But, you know, in your situation which you're describing do you think that would be, you know, if Senator Fischer brought up maybe cities, counties get together and create this thing. You would self-prioritize these needs we need or we think we need. But then they...I think by some kind of local control or local choices it would self-prioritize the projects that really need to be done. Because those people would then say, yeah, we can go for it. That example you gave, where was that at? [LR152]

DAN PARK: Colorado Springs. [LR152]

SENATOR GAY: Colorado and Arizona did you say? [LR152]

DAN PARK: Well, Phoenix did something similar. [LR152]

SENATOR GAY: So...but I guess the voters of a community, Mayor Beutler brought up

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

the same thing, I mean at what point do cities and counties need to be more involved in this as well and say, you know, we need to take care of our own problems. Or even on...when I hear about these expressways, forge together and say, well, let's take care of this expressway coming through this area. I don't know it's always the state's direction here. Maybe it should be more local. So that's... [LR152]

DAN PARK: I had a lot of numbers in here and I just didn't choose to do that. But I mean there's needs at all levels. The state has tremendous needs, but the locals do too. [LR152]

SENATOR GAY: Yeah, but they...and that's, I guess, commentary, I guess. But Senator Fischer kind of threw you a tough question out of not picking on you, but I guess that's our...as a politician... [LR152]

DAN PARK: Yeah, she was. That's okay. (Laugh) [LR152]

SENATOR GAY: ...you know you got to make some tough choices sometimes. And I think what she's saying, and she does...(laugh) but at some point though, too, I think it's the responsibility of...well, there's a lot of great leaders in local government as well that can make good decisions. I mean good or bad, but they were elected officials to make those decisions. So maybe we ask for help or opportunities or ideas from them as well. That's kind of what I'm gathering. So appreciate your input. [LR152]

SENATOR FISCHER: If we would allow local communities, whether it's cities or counties, to join forces and give them extra tools in their toolbox, the state, as you said, would not benefit. So wouldn't it be a reasonable suggestion that we look at the number of miles of state highways within city limits. You know I have a number of communities where, yeah, the highway goes right through my little town. Nothing like Omaha with the Interstate system that's a major portion of their transportation...meets a major portion of their transportation needs, and Lincoln to some extent too with the various state

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

highways that are through there. Couldn't we look at the suggestion then if we're giving local governments more tools that they have to then assume more responsibilities and those responsibilities would include either a greater percentage of their responsibility for a state highway going through their community that they would have to pony up the funds for that. [LR152]

DAN PARK: That's real... [LR152]

SENATOR FISCHER: I mean I'm just throwing out ideas. [LR152]

DAN PARK: Yeah, I don't have the answer. [LR152]

SENATOR FISCHER: That's why we're here is to talk about ideas. [LR152]

DAN PARK: I would imagine that would involve some serious discussion between the state and the locals. But, you know, I would assume that something could be worked out. [LR152]

SENATOR FISCHER: Any other questions? Senator Gay, did you have another one? [LR152]

SENATOR GAY: That's a great idea. Well, I got a question. Since you're there, Dan, I'm going to...what Senator Fischer brought up actually I had several mayors propose to me as well. I think it's a great idea somewhat. But you can't just burden them with that responsibility without giving them the option to do this. So...but that would be maybe an example of what I'm saying, take control of your own situation. Is that kind of where you're getting at? I think that's a good idea. Because right through the middle of Papillion is a state highway actually. So...but the maintenance, the snow removal, all these things, but they do some of that anyway. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: They do some of it, I believe. Now we can check with the department on that and for future discussion here on the percentage breakdown on who's responsible for what, such as the highway through Papillion or Highway 2 in Lincoln. Because I believe it's a percentage cut now. But we'll check with the department on that. Yes, Senator Campbell. [LR152]

SENATOR CAMPBELL: Senator Fischer, just as an anecdotal, I believe in the city of Lincoln people are still here. But I remember that in the south beltway situation if...as that was built, then the city of Lincoln would take over the responsibility of Highway 2. Right, Roger? So that's exactly what Senator Gay is talking about, that there is some agreements that become reached. So the idea that Senator Fischer is talking about probably has been approached by some of the cities, just hasn't been approached by some of the cities, just hasn't been formalized very much. [LR152]

SENATOR FISCHER: I know we have had county roads in my district or highways that have become county roads, the responsibility of counties when the state turns those over, too. But I'm just saying if we, speaking off the cuff, I see the reporters over here writing madly. But you know if you're going to provide more tools then I think you should always demand more responsibility. [LR152]

DAN PARK: Well, I don't want...all I'm saying is I think that could be a tool to help the locals. [LR152]

SENATOR FISCHER: Right. [LR152]

DAN PARK: But it certainly, you know, when you look at the states needs it doesn't help them. And what it... [LR152]

SENATOR FISCHER: It would help the state's needs if you took some of those... [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

DAN PARK: It could have impact. [LR152]

SENATOR FISCHER: ...not the roads off, but the percentage of maintenance off of the state's shoulders. [LR152]

DAN PARK: But it really come down to whether it's rediverting money back to the trust fund or it is a registration fee or it's partially...how I'm saying is I think, as I said, the toolbox. I think there needs to be a lot of different tools in there. None of them are easy, but maybe some combination to help both the state and the local. [LR152]

SENATOR FISCHER: Okay. Thank you, Mr. Parks. Other questions? Thank you very much. Commissioner, would you like to step forward, please. And if I could ask how many more we have to testify on this resolution. I see five hands. And we do have another study after this. Maybe you gentlemen would like to follow us to Kearney and testify there on Wednesday. [LR152]

RODNEY VANDEBERG: Good afternoon, senators. [LR152]

SENATOR FISCHER: Good afternoon, Commissioner. [LR152]

RODNEY VANDEBERG: When you bat fourth behind such beautiful presenters... [LR152]

SENATOR FISCHER: Our minds are just turning though now on things. [LR152]

RODNEY VANDEBERG: ...some of my presentation is going to be a little repetitious because I'm working from prepared comments. But I'll try to read fast and get out of your way. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Pleasure to see you. [LR152]

RODNEY VANDEBERG: Good afternoon, senators. My name is Rodney Vandenberg, R-o-d-n-e-y V-a-n-d-e-b-e-r-g. And I am the Nebraska Department of Roads District 1 Highway Commissioner and have been since May 2008. I remind you that this is strictly a citizen advisory position and it is in this capacity that I appear today. In other words, this testimony is mine and in no way represents any position of the Nebraska Highway Commission. I have no idea what the positions are of my fellow commissioners. This is Rodney Vandenberg's position. While I reside in Falls City, where I serve as mayor, I actually divide my time between Falls City and Lincoln since I also have a home in southeast Lincoln. I believe that characteristic greatly enhances my ability to serve as your District 1 commissioner which I am finding very enjoyable and very interesting and sometimes just a little bit challenging. When I became a highway commissioner, one of the first things I noticed was the declining revenues the NDOR has been experiencing in recent years. And so I asked, how do we preserve and maintain our surface transportation system which consists, yes, of approximately \$7.5 billion of roads and bridges, plus have any funds left for our enormous capital improvement needs. And I would add most if not all of these needs are for reasons of public safety. And if you don't believe me, let me just repeat what Mayor Beutler said, just go out and look at Highway 2. I frankly, received no answers and I quickly realized our present funding arrangements, largely from fuel taxes, may be becoming a less reliable source for highway infrastructure needs and our present system may be broken and/or badly in need of change. As we are all aware, highway programs derive most of their funding from user fees which are largely fuel taxes. Obviously, therein lies the problem because fuel consumption and fuel tax revenues have and will clearly continue to be depressed by changes in automotive technology and rising and unstable fuel prices. Further, the vulnerability of tax revenues to inflation in an era when tax rate increases often seem politically unfeasible magnifies my concerns. And from a legislative point of view that is certainly understandable, senators. I submit to you that these trends will continue and in fact worsen in the future as we see a substantial reduction in average fuel consumption

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

per vehicle, assuming fuel economy improvement will be driven by regulation and/or sustained fuel price increases. I remind you also that we receive a good deal of federal funding. However, our current federal transportation bill, which is a six year bill, is due to expire this month and will very likely be extended for 18 months. This means this bill will be seven and a half years old when Congress next looks at it. Federal funding therefore remains to be seen and is certainly cause for concern. And I am certain this is in the minds of our NDOR leadership every day. As I said earlier, I believe our present funding system is clearly in need of repair. And I believe it is time to explore some new ideas. I emphasize the word "explore" because this is not an easy subject obviously currently or in the future. But I assure this issue will become far more difficult if we do not address the problem now. Where do we begin? Well, in approximately 2006 the Transportation Research Board, which is part of the national academies, formed a committee for the study of the long-term viability of fuel taxes for transportation finance to respond to the very concerns I have enumerated today. That committee consisted of 15 of the brightest transportation people in America. And when they completed their study a book was published entitled The Fuel Tax and Alternatives for Transportation Funding, don't know if you've seen this book. Thanks to Randy Peters, who was recently promoted to Monty Fredrickson's old position as Deputy Director of Engineering at the NDOR. I have read the book and actually have it with me today. If you haven't already done so, I believe this book is a must read for you all. And for any of you who would like your own copy, and this is legitimate, Senator Fischer, I will personally order sufficient copies that you can all have a copy at my expense. Just let me know. And if you all say you want one, I'll get it for you, if that's legitimate. I'll be very happy to do that. While I hope you will take the time to read this book, the committee identifies two areas that compliment each other and they are: (1) toll roads and toll lanes; and (2) road use metering and mileage charges. Simply stated, that means I will pay the same amount to drive my 40-mile-per-gallons vehicle on your roads as you pay for your 15-mile-per-gallon vehicle. And before you form an opinion, please, because I assume these ideas are not totally new to any of you, please read the book because these are two very interesting areas and may provide us with the answers we are seeking for the future. I will conclude my testimony

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

with a suggestion. And, Senator Fischer, I don't want to sound bold and I don't want to sound presumptuous, and I want to be totally respectful. But I'm kind of a layer guy. And I would like to ask you to please consider if you will and if this is possible the appointment of a blue chip legislative committee, similar to what this committee did that authored this book, or task force consisting of leaders, thinkers and visionaries to study this challenging subject and report back to you on how they see the future of our surface transportation needs. Very frankly, as members of the Nebraska Legislature and the Transportation Committee I believe you guys deserve this kind of help and support. Thank you very much, Senator Fischer and members of your committee, for your extraordinary service and efforts. And thank you also for allowing me the privilege of testifying before you today. And please let me know if I can buy you some books. I'd be happy to do so if that's legal, counsel. Thank you very much. [LR152]

SENATOR FISCHER: Thank you, Commissioner. Are there any questions? Senator Stuthman. [LR152]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you for your testimony, Commissioner. You mentioned early on, you know, we need to explore new methods of trying to fund our highway systems. I'm a pretty straightforward, simple type of a person that thinks that, you know, there's only one way that you're going to pay for, you know, the maintenance, the new improvements on it. And that's got to come from the working public that utilize these roads. That's the only place you're going to get it. Whether you explore a new method, it's still going to come from that working person that is using that road. Whether it comes out of the right pocket or the left pocket or the shirt pocket or whatever, that will be a new method but it's still going to come from that one individual. We're not going to be able to plant a new money tree. What we need to have is more people working to help pay more utilization of the gas. And I truly support, you know, the simple fact of just increase the gas tax, we got a method all in place and go from there. Because if you're going, you know, people that are buying the gas, you know, they're going to pay for it because they're using the road for their vehicle. If you're going to take

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

it from something else it's still going to come from that individual that made the money getting to workplace to generate his income, unless there's going to be somebody with a magic wand come over Lincoln and say, here we can take money from this. But it really comes down to the product sold, the places of work, in my opinion that's where the money is going to be generated. [LR152]

RODNEY VANDEBERG: And you know, Senator, I agree with that. There's no question about that. But, you know, one thing I think we forget is what improved transportation does for economic development and what economic development does for job creation. Everyplace that I've ever seen that we've built new roads, we have seen economic development jump up around those roads. I submit to you that if we ever get a south Lincoln bypass, and my goodness I agree with Mayor Beutler, we need that so badly, if we ever get that south Lincoln bypass it's going to do nothing but enhance economic development in the areas that that bypass is built. What does economic development mean? It means more jobs. I think we end to forget that. It's an investment in the future in economic development. [LR152]

SENATOR STUTHMAN: But that's new jobs. But those jobs are people that will be coming and utilizing those roads. There's more people to pay and it still comes out of that individual that has that job is where the economic development is, the way I look at it, I mean. Sure, we... [LR152]

RODNEY VANDEBERG: You're right, somebody has got to pay. [LR152]

SENATOR STUTHMAN: Somebody's got to pay. And if we could, you know, have the economic development, you know, invite more people to stay in Nebraska or come to Nebraska to work in those workplaces and then have them all help pay, you know, with the gas tax is what it is. [LR152]

RODNEY VANDEBERG: You and I have no disagreement, it's just a major problem. It's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

not an easy problem. Somebody is going to have to pay and it's going to have to be on a different way. The system is broken when we're looking to try to pay for our surface transportation with gasoline tax strictly. It's changing and we better recognize that and we better step up and do something about it now, not three or four or five years down the road. [LR152]

SENATOR STUTHMAN: But it's still going to come, in my opinion, out of the pockets of the people that are employed. [LR152]

RODNEY VANDEBERG: Yes, sir. Yes, sir. [LR152]

SENATOR STUTHMAN: Thank you. [LR152]

SENATOR FISCHER: Other questions? Senator Louden. [LR152]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Mr. Vandenberg, I'm glad there's somebody on the Department of Roads that looks at building roads as economic development because we've been trying to push that on the Heartland Expressway now for about ten years. And right now most of the time the Department of Roads has always called it they've got to have traffic count in order to make any difference. As you're...the committee that you're on or the commission you're on, what part do they play in deciding the budget for the Department of Roads from year to year? Do you have any input on how that budget is going to be formed or your needs or anything like that? [LR152]

RODNEY VANDEBERG: Not really, Senator. That's an administrative thing by the professionals at the NDOR. And we're more advisory than we are involved in the hands on creation of budgets and things like that. We do approve projects, the final act that takes place in the approval of a project is approved by the commission. But that would be the extent that we would get involved in something like budgeting and the spending

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

of funds. [LR152]

SENATOR LOUDEN: Now, I guess what I'm wondering or what I'm kind of getting at is as you have...as your needs comes out every year and as you say you have declining revenue, and the tax formula we have is there was supposed to be the revenue or the taxes is supposed to be raised to meet the necessary needs that we have, how come you guys on the commission then haven't been pointing that out that if your revenue is declining then you're going to have to raise your gas tax in order to meet your needs? [LR152]

RODNEY VANDEBERG: Well, I think the commissioners have expressed a concern over our funding on more than one occasion. [LR152]

SENATOR LOUDEN: And has that fell on deaf ears or has your recommendations been... [LR152]

RODNEY VANDEBERG: Well, I'm not...frankly, I'm not familiar enough with the funding apparatus. My understanding is that we receive so much money in the way of revenue and that's what we have to live with. I would have to defer to somebody that is a professional to try to answer that question. Monty or someone, can you answer that? I thought we received a fixed amount. [LR152]

SENATOR FISCHER: That's okay, Commissioner. We usually don't let...take any comments from the audience because we can't get it transcribed then. [LR152]

RODNEY VANDEBERG: I'm sorry. Yeah. I can't really give you an answer to that question, Senator. [LR152]

SENATOR FISCHER: And the director can thank me later. (Laughter) [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LOUDEN: Okay, well, thank you. Anyway, I am in agreement with you that I think we should consider economic development. Because as you mentioned how you...these areas, when you build a road in there they improve. [LR152]

RODNEY VANDEBERG: They develop. [LR152]

SENATOR LOUDEN: And that's what we're trying to do with the transportation corridor across western Nebraska. We have a chance to build this corridor across Nebraska that goes from Canada to Mexico. And it will go across Nebraska if we have the roadway to do it with. If we don't have the roadway to do it then it goes into Wyoming. And this is what we've been trying to push for and this is where we've been trying to get funding. So I appreciate someone being on there that understands something like that. [LR152]

RODNEY VANDEBERG: And, Senator, my long-term thought is that if we try to fix a system that is broken maybe we'll have the money to do something like you're talking about, which I think is something that I would strongly favor if we had the bucks. [LR152]

SENATOR LOUDEN: Now, do you think the system...personally, I don't think the system is broken. I just think they've been tinkering with it too much to play around it politically so they don't have to raise the gas tax. That's what I think. You can use your own opinion and however you come about it. [LR152]

RODNEY VANDEBERG: Had you raised the gas tax five years ago to where it ought to be we probably wouldn't be in this position today. [LR152]

SENATOR LOUDEN: Okay. But the system wasn't broken. The system works fine, it's just the fact that you got to have intestinal fortitude to make it work. [LR152]

RODNEY VANDEBERG: Remember, with diminishing use of gas though that becomes

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

more and more difficult. [LR152]

SENATOR LOUDEN: Has your total usage...and I've tried to get some flow charts on that to find out what the total usage, whether it actually went down over the years or not. I thought one of the things I had, for instance, that sales tax on vehicles have actually went up in the last year. So as we build more Interstate system or something the reason I prefer something like that is because Nebraska has been a transportation state ever since I mean the Oregon Trails went through there. That's how we've more or less always made a living was with transportation. As long as we have that Interstate going and people driving through it, there's other people going to...you got to buy a tank of gas to get across Nebraska. So you have other people helping you pay for some of your roadwork if you have a gas tax. If you have a wheel tax or an occupation tax, something like that, then that's local people have to support it. But anytime you can use some system that people traveling through help you support, then that's the one I'm for. And that's the reason I've advocated more that I think we should be looking at an increase in the fuel tax. Thank you. [LR152]

SENATOR FISCHER: Thank you, Senator Louden. Just for the record, I will clarify. I believe Senator Louden, when he talked about intestinal fortitude, Commissioner, isn't referring to you. I think he's referring to his colleagues. Because, as you know, the Legislature sets the budget for the Department of Roads, which determines what the gas tax will be. In fact the 1988 plan that was implemented and added to if the Legislatures at that time would have raised...would have set the budget for the Department of Roads to meet all those needs in that plan it would be complete now and the gas tax would be at 35 cents instead of 26. So there is always the difficulty of addressing your constituents concerns when it comes to taxes. But I don't think that Senator Louden was questioning your fortitude. I think he was probably questioning the fortitude of colleagues that have gone before us and not give the Department of Roads the budget that they needed to meet their needs. But I do appreciate you being here today. Thank you very much. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

RODNEY VANDEBERG: Thank you. Would you like some books? Is that okay?
[LR152]

SENATOR FISCHER: We can talk about it later. I don't think they cost \$50 apiece, do they? [LR152]

RODNEY VANDEBERG: I don't have any idea. I don't care. [LR152]

SENATOR FISCHER: Okay. [LR152]

RODNEY VANDEBERG: I made an offer and I'll get the whole committee a book, if you want one. [LR152]

SENATOR FISCHER: We can...that would be great. We can talk about it later, if that will work. [LR152]

RODNEY VANDEBERG: All right, thank you very much. [LR152]

SENATOR FISCHER: I'll have you talk to Dusty. Thank you. [LR152]

RODNEY VANDEBERG: I don't want to break any laws though, you understand.
[LR152]

SENATOR FISCHER: No and we certainly don't want to either. [LR152]

RODNEY VANDEBERG: Thank you. Thank you very much. [LR152]

SENATOR FISCHER: Thank you, Commissioner. Good afternoon. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

NICK CUSICK: Good afternoon, approaching evening. [LR152]

SENATOR FISCHER: And we have another resolution to go that some people here have been waiting for. [LR152]

NICK CUSICK: Chairman Fischer, members of the committee, my name is Nick Cusick, N-i-c-k C-u-s-i-c-k. I'm a Lincoln business owner, employ about 250 employees who pay taxes and buy gasoline and pay gas tax. I also serve as the chairman of the Lincoln Chamber of Public Policy Committee, as well as being incoming 2010 board chair. I also served as the chairman of Mayor Beutler's Impact Fee and Infrastructure Financing Review Committee in 2008. My testimony, of course, will be in favor of your efforts under LR152. I intend to be brief for three reasons. One, I don't bring a silver bullet because there is no silver bullet; second, I want to be popular not only with those of you up here but also the people back here; and thirdly, I believe there's a possibility my car is parked illegally outside (laughter) and I'm not sure I have \$200 in my pocket. I didn't look. So...and I have crossed out a good portion of my two pages, so I will try to be brief. Although people who know me know I'm typically not brief so this would be unusual. As you are aware, the Lincoln Chamber has been active over the past several years supporting all kinds of legislative initiatives that strengthen funding for roads. In fact, road funding ranks as our top priority or one of our very top priorities under both our local and our state and our federal opportunities agenda that are approved by our board of directors every year, reviewed and approved. The reason is simple, and that is that we feel that funding infrastructure is investing in economic development. And we support good public policy that helps invest in the building block of our economy. Lincoln Chamber believes Nebraska has a unique system for funding roads that deserves to be protected because it will serve as a basis for meeting our future needs. It need, however, to be amended and enhanced. We support maintaining and protecting the Highway Trust Fund and we support maintaining the variable gas tax feature of our current funding system. We also support the objectives of LR152 and, of course, agree that highway funding has reached a crisis level in Nebraska as well as in communities in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Nebraska and across the country quite honestly. The per gallon fuel tax is an appropriate revenue stream as a user fee that is closely connected to transportation system use. However, there's no doubt that it is a deteriorating revenue source for a variety of well known reasons. The situation is exacerbated by the fact that road infrastructure costs have recently been and will likely continue in the future subject to hyperinflationary pressures because of global commodity demands. We continue to support more state funding support for roads which would include allocating greater percentages of existing vehicle related taxes, auto registration per Senator Fulton's proposal, and also urge the Legislature to allowing more local options along the lines of Senator Stuthman's transportation improvement districts paid for by expanded local option sales tax authority and other sales tax proposals whether they be expanded local sales tax authority or state lawmakers dedicating new sales tax revenues to help pay for an expanded bonding program for major projects. We work closely...we the chamber work closely with Mayor Chris Beutler and our public works director, Greg McClain. We support Mayor Beutler...we supported Mayor Beutler's bill for urban growth bonds last year and appreciate the ultimate support of the legislative body and of the Governor. We urge the committee to be open to supporting funding solutions that leverage governmental as well as public and private partnerships and regional approaches. We believe the challenge will require a comprehensive approach that prioritizes infrastructure funding as a key issue to be tackled at all levels of government. Previously referred to, the Governor's task force, five years ago, which I believe was chaired by Senator Campbell or at least cochaired, certainly did some good work and we have made some progress since that time. I think as we move forward with the recommendations of your group as we tackle our challenges ahead we must do so in a way that's very accountable to the public, you know, any kind of program accountability is, I think, a major factor in winning any kind of public support. I leave you with four final comments, and final is always a good word. When I was sitting back there, when people said final comments, I always thought to myself, boy, I'm ready for that. The first I believe that rational people recognize there can be no total fix, the problem is immense and that only incremental improvements in available funding need to be found. It's

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

not...we can't just pick how much we need and fix it all, it's incremental. The second is that the Lincoln Chamber of Commerce clearly recognizes that Lincoln and other municipalities, counties, etcetera, can't rely exclusively on the state or the federal governments for local solutions. We have to find some of our own solutions, do our own prioritizing, and ultimately partner with state and federal agencies to find the solutions to those problems. The third comment I'd make is that...or the third summary comment is that there is obviously no infrastructure financing fairy. So any solutions have the potential to include new funding streams that ultimately will not be popular. That's the bottom line. As I think Senator Stuthman indicated, it ultimately comes from the citizens. And regardless of what you call it, whether it's property tax, sales tax, occupation tax, you pick the name of it, but ultimately it comes from the citizen's pocket. And taxes and fees are not popular. The fourth comment I'd make is that my hope would be...the hope would be that your efforts and your investment and your time and energy and good work on a very difficult thing will be rewarded at the end of your period of your work with implementations of some real solutions that speak well of the thought that was put into the process, the priorities that had to be balanced. And ultimately a year from now or two years from now that you look back and say, boy, we accomplished something and we didn't just talk about it. So appreciate the time. I'll conclude and would be happy to answer any questions or field any comments. [LR152]

SENATOR FISCHER: Thank you very much. Any questions? I'm sorry to drag this on. My mini truck guys are looking at me with just daggers. You said you supported Senator Fulton's proposal. Is that the proposal to take the registration fees? I believe he had a bill that would just take a small amount of the money of registration fees away from schools and put it in the trust fund. Is that the proposal you were talking about? [LR152]

NICK CUSICK: I believe that is the proposal, yes. [LR152]

SENATOR FISCHER: What do we accomplish with that? Because if you take the money from school districts, not that motor vehicle registration shouldn't go to roads, I'm

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

all for that. But if you take it from school districts, what have you accomplished? You either have to makeup that money to those school districts with General Funds, and that's only if they are equalized districts, nonequalized districts don't get it made up. So if you have to put General Funds into the state aid formula for that to work, or if we can't do that, which our General Fund revenue is in a situation now too with decreasing revenues, you're going to raise property taxes. So do you support taking the motor vehicle registration fees and putting it all in the trust fund? Which I would think anyone who loves roads would absolutely love it if that happened, and then your local property taxes are going to be increased because state aid to schools won't be there. [LR152]

NICK CUSICK: I'll give you two answers. One, your assessment, of course, is exactly correct, and that is you're taking it from one pocket and putting it in another. My conceptual answer and the basis of our support of various things that support taking money that's collected based on vehicle roads, gasoline, any of those types of things, wheel tax on a local basis, any of those our belief is that that should go to the service that's being provided to those people that those fees are collected for. So it's a conceptual answer. And yes, ultimately, that's that balancing act that you guys get paid the big money, you guys get paid the big money for trying to decide those priorities. But yes, that's...you're [LR152]

SENATOR FISCHER: To correct those (laughter) to correct those mistakes that were done in earlier years before any of us were here,... [LR152]

NICK CUSICK: There you go. [LR152]

SENATOR FISCHER: ...when they came up with that. We could take money from the DMV. I see the director is sitting over there. We could take money from DMV with getting all the plates, we'll get all the plate money going to the Department of Roads, too, for roads. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

NICK CUSICK: And are you going to sponsor a bill to that regard? I assume not.
(Laugh) [LR152]

SENATOR FISCHER: No, I am not. [LR152]

NICK CUSICK: And I don't disagree. [LR152]

SENATOR FISCHER: The director is paying no attention to me because she knows I'm not going to introduce a bill to that regard. [LR152]

NICK CUSICK: And I understand that and that is the balance. [LR152]

SENATOR FISCHER: But you know the problem then is the Department of Motor Vehicles will be funded from General Funds, which again throws you into that quandary about we don't have any General Fund money and that is a case where that will have to be funded through General Funds. We can't pass on our responsibilities to school districts and property taxes. [LR152]

NICK CUSICK: We, of course, faced that same issue and had those same discussions on the local level, counties do the same as I said. [LR152]

SENATOR FISCHER: You know, hopefully, you can come up...you know what we're looking for are some answers. And I...it's just my contrary nature to pick apart everything because I want you to be able to defend why you like that proposal. [LR152]

NICK CUSICK: Yeah. Well, I think, ultimately, you know, the conceptual answer is that. But ultimately you need new money. The question is not taking money from one pocket and putting it in another. Conceptually,... [LR152]

SENATOR FISCHER: New revenue. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

NICK CUSICK: Conceptually, you need new...in reality you need new revenue. And that's why I indicated there is no infrastructure fairy. Ultimately it comes out of the pockets of the citizens. And your job that we elect you to do and pay you very little to do is indeed to look at the whole state, look at road funding, look at what infrastructure does for the economy, for economic development and look at all of that and say how important is that, despite the fact that nobody wants to pay for it. And that's a difficult, very difficult challenge. I will say and we didn't say it here but I think generally speaking we need more details on it. But generally speaking we are supportive of a carved out local option sales tax or a state increase in sales taxes, carved out specifically for infrastructure. That's our general, and again that's tax, but it's carved out for infrastructure because we believe infrastructure is that important and I believe most of you also feel that way. [LR152]

SENATOR FISCHER: If you would have that local option sales tax, would you also be willing to accept more responsibility to pay to maintain or even build state highways that travel through your city limits? [LR152]

NICK CUSICK: That's a question that I probably can't answer because I don't have enough knowledge. But generically if you ask me, Nick Cusick, not Lincoln Chamber of Commerce, the answer is yes. With responsibility...with authority comes responsibility. And I have...I, personally, would not shy away from a certain amount of additional responsibility if indeed we had a broader range of authority to make local choices and deal with local issues including some of that. Again, the mayor might not agree with that, other people in my Public Policy Committee might not agree with that. But that's... [LR152]

SENATOR FISCHER: And you'd have to look at all the numbers to see what's involved in that too. Yeah. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

NICK CUSICK: Of course, yeah. So it's hard to answer that in isolation but conceptually yes. [LR152]

SENATOR FISCHER: Okay. Any other questions? Thank you very much. [LR152]

NICK CUSICK: Thank you. [LR152]

SENATOR FISCHER: Next testifier, please. And could I ask how many more we're going to have on this resolution. Just one more. Okay. And I thank the people who are here for the next resolution with your patience. This is our first hearing on this bill so we're all, me especially, just getting into it. Good afternoon. [LR152]

KARL FREDRICKSON: Good afternoon, Senator Fischer, members of the committee. I'm Karl Fredrickson, K-a-r-l F-r-e-d-r-i-c-k-s-o-n. No relation to director Fredrickson, unless it helps. Good afternoon. I'm speaking on behalf of the National Society of Professional Engineers, the Nebraska Section. We're here to testify in support of...first off, back up. Our organization's primary fundamental canon is the safety, health, welfare of the public as professionals engineers. And as many of the previous speakers and you already know, declines in revenue are not even going to keep up with maintenance and preservation of our system. That then leads into the safety, health and welfare of our public and hence the concern of our organization. And so we certainly support additional revenues in order to keep up with those costs. And Senator Fischer left here. But I was going to say on the conservative side we support the look of reduction of costs providing of surface before we go off on the side of increasing revenues always. But obviously with only a couple hundred thousand dollars in fees here and there that is not going to cover the needs of the system. But every bit counts and it's significant. And so we support looking into that in any way we can. To end, you've heard from several people. The bottom line, it takes money from the citizens to pay for it. I think one of the questions is, is it fair? And if you can buy a Volkswagen diesel that gets all the way across the state without filling up where somebody else is filling up, maybe the system

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

is not fair. And that needs to be looked at. And that might be on the short-term. Then in the longer-term would be as we change fuels in our vehicle, does it go to vehicle mile tax travel systems like that as our fuel sources change? But bottom line, our organization promotes the adequate revenue sources, even if that's increases in taking it from our citizens as well as our citizens outside of Nebraska in order to fund a safe system and provide for the welfare of Nebraska. And that's all I've got to say. [LR152]

SENATOR LOUDEN: Okay. Thank you, Mr. Fredrickson. First of all, other questions? Okay. The questions I...you mentioned cutting costs and you're an engineer and I've had people tell me that, you know, the state of Nebraska could build roads for less than what they do. What's your opinion on that? I mean, are you a road engineer or anything like that so that you could tell me whether or not they're doing a good job out there with their engineering? [LR152]

KARL FREDRICKSON: Yeah, I've got the hand that feeds me behind me. Yeah, the Department of Roads, cities, counties do a very good job of designing and constructing their roadways. I believe the department does considerable research in trying to find an efficient way to...of materials and construction of the roadway system to provide for the needs into the future, for future traffic volumes and uses of those facilities, so. But as with every government, and I've been involved in a couple of them, there are always places here and there, but what I will tell you is they are probably very efficiently run and those places are very small. [LR152]

SENATOR LOUDEN: Well, that's what I thought. The Department of Roads is probably...they have less people now than they did a few years back so, you know, when you talk about cutting costs, I didn't know if there was a significant...if you thought there was a significant amount in there anyplace that that would be, you know, enough of a difference to make...to do any good. [LR152]

KARL FREDRICKSON: No, I was referring to Director Fredrickson's comment on the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

highway beautification where the costs of administration is being subsidized through the construction money. [LR152]

SENATOR LOUDEN: Okay. [LR152]

KARL FREDRICKSON: And so while \$200,000 and some is not an insignificant amount to anyone, I'd love to have it in my bank account, it's not enough for the several millions of dollars, if not billions, of needs throughout the state in the cities and counties. [LR152]

SENATOR LOUDEN: And then when you mention it, as we talked about that highway beautification, it's mostly the fact that they either don't charge enough for signs or, whatever reason, it costs them that much more, that \$290,000 I think you said shortfall, and should there be a higher fee on...I mean do they charge...I guess you probably wouldn't be the one to ask. I'm wondering if they charge \$15 for a sign this big that somebody puts out there in their pasture to advertise their stud horse, and do they still charge \$15 for one of these things that, you know, takes half of a wall of a barn or something like that? And so I guess we...I guess we should have asked that question earlier on, but this is what you're talking about, is mostly the administration costs and things like that. Okay. One other thing you mentioned as we talk about the fuel taxes and I said you got to have a...you can't drive across Nebraska without buying a tank of gas or buying some gas, and you mentioned diesels, you know, can fill up. Well, a truck, when they come in they have to measure the fuel in their tanks, don't they? And then don't they have to measure the fuel in their tank when they're going out? [LR152]

KARL FREDRICKSON: Yeah, when I was referring to diesel, there's a new Volkswagon Jetta passenger car that is 40-plus miles to the gallon, so. [LR152]

SENATOR LOUDEN: Yeah, but how big of a tank do they put on them? [LR152]

KARL FREDRICKSON: Well, I was going to say, probably a 15-gallon tank. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LOUDEN: So they could...that'd be... [LR152]

KARL FREDRICKSON: They could theoretically cross the state into Colorado. [LR152]

SENATOR LOUDEN: They could get pretty near 600 miles out of it, huh? Because I know as we got better mileage on our cars, why, they put smaller gas tanks on them so that they didn't have to carry the weight. And I was wondering what you were referring to. [LR152]

KARL FREDRICKSON: Yeah, my point is, as we change either our fuel types and the efficiency of it, is that the ability of our tax, gas tax system, to capture out-of-state travel may become less in the very near future if not now. [LR152]

SENATOR LOUDEN: Okay. I see. Understand. Other questions for Mr. Fredrickson? Seeing none, thank you for your testimony. [LR152]

KARL FREDRICKSON: Thank you. [LR152]

SENATOR LOUDEN: Next testifier. [LR152]

CURTIS SMITH: Good afternoon. My name is Curtis Smith. I am the director of the Nebraska Chapter of the Associated General Contractors and I thank you for affording me the opportunity to be here with you this afternoon and thank you, committee. I think you're the Chairman now, Senator Louden, but...and the rest of the balance. Anyway, I come to you not only as the director of the AGC but as a member of the Nebraska on the Move. The AGC has been a member of Nebraska on the Move since the summer of 2001, when it was created in an effort to form a grass-roots coalition across Nebraska to support a new comprehensive transportation program. Mayor Beutler talked about that coalition and the efforts that were made and the success of that program and the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

presentation to then-Governor Johanns of that program. Nebraska on the Move continues to be active and it currently has 25 board members, including the League of Municipalities, Nebraska Association of County Officials, Nebraska Association of Transit Providers, chambers of commerce from Lincoln and McCook and various other states, American Council of Engineering Companies, Professional Engineers, AGC, AFL-CIO, Metropolitan Area Planning Association, City of Lincoln Public Works, Lincoln Airport Authority. Nebraska on the Move is a leading grass-roots organization pursuing additional funding opportunities for the Legislature. There are some basic themes that we would like to support regarding any findings of this committee and any of the hearings that come forth. One, many of these have been mentioned before but we do want to go on record in support of these. We want to assure the integrity of the current Highway Trust Fund. We want to protect the variable gas tax. We want to minimize the effects on the counties that resulted from LB846 and the loss of monies that they found with the variable gas tax and no baseline for the support of the funds. We support the concept of bonds as long as there is a new dedicated revenue stream that we used, to be used to retire those bonds. And we promote the further discussion of completing the expressway system. We believe that the expressway system accomplishes two major objectives--long-term economic development and the immediate creation of jobs in the design and construction of those roadways. There are numerous options that we feel should be considered when searching for additional or alternative funding for highways. Some of these are...just a few of those that we will mention at this time are we think...are in full support of an increase in the fuel tax on motor fuels; 1 cent is \$12 million or something in that range, the numbers we've heard. We would apply...we would also consider and support the application of sales tax on fuel purchases at the pump. We would support the increase of registration fees on motor vehicles, and we would also establish a minimum value for tax purposes on all vehicles to eliminate the zero tax on older vehicles. I think currently the tax purposes runs out around 14 years and, in today's world with cars running 200,000 miles or so, there are of those cars that are on the roads today and using our roads that are paying no tax on those vehicles. They do pay registration but no taxes. There hopefully will be other suggestions made

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

during the continued series of these scheduled hearings. We hope that each will receive an honest discussion of those options. That concludes my testimony. If you have questions, I will try to answer them. [LR152]

SENATOR LOUDEN: Okay. Questions for Mr. Smith? Senator Stuthman. [LR152]

SENATOR STUTHMAN: Thank you, Senator Louden. Thank you for your testimony. Explain to me a little bit more about that registration and no tax you paid, like an older vehicle. [LR152]

CURTIS SMITH: I think currently, currently the tax rate on cars, for most purposes, runs out, from what I can gather, and I tried to research this on the Internet myself, but it runs out about 14 years there are no more taxes on vehicles, on automobiles 14 years old. The tax goes to zero, zero value. And I don't know how many cars there are, I've heard the numbers, I don't know whether there's 1,000 or 10,000 of those vehicles around but I know there are some that... [LR152]

SENATOR STUTHMAN: I was under the impression that there is a minimum tax on every one whether it... [LR152]

CURTIS SMITH: Well, there's a registration fee but I don't think there's any tax that is for tax purposes. Now I've been wrong before, but that's my... [LR152]

SENATOR STUTHMAN: Well, it used to be on our 1930 Model A, we used to be like \$1.20 and that one now is at like \$17, and they said that that is the lowest it goes. And that's the tax. It's not the registration or anything like that. [LR152]

CURTIS SMITH: Okay. [LR152]

SENATOR STUTHMAN: So I don't...I'm not sure, but that's what I have in mind. [LR152]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

CURTIS SMITH: All right. Well, maybe we can set a minimum then. Would be \$25.
[LR152]

SENATOR STUTHMAN: Yeah. Uh-huh. Well, yeah, I would say it could only go so low, immaterial of how old it would be. [LR152]

CURTIS SMITH: Yeah, it would be zero, yeah. If it doesn't go to zero then we would support some minimum value on those cars because they do use the highways.
[LR152]

SENATOR STUTHMAN: Yeah. There is value there, yeah. Thank you. [LR152]

CURTIS SMITH: Okay. [LR152]

SENATOR LOUDEN: Other questions? I would like to add to that what I think, and we have director of DMV here, but that registration fee goes to the state. That tax that's on there is city or county. Because I have my Mom's 1990 Oldsmobile and the tax is nearly hardly anything on it, if there is anything, but that license plate still costs me the same price as it does on whichever car I have. That goes to the state. So when you talk about the taxes on a car, I think you're talking about city and county taxes. You're not talking about state revenue. [LR152]

CURTIS SMITH: Could be. [LR152]

SENATOR LOUDEN: So...yeah, other questions? Thank you for your testimony, Curt. Are there other testifiers for LR152? Seeing none, we'll close the hearing on that and I'll turn it over to Vice Chairman Arnie Stuthman now for LR143. [LR152]

SENATOR STUTHMAN: Thank you, Senator Louden, and I think we have Dusty. Dusty

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

will open on LR143. Welcome. [LR143]

DUSTY VAUGHAN: (Exhibit 3) Well, thank you, Senator Stuthman and members of the Transportation Committee. Once again for the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm legal counsel for the committee. I already submitted each of your offices a memo on this and I will just briefly touch on some things so the audience kind of knows what we're talking about. I think this is probably the single biggest issue that the committee hears from on senators' offices and also from constituents, so this is a big deal to a lot of people out there. We do currently have three bills still in committee. Senator Loudon, you introduced one, and then we also have one from Senator Rogert and Senator Christensen. I think the statutory law on these off-road vehicles is definitely a gray area. The statutes we have are scant, at best. We have conflicting statutes. In one area we have a statute where it talks about the state agencies and any political subdivisions have the right to regulate these vehicles within their respective jurisdictions. In another area, we have legislative intent language that says we need to keep these off-road vehicles off the roads. There's also been an argument made that since most of these vehicles cannot be titled and registered, they do not have the right or the privilege to be on the road so it doesn't really matter what political subdivisions want to do on it anyway. They can't be on the road. So I think it's definitely something that we need to address. Right now, we have four specific definitions of certain off-road vehicles in the statutes: all-terrain vehicle, moped, minibike, and low-speed vehicle. And I gave you definitions and kind of gave you some background on each of those. They're very specific definitions. All-terrain vehicle, you need to straddle it, so it doesn't cover very much. The mopeds I think are...I actually did see one last week, but they're pretty much obsolete. You need the actual human pedals. Minibike is kind of a term that the industry doesn't even recognize. And low-speed vehicle was only put in there so they could be excluded from registration and titling purposes a couple years ago. I think the three main vehicles that we're talking about right now are minitrucks, the side-by-side ATVs, and the neighborhood electric vehicles, the NEVs. I gave each of you in the memo kind of a description of how states

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

are treating these. We are seeing many more states legalizing them on their highways. The NEVs, we are one of only five states that doesn't allow them on lower-speed-limit roads. I did find 14 states that do allow minitrucks on the roads right now in different degrees. Some of them allow them on everything except basically the interstate; some only allow them under local authority. And the side-by-side ATVs, I did find eight. Those are kind of a little bit harder to find because I think some states just treat them as ATVs, but I did find eight that do allow them on the highways in some respect. I did give each of you recommendations on how these vehicles should be treated, if you so choose. I do want to make it clear that my recommendations were not advocating for these vehicles to be put on the road. That's obviously a question for the committee to decide this January. But if you do choose to allow one or all of them on the road, based on what I found that other states do and just on my analysis of the capability of these vehicles, that is I think the best avenue to choose for the respective vehicles. And with that, I will turn it back to you. [LR143]

SENATOR STUTHMAN: Okay. Thank you, Dusty. Are there any questions for Dusty? If not, thank you again. Okay, we will now hear testimony on this LR143. How many people plan to testify on this one? We have 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11. So try not to be repetitive and we do want to hear what you have to say because I think this is an issue that we need to take some serious thoughts on and hopefully come up with something. So with that, welcome. [LR143]

KEITH WASEM: Thank you, Senator Stuthman. I'm Keith Wasem, K-e-i-t-h W-a-s-e-m, owner-operator of Easy Lawn, a lawn care and sprinkler company from Aurora, Nebraska. Two hours and thirty-seven minutes ago, my two hours was up out in the parking lot. I'm now probably towed away and in an impound lot, but we'll address that later. I don't think you're going to validate any tickets for me. Great news, though: After hearing the last testimony from the last legislative resolution, I think I have a way that we can help fund some of the road projects by putting minitrucks on the road, licensing them, paying taxes. It will be a small portion but one that many of us here in this room

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

would be willing to address and help with. We live in a world of acronyms and, in an effort to classify minitrucks, many new ones have been added. They are a very unique vehicle that are somewhat between an ATV, all-terrain vehicles, or a UTV, utility-type vehicles, and a small truck. States currently recognizing minitrucks as road worthy have come up with a host of acronyms. Most common is minitruck. Added to that you have off-road recreational vehicle, neighborhood vehicle, micro-utility vehicles, slow-moving vehicle, low-speed vehicle and medium-speed vehicle, last but not least multipurpose vehicle. Some states have adopted laws with specific speed restrictions and road types for legal travel. Others, such as Wyoming, Louisiana, and Arkansas, are quite liberal and only restrict travel on interstate highway systems. This was a topic of discussion when LB650 was introduced concerning the cost of signage to establish interstate highways. North Dakota easily resolved this cost burden by allowing minitrucks on any paved road except highways with a posted speed of more than 65 miles per hour. These signs are already in place. One other point of discussion usually comes up concerning right-hand drive, or RHD. The federal government must already recognize right-hand drive vehicles since most of their postal route delivery trucks are right-hand drive and many garbage trucks in the private sector as well. Minitrucks are versatile, fuel-efficient vehicles that can fill many needs in Nebraska towns in the state. They can generate added tax revenue through licensing in a time when revenue shortfalls are common. I feel strongly that Nebraska should be the next state to adopt legislation allowing minitrucks to be registered, insured, licensed, and driven in this state. That concludes my testimony, but I would be happy to address any questions. [LR143]

SENATOR STUTHMAN: Okay. Thank you, Mr. Wasem. Are there any questions? Keith, do you feel that we need to take a little bit more time and figure out, you know, how we want to address this thing or do you think we should move on it, you know, in January already or February as far as what we want to do? Do we have enough information as to, you know, do we really think we should allow these on certain roads? I believe, you know, there's going to be more of these coming in the future, in time to come. It's going to be a thing that's going to be utilized a lot and how can we...how can we, you know,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

make it worthwhile so that we can utilize these but yet so they're not an accident waiting to happen? [LR143]

KEITH WASEM: Classification seems to be one of the most important issues that most states have attempted to address in putting these on the roads, and, yes, you're going to get some discrimination here perhaps because you're going to have individuals that currently own four-wheelers, ATVS, you're going to have those that have your Mules, your Rangers, your Gators, which are UTVs, and now you've got a third class that really falls outside the parameters by wheel base, size, weight, engine displacement in some cases, enclosed full-metal cab. Are you going to draw a separate distinction so you can exclude some, include some, or go blanket? I think Wyoming went that way; pretty much says if it has four wheels you're on the road. There's a few other states, I've read some of their bills also which have passed, some are pending, and they've kind of taken that direction. Most of them have implemented some sort of a speed restriction. All of them, to the best of my knowledge, have implemented a nonallowance of driving on interstate highway systems. But you're correct, I think it needs to be studied, but that's why we are here today to offer more input for the purpose of your good decision making. [LR143]

SENATOR STUTHMAN: Okay. Keith, what types do you use in your business? [LR143]

KEITH WASEM: In my business, I specifically built a custom-made sprayer so that I can spray large acreages, I can spray roadsides. And right now if I have within, say, a ten-mile area five stops to make in order to accomplish five different spray operations, I have to put it on a tandem axle trailer to transport each time. Other things I use it for: getting firewood out of a creek bottom next to me, and in three months and four days I'm going to be up in Senator Fischer's district helping control the deer population. [LR143]

SENATOR STUTHMAN: I think that's a good idea. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

KEITH WASEM: I think it is too. (Laughter) [LR143]

SENATOR STUTHMAN: When you get them controlled up there, move south. [LR143]

KEITH WASEM: (Laugh) Give me the legals on the area you'd like me to work with. [LR143]

SENATOR STUTHMAN: Okay. Any other questions from the committee? Senator Louden. [LR143]

SENATOR LOUDEN: Yeah. When you mentioned Wyoming, now did they go...did they license those vehicles? Do you have to buy a license on those? [LR143]

KEITH WASEM: No, they're actually not licensed, to the best of my knowledge. [LR143]

SENATOR LOUDEN: They're just used same category as a tractor or something like that. [LR143]

KEITH WASEM: I'm presuming that. I don't know that for certain. [LR143]

SENATOR LOUDEN: Okay. My question is, is when you talk about with yours mounted with a sprayer and stuff, why can't you classify that as a farm implement to do your spraying? Have you challenged that or has anybody challenged you on driving it around with your sprayer and stuff on it as a farm implement, put a SMV sign on it? [LR143]

KEITH WASEM: I can start that tomorrow. I guess that would bring it to a court case and see how it's resolved, put an SMV sign on it, head down the road until one of the local individuals thinks I should not be there. [LR143]

SENATOR LOUDEN: Well, we've run across that up in Chadron. A guy had...I don't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

know if it's one of these or a side by side, and I remember the city police chief was threatening to write the guy a ticket all the time and the sheriff asked him, well, what are you going to charge him with, you know, because it doesn't...it doesn't say that he's breaking a law or anything. And it was as you look at some of it here, they mentioned what motor vehicles are and there's an "except," and then you go on with road rollers, farm tractors, tractor cranes, power shovels, well drillers, every vehicle which is propelled by electric power, and that sort of thing. So I mean perhaps we need to just stretch that paragraph out a little bit and put in there minitrucks or something like that under a certain weight rather than...and like you say, like some of the other states, just put them on the road. [LR143]

KEITH WASEM: In many cases, what I found in doing some research with what other states' bills did was to amend or slightly change the wording of existing legislation action so it was more inclusive. So they didn't try to really exclude; they tried to include but within parameters which presumably everyone could live with. [LR143]

SENATOR LOUDEN: I don't know if you remember, if you're old enough to remember. You know, when Jeeps first came out after World War II, Willys Jeeps, you know, came out with a catalog with them. You could buy, hook mowing machines on them and all kinds of plows and everything else on them. And at that time there was a question of whether they were going to be considered a tractor or a vehicle, and finally nobody...we bought better tractors and so did away with that and then they ended up being vehicles. And I'm wondering if that's where we are with these things at this time. Are they going to be considered a tractor or are we going to consider them a vehicle you're going to go to church in on Sunday? [LR143]

KEITH WASEM: Actually, I can see mine being used in a multifunction. In the spring of the year we start sprinkler systems for 300-400 customers. If I was working with that machine in the city of Aurora, I could not only get to the property, commercial properties particularly which are larger, I could actually go out on the law then simply by putting it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

in low-range four-wheel drive and go to all my service locations, thereby saving time, steps, manpower. [LR143]

SENATOR LOUDEN: Now one last question: If you put that...you say you got to put it on a tandem trailer and pull it. Now if you put it on a tandem trailer and hook that trailer up to a tractor, you can drive it down that road, can't you? [LR143]

KEITH WASEM: To the best of my knowledge, even though I'm not specifically an agricultural entity. [LR143]

SENATOR LOUDEN: I know but if you...with a regular farm tractor or wheel tractor type deal. [LR143]

KEITH WASEM: Uh-huh. [LR143]

SENATOR LOUDEN: Okay. Thank you. [LR143]

SENATOR STUTHMAN: Okay. Any other questions from the committee? If not, thank you for your testimony. [LR143]

KEITH WASEM: Thank you. [LR143]

SENATOR STUTHMAN: Next testifier. [LR143]

SENATOR FISCHER: Thank you, Senator Stuthman. Welcome this afternoon. [LR143]

SCOTT O'NEAL: (Exhibit 4) Madam Chair, members of the committee, my name is Scott O'Neal, S-c-o-t-t O-'-N-e-a-l, and I'm here to testify today in support of the minitruck issue, specifically to drive them on state highways. I'll try to condense this. My wife and I started a company at Lewis and Clark Lake called Lewis and Clark Cabin

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

Care, and we check cabins. We do maintenance. We check in the wintertime to make sure the pipes are not frozen. And in South Dakota, these minitrucks are now legal and so I'm in direct competition with people right across the river from me and they're legal to drive on their state highways and I think everywhere except on the interstate. We started our company, it will be two years ago in December, and I have put on my Dodge Ram like 19,280 miles. And if you take like \$2.50 a gallon gas, that comes out to like \$3,213, and with a vehicle like this, I would still have in my pocket \$2,152. So it would cut my gas consumption by 67 percent. And there's no other vehicle that I can use, get that kind of gas mileage and do the work that I do, because I carry ladders. We do cleaning so we have to carry, you know, our cleaning materials and, you know, things like that. I guess in closing, you know, I've seen bills or read them, like last year when you were talking about this, and they referred mostly to farmers. I don't think that...and I'm all for farmers. I have farmers, you know, that are in my family, but I don't think that just because I'm a small business and not a farm person that I should be discriminated against driving on a state highway. Oh, and the other thing is the only really...the distance I have to drive on the state highway is two miles to get to my other customers, which I have customers on both sides of the lake, and it doesn't make sense to me that I should spend over \$2,000 more dollars in two years for gas because I can't drive this vehicle for two miles on a state highway. And in closing, I just want to list five things that I...five points. One, it makes sense, it's green, and it's a positive change in transportation. Two, these vehicles are already safer than vehicles that you allow on the roads. The emission standards can be met to meet, you know, the state requirements. This vehicle is fast enough to go with the flow of the traffic, up to 55 miles an hour. And in at least some cases, and I guess I'm talking about myself a little bit, by not allowing these vehicles on the road, you are pushing new and existing businesses out of our state and into neighboring states. So I'd like you to consider this when you're talking about this because it really affects, you know, what kind of business we can do now and in the future, and think of the small businessperson when you're talking about this on the floor. And the only bill that I know of now that would make any difference to me would be Senator Christensen's bill and I think he states in the bill that you can drive it

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

on a state road. So that's why, you know, I took my time today to come down to let you know, you know, how I feel about it. [LR143]

SENATOR FISCHER: Thank you, Mr. O'Neal. [LR143]

SCOTT O'NEAL: Yeah. [LR143]

SENATOR FISCHER: Are there questions? Senator Stuthman. [LR143]

SENATOR STUTHMAN: Well, thank you, Senator Fischer. Scott, I want to thank you for your testimony because I think...I think what you have put out here in your testimony is so realistic, I mean, and it's going to be coming in the future with more of these minitrucks down the road... [LR143]

SCOTT O'NEAL: Uh-huh. [LR143]

SENATOR STUTHMAN: ...because of the value and the economics of it. And, you know, I think we in the state of Nebraska, and you alluded to that, the fact that we need to invite people in for businesses, not try to drive them out. [LR143]

SCOTT O'NEAL: Yeah, that's a big issue. Like when we moved up there, you know, do we live in South Dakota or do we live in Nebraska? And we actually tried to find someplace in South Dakota but we did end up in Nebraska, and I love Nebraska and it just makes sense for me to promote business. I mean I can spend that money on hiring people to clean and workmen's comp and all other kinds of stuff. [LR143]

SENATOR STUTHMAN: Would you say that these minitrucks should be allowed to go on an interstate? [LR143]

SCOTT O'NEAL: No. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR STUTHMAN: Just on the state highway would be... [LR143]

SCOTT O'NEAL: That's my personal belief, yeah. [LR143]

SENATOR STUTHMAN: Okay. Thank you. [LR143]

SENATOR FISCHER: Mr. O'Neal, how fast does your truck go? Do you have a truck?
[LR143]

SCOTT O'NEAL: Yeah, I've got a Dodge Ram truck. [LR143]

SENATOR FISCHER: And how fast does it... [LR143]

SCOTT O'NEAL: I've never like... [LR143]

SENATOR FISCHER: ...travel comfortably would you say? [LR143]

SCOTT O'NEAL: (Laugh) Well, it goes down the interstate well, so I mean... [LR143]

SENATOR FISCHER: Really. [LR143]

SCOTT O'NEAL: ...85, 90, I'm sure it will go that. [LR143]

SENATOR FISCHER: But you don't believe that Nebraska should allow these vehicles
on the interstate? [LR143]

SCOTT O'NEAL: You know, I've driven in them and I feel comfortable going like 55 to
60, in that range. I think it's...you know, if you're going to put a motorcycle on the
interstate, I don't see that it would be more unsafe to put a minitruck on the interstate.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

But me personally, I would feel better if I took a state or a county road compared to actually driving on the interstate with one of these trucks just because it's the weight, the weight of it and, you know, sometimes, you know, you just need to punch it and get out of the way. [LR143]

SENATOR FISCHER: Other questions? I see none. Thank you for spending your afternoon with us, and I do... [LR143]

SCOTT O'NEAL: Thank you. [LR143]

SENATOR FISCHER: ...appreciate you coming down. Other testifiers. Good afternoon. [LR143]

FRED FRANKLIN: Hi, how are you? [LR143]

SENATOR FISCHER: Good. [LR143]

FRED FRANKLIN: Well, thank you, Senator. My name is Fred Franklin. I live in Oakland, Nebraska, and I'm here to testify in behalf of whether minitrucks or off-road vehicles or whatever you want to call them. I think our biggest problem that we're going to have now and in the future is that the characteristics of off-road vehicles are ever changing and that they're becoming and looking a lot more like on-road vehicles than off-road vehicles. It's not like it was 25 years ago when we had a three-wheeler when we all knew that that was an off-road vehicle and there was no issue. The issue is that we have off-road vehicles that are being labeled today that look just like and have all the characteristics of an on-road vehicle. And so, therefore, the question is becoming, why can't I drive it on the road? And so the...you know, not so much that, you know, we had the governing of the ATVs a couple years ago, we redefined them. I really don't believe that trying to make a new definition of, let's say, a minitruck is going to help you in the future, and the reason why is because in a few more years there's going to be another

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

truck or another vehicle that's going to come upon this group and they're going to say, oh, but that's not a minitruck. But it's not an ATV and it's not this, so you're going to find yourself in that same boat again. And so trying to spot define things so that it helps us for now may not be what we really are after. You know, I think we need to have a little bit better redefining of some vocabulary that's already in our state statutes, as your legal counsel had mentioned in his opening statements. Currently, the definition of a vehicle is just something, in a nutshell, it's just...it's a form of transportation from A to B, just as simple as that. And so, therefore, minitrucks or UTVs or something of that nature, they are a vehicle of...in that description. Also, there is a definition of a low-speed vehicle in our state statutes in which UTVs and minitrucks fall within that category also as a low-speed vehicle, not to mention that, you know, of course, your low-speed vehicles are...one of their requirements, one of their identifications would be is it's labeled as an off-road vehicle, so an off-road vehicle can also be a low-speed vehicle. And then the other one that kind of puts a twist on everything is the fact when they start talking about vehicles slow moving, and they talk about putting the signs on the back of them. And so, therefore, it becomes the question as to whether or not these UTVs or minitrucks can virtually drive down a Nebraska highway as a low-speed vehicle in a slow-moving status with an orange triangle on the back. And I just really wish that we just had a little bit better clarification just on that alone, because that would really solve a lot of our issues, I think, that we're even talking about today. And I have contemplated and I've kind of held off on this because, believe it or not, I was planning on putting a triangle on the back of my truck and getting a ticket and taking it to court and trying to fight it and see what would happen. Because if I can't get something from...if I read through our legislation and we can't determine something, then somebody would have to determine something. And I really believe that, by what I have read, I believe that our current legislation and definitions in our statutes would allow these vehicles and others to drive on a Nebraska highway in a slow-moving, low-speed status. Now that's from my determination from reading through our statutes. Now I'm not an attorney and...but that's what I...that's what I believe. Also, you know, we talk about the funding of your Nebraska roads, and I believe that any off-road vehicle, that at some point in time they

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

do cross the highways or they do drive down a county road, just like ATVs are allowed to do at this time; that if there were something that we had put together that would allow these to be driven on the roads that we could generate additional funding through the state. Because anything that drives on a road should have to pay something to be able to be on that road besides just buying gas. And so I'm a believer in the fact of if we're going to allow these to be driven on the road or changing the wording or the definitions or whatever, that there should be some type of a registration of the vehicles. The only thing that I would advise you on is that the minitrucks, for example, they do not have a normal VIN number that is the same as what we have in the United States. They don't have the same amount of numbers and things of that nature. They have what they call a chassis number. And, therefore, I don't want something to get put in place that gets hung up on that situation because currently, in order to go register something, the next thing they're going to ask us for is our VIN number and we're not going to be able to produce a VIN number. So then if we put something in place that has that, then all of a sudden we have something in place that obviously didn't work. So right now, most of your minitruck owners have a bill of sale only and they have...some of them have an export certificate that has the chassis number on them that is...the chassis number is engraved right into the frame of the truck. So there is a number and there is an identifier, but it wouldn't be the same kind of VIN number that we currently have in our system. And if you have any questions, be glad to answer them for you. [LR143]

SENATOR FISCHER: Thank you very much. Are there any questions? I see none.
[LR143]

FRED FRANKLIN: Okay. [LR143]

SENATOR FISCHER: Thank you for being here and, to all you gentlemen, I appreciate it when you came down when we had the hearings for the bills last session too. So thank you. Next testifier, please. Good afternoon. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

TYANNE HOYT: (Exhibit 5) Good afternoon, Chairperson Fischer and members of the Transportation and Telecommunications Committee, my name is Tyanne Hoyt, legislative aide for Senator Kent Rogert, District 16. I'm here to read a letter into the record on behalf of Senator Rogert, as he cannot be here today. Dear Senator Fischer and members of the Transportation and Telecommunications Committee: Ever since I was elected to the District 16 seat, I've been approached multiple times about altering our state statutes regarding ATVs and their definitions and their uses on Nebraska roads. I believe it is time for us to expand both of these aspects of the statutes concerning these alternatives to automobiles. Since the creation of ATV laws, we have seen a massive change in the marketplace regarding the styles and safety of these vehicles. We've gone from a primarily straddled-type, three- and four-wheel vehicle with a handlebar, to mini-bench-seat-type vehicles with steering wheels and seat belts and roll cages. We've also seen a tripling of gas prices along with an increasing aging population. These vehicles use far less gas for short distance travel, making them much cheaper to run and allow many people with disabilities and hindered movement from age to get around our smaller communities with more ease. I don't believe we need to have these vehicles on our major highways, including the main streets in many towns, but to allow these vehicles to be used in some sort of controlled fashion seems logical. If I can ride my lawn mower or take my tractor downtown to the grocery store in Tekamah, then it seems logical that my golf cart or Kawasaki Mule, if equipped with the proper safety gear, would be a logical alternative, actually providing more safety than the tractor or lawn mower. I thank the committee for their consideration of this resolution and appreciate the careful deliberation that must take place before we expand the statutes in these ways. As always, my interest comes along with an offer to help in any way. I regret I am unable to attend this afternoon but trust the rest of the testimony today will suffice in coming to sound conclusions in this matter. Thank you; Senator Kent Rogert. [LR143]

SENATOR FISCHER: Thank you very much. Appreciate you being here. Next testifier, please. Good afternoon, Director. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

BEVERLY NETH: (Exhibit 6) Good afternoon, Chairwoman Fisher, members of the committee. I'm Beverly Neth, director of the Department of Motor Vehicles, here today to provide you with information relating to off-road vehicles. I have prepared remarks which I am going to allow you to read without the benefit of me reading them to you, but I do want to make a couple of comments and kind of give you a brief overview of what the testimony really is. What I tried to do in my testimony is give you definitions of things like low-speed vehicles. And I'd like to correct that a minitruck is not a low-speed vehicle. A low-speed vehicle is defined by the National Highway Traffic Safety Administration, in its 1998 rule, is a vehicle that can go anywhere from 20 but cannot exceed 25 miles an hour on a paved surface. It also, as a low-speed vehicle, has to conform with certain safety requirements and, therefore, things like lawn mowers and tractors and golf carts are not low-speed vehicles. Even though they may fall within the speed range, they aren't because they don't have the types of headlamps, tail lamps, blinkers, seat belts, those kinds of conforming things as well as a conforming VIN. The previous testimony did talk about a VIN on a minitruck and it's true. Minitrucks, for the most part, don't have a conforming VIN. They're not manufactured in the United States. They're manufactured primarily in Asian companies and many times they're being exported with foreign manufacturer certificates of origin, primarily Japanese. And so they present a particular challenge to clerks, titling clerks, who see them. When you're giving the titling clerk something that's in Japanese, there's not too many clerks that have the ability to read that document. So I talk about low-speed vehicles, I talk about medium-speed vehicles in my testimony, and a medium-speed vehicle, most recently, just recently, NHTSA declined to issue a rule and reg regarding medium-speed vehicles. Those are vehicles that can exceed...can go...can exceed 25, somewhere in the neighborhood of 35 to 40 miles per hour. Primarily, NHTSA believes that if a vehicle is mixing in that kind of traffic, then it really isn't a low-speed vehicle. It really should be a passenger vehicle and it should conform with all the safety standards that a passenger vehicle has to conform with, which is a higher level of safety standard than a low-speed vehicle because you have higher conforming occupant restraint systems, air

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

bags, those kinds of things. Those are the kinds of things that are missing on a minitruck. They do not have air bags on them. Although they do for the most part have seat belts, some kind of occupant restraint, they don't have the air bags. Senator, when you talk about driving them on the interstate, I think that would be one of the things that primarily, mixing in the kind of traffic that's on the interstate with the safety gear that's in a minitruck, I think could be quite problematic. And I also talk in my testimony, I do give you the three definitions of a motor vehicle that currently exists in Nebraska statute. There is a definition that is in the titling and registration acts, the same definition. We did that a couple of years ago with our recodification. There is a different definition for our motor vehicle in the Operator's Act, and there is yet another definition in the Rules of the Road. I would say that where...a good starting point would be that we try to adopt a uniform definition for motor vehicles, just that motor vehicle definition, and then I think another good starting point is for us to look at...review the existing local control statutes. We have to...I think it's our...it's our duty to try to find a balance between the need the public has, the demand for smaller, more fuel-efficient vehicles, and public safety. We can't...we're talking about 2,500-pound vehicles operating on the roadways. They are dangerous in some...in many respects, almost all respects. And so we can't forget the public safety aspect and the highway safety aspect of what we're going to be doing, but I think expanding or modifying our existing definitions gives us the opportunity to determine if a new class of vehicles...and I think when we look at that new class of vehicles, there's a number of questions we need to ask ourself. Should these vehicles be required to be sold by licensed dealers only? If...we need to ask if the vehicle should be titled and registered. If so, what documents should be required for titling and registration? If the vehicle should be insured, how the vehicle should be taxed and under what circumstances the vehicle should be operated and by whom. I have included in my testimony a handout that gives you an overview of the off-road vehicles, and that is the two pages, two pages of off-road vehicles that we currently see today and how they may be addressed in statute or how they're not addressed in statute. Some of them are addressed in statute but many of them are not. They're just new vehicles that we're seeing every day that are out there on the roadway. The one

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

common thread they have appears to be that local subdivisions can choose to do anything they want with them as opposed to the state statute which says that many of them are not titled and registered, are not motor vehicles and, by definition, should not be operated on any roadway in the state of Nebraska; they are purely off-road vehicles. The other handout that I have then are the vehicles that are currently expressed in statute. There's some of them like the various motorcycles we're seeing, the three-wheeled motorcycles, a different variety than what we're used to, including three-wheeled passenger vehicles that currently fall under the definition of a motor vehicle and, even though they're an enclosed vehicle, the operator of that vehicle has to pass a motorcycle test, get a motorcycle endorsement on their operator permit, they have to wear a helmet while they're driving the vehicle. I mean it's...our statutes really are not adequate as they currently exist for us to...for us to attack proper registration, titling, and taxing of these vehicles. So with that, I'd be able...I'll be happy to answer any questions you might have. [LR143]

SENATOR FISCHER: Thank you, Director Neth. Any questions? Senator Louden. [LR143]

SENATOR LOUDEN: Yes. Then a farm tractor isn't considered a low-speed vehicle? [LR143]

BEVERLY NETH: No, it is not. [LR143]

SENATOR LOUDEN: That's a different category all of its own? [LR143]

BEVERLY NETH: It's just a tractor. [LR143]

SENATOR LOUDEN: Okay. [LR143]

BEVERLY NETH: It's exempt from the definition of a motor vehicle, so it's not entitled

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

for registration or titling in Nebraska, but there are some Rules of the Road statute that allow a tractor to be used on a roadway incident to agricultural purposes in certain times of the day. [LR143]

SENATOR LOUDEN: Uh-huh. Now you have this list here and I see these Unimogs here. [LR143]

BEVERLY NETH: Yeah. [LR143]

SENATOR LOUDEN: These things are quite heavy. [LR143]

BEVERLY NETH: They're gigantic, yes. [LR143]

SENATOR LOUDEN: And I'm wondering how are you classifying them now, is just off-the-road vehicle use only, and can they be driven on a highway? [LR143]

BEVERLY NETH: They would be off-road use only; would not be driven, under the statutes, would not be driven on a roadway unless a local subdivision said that people could use them within their jurisdiction. [LR143]

SENATOR LOUDEN: Okay. Because they are a type of tractor. [LR143]

BEVERLY NETH: Yeah, they're very big. They're primarily, if I understand it, used I think in military uses where they maybe were developed, but then also they're used quite often in forestry or firefighting, those kinds of things as well. [LR143]

SENATOR LOUDEN: Well, there was a guy up at Alliance used them and he pulled machinery with them. [LR143]

BEVERLY NETH: Does he? Yeah. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR LOUDEN: Yeah. [LR143]

BEVERLY NETH: They're big. [LR143]

SENATOR LOUDEN: And there was a guy south of Lakeside that had one that used them for machinery and stuff like that. I mean there are some around and they were questioned about when they're driving them on the highway. And that's what I was wondering, how you...why they couldn't be driven on the highway same as a tractor. [LR143]

BEVERLY NETH: Well, but a tractor is only supposed to be driven on the highway for purposes...agricultural purposes. It's not as though...we heard from a couple of gentlemen who are using the minitruck in their commercial operations. Those aren't...it would be the same kind of thing. If someone is using this in the commercial operation then it's not a farm tractor. It has to be used incident to agriculture in order for it to have that designation and that characterization that it could be... [LR143]

SENATOR LOUDEN: Then you're telling me if I have a Farmall, say, and put a sprayer on it and I go out here commercially spraying people's yards then I can't drive that tractor on the highway? [LR143]

BEVERLY NETH: No, you shouldn't be. That's not...you are engaged in a commercial activity... [LR143]

SENATOR LOUDEN: Rather than a farm? [LR143]

BEVERLY NETH: ...rather than a farming activity. [LR143]

SENATOR LOUDEN: There's...you do have certain specifications whether it's farm or

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

commercial. [LR143]

BEVERLY NETH: I think that the statute is clear that it has to be incident to agricultural use and I think, as defined, for the most part that is considered a farming operation and not a commercial operation. [LR143]

SENATOR LOUDEN: But if I was going down to spray my field, my own field someplace with that same tractor and sprayer, I could drive it on the highway? [LR143]

BEVERLY NETH: You could do it, uh-huh. [LR143]

SENATOR LOUDEN: I just can't charge when I get to the other end? [LR143]

BEVERLY NETH: That's right, can't charge your neighbor. That's right. (Laughter)
[LR143]

SENATOR LOUDEN: Okay. Thank you. [LR143]

SENATOR FISCHER: Other questions? Senator Stuthman. [LR143]

SENATOR STUTHMAN: Thank you, Senator Fischer. Director Neth, do you think...well, first of all, I'm sure that there's going to be more of these coming, you know, to the communities. Do you think that we can develop some type of a regulation or statute, something that we can make it workable and doable so that people can utilize these?
[LR143]

BEVERLY NETH: Senator, I think what we're presented with is a pretty challenging statutory issue. There are...there are a couple of bills. I think as Legal Counsel Vaughan said, there are I think three bills currently pending. I think what we could do in a short term is take a look at those and work to put things in...like the minitruck on the roadway

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

with taxing, titling, sold by licensed dealers, insuring, and keep them...restrict them to certain roadways. And there may be a couple of other vehicles that we could take a look at to do those kinds of things, kind of keep them on a certain roadway. But if we're going to approach this in a comprehensive fashion, this isn't the type of statutory bill I think you could put together between now and January. We have...there are a lot of statutes that would need to be rewritten, including titling statutes, registering statutes, taxing statutes. I mean when we talk about a VIN and not wanting to use a VIN, the VIN is critical to taxing in Nebraska. The VIN is what...is how we tax. We look at a VIN; the VIN tells us so much. It tells us year, make, model of a vehicle, gives us manufacturer suggested retail price of the vehicle, which is how we tax vehicles in Nebraska. And so we're talking about the majority of these vehicles don't have conforming VINs. As a matter of fact, an ATV doesn't even have a VIN. It has a PIN. It is a product, it's called a product identification number, not a vehicle identification number. So you've got other...it's certainly not as easy as just saying everything should go on the roadway, everything that has four wheels should go on the roadway. It's not easy from a statutory standpoint and I believe you'll probably hear from the Colonel that that is certainly not easy from a law enforcement point. And from a public safety issue, I'm not sure that that would be really great public policy for us to say you get to drive whatever you want to drive in the state of Nebraska. [LR143]

SENATOR STUTHMAN: So, in other words, Director, you feel that it is possible but it's going to take time. [LR143]

BEVERLY NETH: It would take time. I think in the best of all possible worlds, although we could do some tweaking with the bills that are currently before the committee to address the minitruck issue because those are a different...little bit different kind of an animal, I'd say we should probably take the next 15 months and put together a working group in the State Patrol, the league, counties, committee to come together to do a comprehensive rewrite of those statutes to try to...try to put many of these things that we know exist and what we know are out there on the horizon into some kind of fashion

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

where they all have their own distinct, is it a motor vehicle, it is not a motor vehicle, does it go on the road, does it not go on the road. If it's on the road it should be sold by a licensed dealer, it should be titled, registered, insured, and operated by someone with an operator permit. That's my opinion. (Laugh) [LR143]

SENATOR STUTHMAN: Okay. Thank you. Thank you. [LR143]

SENATOR FISCHER: Other questions? I see none. Thank you, Director. [LR143]

BEVERLY NETH: Thank you. [LR143]

SENATOR FISCHER: Next testifier, please. [LR143]

BRYAN TUMA: Afternoon, Senators. [LR143]

SENATOR FISCHER: Good afternoon, Colonel. [LR143]

BRYAN TUMA: (Exhibit 7) Senator Fischer, I have written testimony that I'm going to offer for the record and then avail myself to questions. [LR143]

SENATOR FISCHER: Good afternoon. [LR143]

BRYAN TUMA: Good afternoon. [LR143]

SENATOR FISCHER: Good evening. Close. [LR143]

BRYAN TUMA: Yes, it is evening, very close. Perhaps I could maybe summarize some of my comments to make it easier, as you're able to look at the document. I think there are a couple points that I would like to make and the first one is I think it's prudent, I think it's probably overdue in terms of the Legislature taking a look at a lot of these

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

statutes that are governing these various different types of vehicles that we have on our roadway. The one thing that we see from an enforcement perspective is a lack of clarity and consistency, and so that leads to confusion. Some of the testifiers have spoken to that very issue, you know, what is appropriate to be driven on the roadway and what's not. In some cases, we simply have to take a guess. In some cases, our officers may take enforcement action and, quite frankly, the county attorneys and the local judges are going to be the ones that really decide, you know, if that's something that's going to be allowed or not. So we have a lot of confusion out there so I think it would be in everybody's best interest if we would take a look at the statutes. And I would endorse Director Neth's approach. This will be an undertaking because there's a lot of different vehicles, a lot of different situations that have to be addressed, and I think that's the appropriate venue to do that. With respect to off-road vehicles and those issues, no doubt those vehicles are gaining popularity. They have more than one application aside from recreation. We are seeing them used in construction sites, we see them used in the agricultural sector. You know, it's not uncommon to see the utility providers using these types of vehicles. So, clearly, the off-road vehicles have an application. There's spraying that goes on, there's mowing. I mean you can haul trailers with them. So, clearly, they have a lot of applications. Now how and where should you allow them to be used? And that's our concern. We...let me give you my approach. I have concerns because there are a lot of studies out there--our experience bears this out--if you have differences in speed, size, and visibility of vehicles, the greater likelihood you're going to have for vehicle interaction and the greater the likelihood for more serious or severe damage that's going to occur. So I think when you look at these issues, I think you have to keep that in the back of your mind: If those vehicles are sharing the roadway, what's their ability to interact with the other vehicular traffic? Because I can assure you, we will have interactions. So I do have concerns in that regard and I think that's probably one of the larger issues that this committee and the senators will have to take a look at, is where do you want to allow those vehicles to operate. This year alone we've had ten fatalities on ATVs; four of those occurred on highways. That trend is increasing and so we have some concerns there. With regards to the minitruck issue, all the testifiers are

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

correct. Everything that we've looked at in this regard, there are more and more states that are looking at the issue. More states allow their operations on roadways. You've got a mixture of where and how they can be used. Many states restrict the operation of the minitrucks to roadways, say, 35-45 miles an hour, and some states take the approach, they let them operate anywhere with the exception of the interstate. Somewhere in there I think there's probably some kind of appropriate use. If you want my opinion, it would be...I would rather see a minitruck on the highway as opposed to an ATV. And I'm certain there's going to be a number of configurations on minitrucks, you know, how they'll be used. They'll probably be used in a utility type configuration aside from just, you know, a truck with a box on the back of it. So I think that's going to have to be looked at as well. But again, my point I guess more than anything is in rewriting the statutes, if you look at off-road vehicles sharing the roadways, you have to consider the fact that they are not able to interact with other traffic the same way as any other motor vehicle. [LR143]

SENATOR FISCHER: Thank you, Colonel. Any questions? Senator Stuthman. [LR143]

SENATOR STUTHMAN: Thank you. Thank you, Colonel Tuma, for your testimony. On those four ATV fatalities, were they legal, going from farm to farm, or where they just going... [LR143]

BRYAN TUMA: We have a variety. We have one instance which was near Lincoln, four people riding on an ATV at night. Alcohol was involved. They were not on a public roadway. They were on a trail, a public trail system, and one person lost their life, another very critically injured. We had one instance out west, the western portion of the state, where a lady went out to pick up her mail, drove the ATV down to the mailbox, picked up the mail and then did a U-turn in the middle of the highway and didn't see the truck coming and was struck and killed. We've had another instance, I believe in the Hastings area, this year. Was on a...the vehicle was being operated on private property but it left the private property drive, went down through a ditch, and ended up on the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

county road and two people were killed in that event. So those are the kinds of things that we're beginning to see. The others were a variety of off-road injury accidents, but the trend is up. The use of these vehicles is increasing. [LR143]

SENATOR STUTHMAN: Thank you. [LR143]

SENATOR FISCHER: Colonel, what does a minitruck weigh? Do you know? [LR143]

BRYAN TUMA: Oh gosh. [LR143]

SENATOR FISCHER: I probably can read... [LR143]

BRYAN TUMA: Yeah. [LR143]

SENATOR FISCHER: Is it 2,500 pounds? [LR143]

BRYAN TUMA: It's 2,500, yeah, I think that's it, or less. [LR143]

SENATOR FISCHER: What does...what does a Mini Cooper weigh... [LR143]

BRYAN TUMA: Oh gosh. [LR143]

SENATOR FISCHER: ...that are licensed and on the roads and I'm scared to death... [LR143]

BRYAN TUMA: Yes. [LR143]

SENATOR FISCHER: ...if I open my door I'm going to kill the people in them? You know, what... [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

BRYAN TUMA: Well, and I think you make a good point there... [LR143]

SENATOR FISCHER: ...do they weigh? [LR143]

BRYAN TUMA: ...and that was something that hopefully I would have gotten to allude to in the testimony. I think we have to take a look at the vehicles that we allow on the roadways. If you look at Smart Cars, I would venture a guess, in size, dimension and weight they're probably smaller than a minitruck. We allow motorcycles. We allow three-wheeled motorcycles. If you look at some of the motorcycles that are out on the market now, there is a three-wheel version called the Can-Am, sits very low to the ground. In my opinion, they're very hard to see, but, you know, they're perfectly legal to operate. We have three-wheeled motorcycles that have a cab built around them. We see those operating on roadways and they can operate anywhere. So we have...I mean, you can't operate minibikes or go-carts or golf carts on the roadways, but if you have a parade or an emergency you can operate them on a roadway. We have mopeds. We have electric-powered wheelchairs or personal assistive devices that can operate on the roadways and they can operate at night if they have lights on them. Snowmobiles, you know, we allow them to operate on the highways and they're regulated. They have to have a license plate, they have to be registered. The owners or the operators have to meet certain safety education requirements. That was an issue many years ago. I think the Legislature dealt with that fairly effectively. My point is we allow a lot of stuff out on the roadways already with a lot of exceptions, and I think if we were to take a look at...I don't think we throw the baby out with the bathwater on this deal. There is a lot of good statutory guidance currently in the statute. We need to clarify it. And I think taking a strong look at what's out there and trying to maybe gain some consistency of how we look at these vehicles and where we allow them operate would really be prudent, and I think a lot of it's already been here. We just have to go through and refine it. [LR143]

SENATOR FISCHER: I think most of us have heard from constituents on this issue and the more that I look into it with the committee counsel, nothing makes sense in our

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

statutes, in my opinion on this, as you pointed out in your testimony. Do you think we should move ahead with a stopgap measure this session or wait entirely until we have a complete plan to introduce? [LR143]

BRYAN TUMA: Well, I think Director Neth alluded to this. I think minitrucks, there's probably something you could do with that in the short term. The ATV statute, Senator Stuthman introduced that or was a sponsor of that bill last year, that legislation is already on the books. But I think the prudent thing to do would be to take a step back after that and really take a look at all the other vehicle configurations that we have out there and there's some definitions that I think need some work. This whole thing of controlled-access highway--you and I had an off-line discussion about that--the statutes repeatedly refer to controlled-access highways but really, when you look at that definition, doesn't really apply to what we're trying to do here. That simply means it controls the egress and the exit of vehicles on and off the highway. It's property issues. It has nothing to do with the type of vehicles that we allow. There's no control of which vehicles we allow out there other than what's defined by statute, so clearly an area that needs some attention. [LR143]

SENATOR FISCHER: Okay. Thank you. Other questions? Appreciate you being here. Thank you very much. [LR143]

BRYAN TUMA: Okay. All right. Thank you. [LR143]

SENATOR FISCHER: Next testifier, please. Good afternoon. [LR143]

GARY KRUMLAND: Senator Fischer, members of the committee, my name is Gary Krumland, last name spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. What I was going to say has already been said several times by Mr. Vaughan and Director Neth and Colonel Tuma about clarifying what the law is. We appreciate what this committee did on ATVs a few years ago. It gave some clear

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

definitions. It gave clear authority to what a local government can do in that area. It set standards on how that has to be done. We're getting a lot of questions and a lot of concern about all these other vehicles and what authority a city has to do it. Some cities want to expand it, some cities are concerned. And maybe what's appropriate in a smaller community with very little traffic is not appropriate in a larger community with a lot of traffic. So I guess we are willing to help and offer our assistance any way we can, but we do think some of these things need to be clarified and standards set on how we deal with them. And we do think, unless like, for example, minitrucks are registered and allowed statewide, there needs to be local control involved, too, because different circumstances apply in different parts of the state. [LR143]

SENATOR FISCHER: Okay. Thank you very much. [LR143]

GARY KRUMLAND: So I'd be happy to answer questions. [LR143]

SENATOR FISCHER: Any questions? See none. Thank you very much. Next testifier, please. Good afternoon. [LR143]

DENNIS KIMBROUGH: Good afternoon. Good evening. Senator Fischer, I applaud you for attacking this issue. It's right in front of us right now. Committee members, I'm Dennis Kimbrough, D-e-n-n-i-s K-i-m-b-r-o-u-g-h. I'm a Fillmore County supervisor. I'm also president of NACO. So I'm going to kind of speak from both ends of that, to start with from Fillmore County. We've had a lot of discussion about this, as all counties have. It is not an issue that we're going to have a lot of time. I know Senator Stuthman had said, and you have, how much time do we have to address this. This has exploded in front of us already. We need to address it as good as we can as soon as we can. I know we don't want to rush into anything, but I think there is a little bit of need to not delay it. I agree with a lot of the testimony with the minitrucks. We also have those. Our feeling at the county level is the title describes it--minitruck. It's a truck. License it, tax it, let it be on the road. ATVs are a different situation. I found out this morning that I have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

been in violation for quite some time. A young man came and talked to me and was picked up on a blacktop road going between farms at 51 mile an hour. He was informed that 30 mile an hour is the speed limit on an ATV. I have yet to see my neighbors run under 30 mile an hour, including myself. I operate normally between 30 and 50. I have a five-year-old unit. It will run 65 mile an hour. That's very common. And there are much bigger units out today. So I think we definitely need to clarify some of this. Our law enforcement at the county level is just begging for us to do something. They're at a great loss; I think the licensed driver thing, if we can enforce it. We just picked up a young man, 15 years old, and cited him with five violations. Something has got to be done. It's up to us to take care of our local problems in our towns and cities but I think for clarity, for the benefit, I didn't always agree with the law that was passed that allowed agriculture to ride. I felt then we should register them and license them. If they're going to be on the road, whether it be county... [LR143]

SENATOR FISCHER: Were these...were these the ATVs that you're speaking of?
[LR143]

DENNIS KIMBROUGH: Yes, side by sides, ATVs. If we're going to put them on county gravel, on a highway of any kind, our feeling is they need to be licensed and they need to comply with all of the rules. I agree with the State Patrol and the DMV. I think we need to get the categories. And we don't want to necessarily see it complicated. Simple usually is better, if we can do that, but I think we need to address that and take care of it. I have a young man who lives next to me that runs 15 center pivots. He allows himself 30 minutes a day at a pivot, which if you've taken care of them isn't too long. That's 7.5 hours he's on that. He drives a side by side. So they're getting tremendous miles on them, they're getting tremendous use. And I've talked to counterparts in South Dakota who have told me they license them. They have trail groups now. It has just exploded. They go trail riding. This isn't kids. This is...I'm 63, they're my age. Their wife goes with them in a side by side. They do camping things. And he said, you just can't believe what the industry, what's happened with it. So I think there's, you know, some

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

just real positive things there. I don't think we should just blanket say you're on the road. I definitely think there has to be guidelines. So, you know, without going very long, I really...I applaud you for your efforts and I would encourage you very much to move as rapidly as you can on it. Thank you. [LR143]

SENATOR FISCHER: Thank you very much. Any questions? Senator Stuthman. [LR143]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thanks, Mr. Kimbrough, for coming and testifying. I will agree with you these side by side or we've got a Teryx, it was a Teryx, and we went from three-wheelers to four-wheelers to the Teryx, and you won't go back to a four-wheeler once you ride the Teryx. They're so much safer. We utilize them a lot. I mean they go fast, too, but... [LR143]

DENNIS KIMBROUGH: Right. [LR143]

SENATOR STUTHMAN: ...it's just once you have them you don't get the four-wheeler out near as much. So thank you. [LR143]

DENNIS KIMBROUGH: The Colonel's comment about the Smart Car and its size, if I stand up beside a side by side, I'm six foot, I can't look over it. How many cars today, what they consider midsize, can you walk up to and you're looking right over the top of it? Are there...we have to have a flag five foot in the air? Where's the taillight on a car? You know, I don't have a problem with it but we need some consistency somewhere in this thing. I wouldn't mind if I had lights. I have a brake light but I don't have turn signals, but motorcycles have them so it's no big trick to get them on a four-wheeler. Manufacturers could do that without a lot of trouble. I realize they'd need some time, but it could happen, so. [LR143]

SENATOR FISCHER: Other questions? I see none. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

DENNIS KIMBROUGH: Thank you. [LR143]

SENATOR FISCHER: Thank you very much. Next testifier, please. Hello. [LR143]

JANE TOOLEY: (Exhibit 8) My name is Jane Tooley, that's T-o-o-l-e-y. Many of my comments, the Colonel addressed most of the issues. I do have a couple of things that I would like to point out. Number one, our law currently regarding ATVs, and as you address the issues on these other types of vehicles, says if incidental to the vehicle's use for agricultural purposes. Now I should go back. My background, I'm in...have been in law enforcement for 32 years, 25 years with the Nebraska State Patrol and now 7.5 years with the Butler County Sheriff's Department. I am here today representing myself on this. But with 32 years of experience I still can't tell what a farmer looks like by looking at him or knowing he's a farmer by what he looks like. I have to go by their word. So it is kind of an ambiguous description. The Colonel pointed out the different purposes that we are seeing these vehicles being used for and I think it should...the limitation on ATVs and off-road vehicles being used only for agricultural purposes needs to be changed and needs to be allowed for other bona fide uses as well. The other thing, I have a problem that I think needs to be addressed is the Rules of the Road. We talk about ATVs and what their description is and equipment that's on them, but we've never applied the Rules of the Road to ATVs statutorily. We have statutes that apply the Rules of the Road to cars, trucks, bicycles, mopeds, motorcycles, but not to ATVs or off-road vehicles. I think that's an important point. If I see someone, as a law enforcement officer, if I see them riding an ATV and they fail to stop at a stop sign, do I have the right to stop them? If they're on the left side of the road, do I have a right to stop them? Currently, it's ambiguous as to whether I have that authority or not. To my knowledge...I still am doing it, but to my knowledge it's never been tried in court to see whether the Rules of the Road actually apply to these vehicles and I think that is something that needs to be addressed. Currently in Nebraska, we kind of address these issues as we define who drives the vehicles and not how they drive them. I think we

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

need to address the Rules of the Road and the safety procedures that are involved in safety operating a vehicle. [LR143]

SENATOR FISCHER: Thank you, Ms. Tooley. Are there any questions? I see none. Thank you for sticking with us here. [LR143]

JANE TOOLEY: Thank you. [LR143]

SENATOR FISCHER: Next testifier, please. Good afternoon. [LR143]

LAURIE KLOSTERBOER: (Exhibit 9) Good afternoon. My name is Laurie Klosterboer, Laurie is L-a-u-r-i-e,, Klosterboer is K-l-o-s-t-e-r-b-o-e-r, and I'm with the Nebraska Safety Council. I'm here today just to try and provide some information and to ask that the committee...to keep safety at the forefront. The Nebraska Safety Council provides all kinds of safety training, both driving safety and workplace safety, so that's the main reason that I'm here today. I certainly understand that there's lots of uses for all of these different type of...I don't know if you'd call them vehicles. (Laugh) I would call them vehicles. But I did put together some information that I had done some research on. One of the things was the Insurance Institute of Highway Safety has, as of September '09, listed across the country where there are laws or no laws regarding minitrucks I was focusing on. So I've provided that information for you, as well as also the laws in these different states to give you some information. I also had run into the Environmental Protection Agency has some information. I don't know if this is going to apply to Nebraska or not, but I thought it was kind of interesting. They were talking about used minitrucks being imported as nonroad vehicles, that they have to be properly and permanently modified to have a maximum governed speed of 25 miles per hour. As I said, I'm not sure if this applies to Nebraska, but I thought it was worth putting this information in there. That may be something that needs to be checked out. I don't know if state law can supersede the Environmental Protection Agency, but they do have some regulations and specifically for states that fall under the Clean Air Act as far as having to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

adopt a vehicle inspection and maintenance program. I tried to find out if Nebraska was under that. I don't think they are but I wasn't able to get a definitive answer on that, so that may be something to look into as well. I also included just some stats--I know that we're kind of focused on minitrucks--but on the ATV crashes in Nebraska from 2004 to 2008. The very back I included, and this information has come from the Nebraska Office of Highway Safety, but I have a spreadsheet. From 2004 to 2008, these are the fatalities, on-road fatalities, public roads, for ATVs. So this gives all the information to you about age and what the situation was, what happened. So I thought that was valuable again just to put a human face on the issue that, whatever the committee decides to do, that we keep safety in the forefront because we want to make sure that...we've had such a fabulous record with...last year with our traffic fatalities in the Nebraska, has been the lowest ever, and of course we want to improve on that each year. And so we are concerned about mixing all these other vehicles on the road that we may run into more deaths, more injuries. So I'd be happy to entertain any questions that you might have. [LR143]

SENATOR FISCHER: Any questions? I certainly appreciate the information you brought us here, Laurie. Not that many states allow minitrucks, I guess, as I'm looking on your information, but it just so happens there's a group of states around us that allow these vehicles on the road. Do you see a problem? I brought up the Mini Cooper, as I see those on the streets here in Lincoln. [LR143]

LAURIE KLOSTERBOER: Yeah, I'll never own one. (Laugh) [LR143]

SENATOR FISCHER: I haven't...I haven't seen one on the highway yet. Maybe I just was up too high. I don't know that for sure, but I haven't seen one on the highway. But do you...does your group address those issues? Because even though they're licensed vehicles, in my opinion they look extremely dangerous. [LR143]

LAURIE KLOSTERBOER: They do. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Maybe they have a great safety record. That would be your forte there. [LR143]

LAURIE KLOSTERBOER: You know, and I would have to look and see. I know that the Insurance Institute for Highway Safety, where is which I got some of this information, they've actually done articles on how you are safer in a larger vehicle. I mean they've done a comparison. It makes sense because you have more metal around you. All the features that they have built into cars about trying to make sure that the engine, if you have a frontal crash, doesn't come into the passenger area, you know, we've made great gains in how our vehicles are manufactured to be safe that people don't even think about how to keep that spot inside the car safe if you're in a crash. So I personally, even though they look like cute little cars, you're not going to find me in a Mini Cooper because of all the other size cars that we have. And, you know, I don't think that we're going to give up our big cars. I think as Americans we like our big cars so I don't see us being like Europe where they drive those little cars around so, you know. [LR143]

SENATOR FISCHER: No, and I'm not going to be on a moped or anything else on the street, so. [LR143]

LAURIE KLOSTERBOER: So... [LR143]

SENATOR FISCHER: Maybe that's just my age and I'm a little more cautious. [LR143]

LAURIE KLOSTERBOER: Yeah, I mean obvious... [LR143]

SENATOR FISCHER: But in my opinion, I think the minitrucks, just looking at them, minitrucks look a lot safer than certain vehicles that we already allow on our roads. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

LAURIE KLOSTERBOER: You know and... [LR143]

SENATOR FISCHER: Do you...do you have information on that? [LR143]

LAURIE KLOSTERBOER: I don't but I can certainly look and see what I can find...
[LR143]

SENATOR FISCHER: That would be good. [LR143]

LAURIE KLOSTERBOER: ...about, you know, the Mini Coopers. Obviously, I mean, our vehicles have to have air bags and so, you know, the Mini Coopers have to have air bags and things like that, so obviously they have met the federal rules to be on our roads. But, you know, I'm not going to disagree. I think Mini Coopers, although they're cute, you're still...you get into a crash with a semi or a larger vehicle, you're going to lose out. [LR143]

SENATOR FISCHER: Are there air bags in minitrucks? [LR143]

LAURIE KLOSTERBOER: I...you know, like I said, I was confused about the EPA because from what I'm reading from this EPA bulletin, which was put out in March of 2009, if you're going to import a minitruck, they have to have that control on so that they can't go faster than 25 miles an hour. So definitely you would not want, you know...so I...I think there needs to be some investigation in does that apply to us. [LR143]

SENATOR FISCHER: Right. Right. Well, I appreciate the information. Thank you. Other questions? I see none. Thank you very much. [LR143]

LAURIE KLOSTERBOER: Okay, great. And I'll get that other information to you about the Mini Coopers. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Next testifier, please. Good afternoon. [LR143]

LOY TODD: Senator Fischer, members of the committee, my name is Loy Todd, L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. I will not repeat anybody else's testimony. Director Neth was exactly right. This is something that needs a comprehensive look. I certainly will be willing to sit down with anybody in that regard. I would...we would prefer that if you're going to put these things on the road, we do address insurance, taxation, licensing, titling. They're going to get stolen. They're going to get wrecked. They're going to...people are going to get killed in them. We're going to have a lot of things happen and we better regulate them like anything else on the road and so...and one other thing. Sold by licensed dealers I think is important for several reasons, but one of them that's key is collection of the taxes on them. If they're going to be on the roads, let's let them help pay for the roads, and I would really encourage you, Senator, to bring out your old LB163 which would stop the escape of sales tax by ATVs and minitrucks and all the rest of this stuff that's imported for the...for one of the purposes, to escape regulation and to escape taxation. And so, you know, they're brought in and they're stated by the manufacturer to be off-road use only so they escape our safety laws and our environmental laws by doing that. They bring them in, they sell them to farmers and people doing lawn care and all the other kind of things, and then they come rushing in to you and say, oh, how unfair because we've got these wonderful vehicles, that aren't as safe as a Mini Cooper, let me assure you. If you're going to be in a wreck with...and you get a choice of having a wreck with the Mini Cooper and a Japanese minitruck, bet your life that you want to be in the Mini Cooper. I can assure you of that. And so from that standpoint, let's not let them come in under...as a Trojan horse and say we're not required to meet any of these other laws but, as soon as we get here, now we want to change it and now we want to be like everybody else. That's... [LR143]

SENATOR FISCHER: We saw three...thank you, Mr. Todd. We saw three bills introduced last year on this, a couple bills the year before. I anticipate that this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

committee is going to be seeing a number of our colleagues continue to introduce bills on this, which is why I would like to at least settle it for the foreseeable future that we don't deal with it every year. Obviously, we're not going to get it done this year with all the ramifications of going through the statutes. Do you think we need to do a stopgap measure? I know a lot of the people who testified are...have already left because it's late, but do you think we need to get something out there so that minitrucks are allowed this next year before we do a comprehensive study? [LR143]

LOY TODD: I think as long as you can follow those guidelines of controlling titling, registration, insurance, and local option, with the safety consideration, certainly we would not object and we'd certainly want to participate in solving it, that part of the puzzle now. Just hopefully that it doesn't put off deciding the whole thing because it really all needs to be fixed. So we'd work with you. [LR143]

SENATOR FISCHER: Wouldn't we have to check the EPA standards, as the last testifier brought up, so we're not violating any kind of federal law by allowing them? I just wonder what other states are doing on that. Do you have any idea? [LR143]

LOY TODD: Our state doesn't enforce any of that stuff on a local basis. We don't have any nonattainment areas in our state so we don't run into those kinds of regulations. The curious thing to me is these vehicles do not meet federal standards, so they're not a motor vehicle by federal law. They are not a low-speed vehicle, as the director testified. They are not a motor vehicle. I'll be darned if I know who is in charge of enforcing that federal law but I guess we're going to get an opportunity through lawsuits eventually to find out. [LR143]

SENATOR FISCHER: I guess...I guess this is an exertion of states' rights then, right, that these states that have gone ahead and allowed them on their roads? [LR143]

LOY TODD: I think they've left that to you by practice if not by law. [LR143]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office
Rough Draft

Transportation and Telecommunications Committee
September 11, 2009

SENATOR FISCHER: Any other questions? Thank you, Mr. Todd. Any other testifiers on this resolution? Other testifiers? Seeing none, with that, I will close the hearing and also close the hearings for the day. Thank you all for your patience and spending time with us. [LR143]