

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

Transportation and Telecommunications Committee  
January 29, 2007

---

[LB70 LB163 LB288 LB307]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, January 29, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB70, LB288, LB307, and LB163. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; LeRoy Louden; Mick Mines; and DiAnna Schimek. Senators absent: Dwite Pedersen. []

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee hearing. I'd like to begin by introducing the members of the committee. On my far right we have Senator DiAnna Schimek from Lincoln; next to Senator Schimek, is our Vice Chair, Senator Arnie Stuthman, he is from Platte Center; next is Senator Ray Aguilar from Grand Island; to my immediate right is our committee counsel, Mr. Dustin Vaughan; and on my left is Pauline Bulgrin, she is the committee clerk. Our two pages that we have in the Transportation and Telecommunications Committee are Michael Shaeffer from Lincoln, and Kristin Kallsen from Big Springs. If you've brought any material with you that you would like to have distributed to members of the committee during your testimony, please ask for a page and they will pick that up from you and distribute them to the members. We will be hearing the bills in the order that they are listed on the agenda. First, will be LB70, second, LB288, third, LB307, and fourth, LB163. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying, and that's in order that we can keep the hearing moving. Please complete the yellow sign-in sheet at the on-deck table so it is ready to hand in when you testify. A computerized transcription program is being used this year, so it is very important that the directions on the sign-in sheet are followed. You will need to hand this sheet to our clerk, Pauline, before you testify. For the record, at the beginning of your testimony, please spell your last name and also your first name, if it can be spelled several different ways. Please keep your testimony concise and try not to repeat what someone else has covered. If there are large numbers of people to testify, it may be necessary to place time limits on that testimony, and I will do so as chair of the committee. If you do not want to testify but want to voice your support or opposition to a bill, you can indicate so at the on-deck table, on the sheet provided. This will be a part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a yellow sign-in sheet and actually testify, even if you just state your name and your position on a specific bill. If you do not choose to testify, you may submit comments in writing and have them read into the official record. Please relax and try not to be nervous. And if you need anything, certainly feel free to ask me or Senator Stuthman, as Vice Chair, if I'm introducing a bill. As a last reminder, please turn off your cell phones. We don't like to hear cell phones in the committee. At this time I'd like to introduce three senators who have joined us. We have Senator Mick Mines from Blair; Senator Carol Hudkins from Malcolm; and Senator LeRoy Louden from Ellsworth. If I

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

Transportation and Telecommunications Committee  
January 29, 2007

---

could, before we begin on LB70, how many of you plan to testify on that bill? Okay, thank you very much. At this time, I will turn the chair over to our Vice Chair, Senator Arnie Stuthman, because I have the first bill to introduce. []

SENATOR STUTHMAN: Thank you. Senator Fischer, you have the first bill, LB70. []

SENATOR FISCHER: Good afternoon, Senator Stuthman and members of the committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the senator representing the 43rd District here in the Nebraska Unicameral. I come before you today to introduce LB70. LB70 creates an exemption for an all-terrain vehicle to cross a highway when it is being used by a municipal employee while acting within the course of his or her employment, and operating the vehicle within the municipality limits. This bill proposal was brought to my attention by law enforcement officials in my district who had questions about the laws covering ATVs and municipal employee activities. City employees in some of our cities use ATVs in the course of their employment to do their jobs in the most efficient and cost-effective manner. There's some question as a matter of law whether using ATVs on state highways that pass through a town may be in violation of state law when the employee is using that ATV to do their job. In order to make it clear to our law enforcement officials what the law is in this area, I suggest that we give LB70 our full consideration. Thank you, and I would be happy to try and answer any questions. I do have two law enforcement officials from two counties within my district that are here to testify on this bill. [LB70]

SENATOR STUTHMAN: Thank you, Senator Fischer. Any members have any questions? Senator Mines. [LB70]

SENATOR MINES: Thank you, Senator Stuthman. Senator Fischer, my one thought leaves your district and goes to Omaha. Considerations when you thought about putting this bill together that it's not the same, that highways that run through Omaha are much different? Did you have any discussions about that? [LB70]

SENATOR FISCHER: I have concerns about that. And I would hope that the committee maybe we can possibly work that out in our discussions on how we address the diverse needs of the state. In my smaller towns we, almost all of them have a state highway running through either the middle of town, or close to the middle of town. And we have local officials who use those ATVs to spray weeds in alleys, and then they're prohibited from crossing a street which is also a highway in order to continue their work. [LB70]

SENATOR MINES: Would you be open...well just, we'll have it in Exec. But, you know, perhaps an alternative is to identify this would be appropriate only in villages, cities of the second class, that nature. We can talk about that. [LB70]

SENATOR FISCHER: Yes, I'd be open to that amendment, Senator. [LB70]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR MINES: Okay. [LB70]

SENATOR STUTHMAN: Thank you. Any other questions? Thank you, Senator Fischer. [LB70]

SENATOR FISCHER: Thank you. [LB70]

SENATOR STUTHMAN: Will you be here for closing? [LB70]

SENATOR FISCHER: I hope so. [LB70]

SENATOR STUTHMAN: Okay. Proponents to LB70? You may begin. [LB70]

JOHN HALLER: Good afternoon. My name is John Haller. I am the sheriff for McPherson County. [LB70]

SENATOR STUTHMAN: Will you spell your name, please? [LB70]

JOHN HALLER: J-o-h-n, last name H-a-l-l-e-r. And I'm here to speak today as a proponent of LB70. I apologize. I've never testified before a committee like this before, so bear with me if I make mistakes or seem a little nervous. I would like to thank you for the opportunity to come and talk to you today. I've been a law enforcement officer for over ten years. I've been the McPherson County sheriff since August of 2005, and this issue has come up for me and my constituents. Perhaps less so than some other counties, as McPherson County doesn't have any incorporated towns. But it is still an issue that I think is important and needs to be addressed. And I think that LB70 is a good way to begin to address some of those issues for our smaller communities. I would agree with Senator Mines that perhaps one way to address this might be some sort of a population exception, something like that. And I would be supportive of that. I think in our smaller communities it would make sense to allow municipal employees to use this as a tool in these lower population areas. I think it can be done in a way that's safe, due to our lower traffic volume and things of that nature. Beyond that, I'm not really sure what else I can add, other than I do support the bill. I think it's a good idea. I'd be open to any questions or comments that you might have for me. [LB70]

SENATOR STUTHMAN: Okay, thank you, Sheriff. Does the committee have any questions? Yes, Senator Schimek. [LB70]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Mr. Haller, I just want you to know that there are those of us who have been there and done that. Before I ever came into the Legislature, had an occasion to come and testify before a committee. And I would always cower in the back of the room until everybody else had testified (laugh), and I

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

Transportation and Telecommunications Committee  
January 29, 2007

---

was the last one up, and hopefully, nobody would be left in the room to hear my testimony. So we've all done that, so I understand where you're coming from. [LB70]

JOHN HALLER: I wanted to get the agony out of the way, first. (Laugh) [LB70]

SENATOR SCHIMEK: Oh, well, you're smart. (Laughter) [LB70]

SENATOR STUTHMAN: Any other questions? Senator Hudkins. [LB70]

SENATOR HUDKINS: Thank you. Sheriff Haller, can you give me an example of how the employees within your areas would be using these ATVs? [LB70]

JOHN HALLER: Well, I can give one example, and he's, strictly speaking, not an employee of the county but in the city of Tryon there's a gentleman there that uses his ATV with a spray rig to spray weeds and to pull a mower cart around to help elderly ladies in the community, to take care of yards and things like that. And I think that that would probably be some of the activity that you might see, you know, would be to use it with a spray rig, or to pull mowing implements and things like that. So those would be some of the ways that I could foresee this having an impact, general transportation to and from work sites and things of that nature, might be some of the ways that you might see these ATVs used for that purpose. [LB70]

SENATOR HUDKINS: All right, thank you. [LB70]

SENATOR STUTHMAN: Senator Mines. [LB70]

SENATOR MINES: Sorry to keep piping up. John, a couple things come to mind. And I'm...in principle I'm with this bill, I'm with you. But I have to ask the questions. I haven't been on an ATV in 25 years. Do they have turn signals, lights, brake lights, those kind of things, I don't know? [LB70]

JOHN HALLER: Typically, I don't think so. [LB70]

SENATOR MINES: Okay. [LB70]

JOHN HALLER: But I don't think there's any reason why they couldn't be so equipped. [LB70]

SENATOR MINES: Okay. [LB70]

JOHN HALLER: They do have headlights, tail lights, turn signals I'm not sure of. [LB70]

SENATOR MINES: All right. And I didn't know if that's important or not, but you got to

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

Transportation and Telecommunications Committee  
January 29, 2007

---

ask that. The other thing everyone has to ask is, can they be insured, or are they insurable? And I see maybe we may get, I may have a chance to ask someone, and what kind of liability might a municipality stand if they can't be insured or they can't be licensed or...I just don't know? [LB70]

JOHN HALLER: And I'm... [LB70]

SENATOR MINES: And that's the wrong...I don't expect you to answer that. It's just those two things popped up in my head while you were there. [LB70]

JOHN HALLER: Right. And I'll be honest, I'm not 100 percent certain on the insurability of them. I guess my initial thought would be that they could probably be covered under a blanket policy that would cover any piece of equipment, such as loaders, or road graders, or anything that a county employee or a city employee might use. But... [LB70]

SENATOR MINES: This might...you may be able to answer this one. Are they considered like a motorcycle? In other words, do you have to wear a helmet if you're on a public area? Or they're just not considered? [LB70]

JOHN HALLER: Well, you have to have a valid Nebraska operators license. [LB70]

SENATOR MINES: Okay. [LB70]

JOHN HALLER: I don't think that the helmet statute specifically covers them, because of course at this point in time, you're not allowed to ride them on a highway. [LB70]

SENATOR MINES: Right. But if we allow that, I wonder? [LB70]

JOHN HALLER: That might be something that would have to be visited to say that yes, you know, you'll have to have a helmet, or they'll have to be equipped with signals. [LB70]

SENATOR MINES: Yeah. Okay, well thank you. You've been great. [LB70]

JOHN HALLER: Some things that would need to be addressed. [LB70]

SENATOR STUTHMAN: Thank you. Any other questions from the members? I have one. Sheriff Haller, do you see much abuse of the usage of four-wheelers in your communities? [LB70]

JOHN HALLER: I haven't, you know, for the time being that I've been sheriff there and during my ten years as a law enforcement officer I wouldn't say that I have seen excessive abuse. Of course, you know you're always going to have cases where things

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

Transportation and Telecommunications Committee  
January 29, 2007

---

are abused. But for the most part, I think my constituents use them very responsibly. Like I say, the issue that has come up most of all is this gentleman that wants to use his ATV to go and help people, spray their weeds, mow, things like that. And at this point in time, the statute as it's written kind of makes him a law breaker. (Laugh) And so I think in these lower population density areas, like my county, I think a bill like this and this bill make sense. [LB70]

SENATOR STUTHMAN: Do you also feel that because of the technology and what people utilize four-wheelers for and the size of some four-wheelers, you know, makes it that, you know, we should be changing the laws because the statute was, you know, from prior years as to just, you know, a four-wheeler? Now there's 30-, 40-horse power four wheelers and, you know, you can utilize that to do a lot of jobs. [LB70]

JOHN HALLER: Right. And I think the aftermarket has really stepped up and created a lot of implements and tools and things for ATVs that do add a lot to their utility and kind of allow people to use them in a lot of ways that, you know, maybe before they couldn't. [LB70]

SENATOR STUTHMAN: Yes. Are there any other questions? Senator Louden. [LB70]

SENATOR LOUDEN: Yeah, thank you, Senator Stuthman. Sheriff Haller, my geography here...McPherson County now, is that Tryon? [LB70]

JOHN HALLER: Correct. [LB70]

SENATOR LOUDEN: Okay. I've been through there a lot of times. And do you have many people using those things to work cattle, and drive cattle, and check cattle, and that sort of thing? [LB70]

JOHN HALLER: Quite a few. [LB70]

SENATOR LOUDEN: Do any of them drive them on the state highways? [LB70]

JOHN HALLER: I have never encountered anybody operating one on a state highway. Probably be more likely to see them on a county road. [LB70]

SENATOR LOUDEN: Well, do you know that you can drive them on state highways? [LB70]

JOHN HALLER: Well, I know that they can cross a highway. [LB70]

SENATOR LOUDEN: No, you...well, the law says you can drive them if it's incidental to agricultural work. [LB70]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

JOHN HALLER: Right. [LB70]

SENATOR LOUDEN: And nobody has said yet what agricultural work is. [LB70]

JOHN HALLER: Right. [LB70]

SENATOR LOUDEN: You know, is that driving up and down? I was just wondering, curious around Tryon there if there was very many people driving them up and down. Because where I live well, yeah, people run them up and down the highway about so much, go from one pasture to the next... [LB70]

JOHN HALLER: Um-hum. [LB70]

SENATOR LOUDEN: ...and other areas that they'll use them to go from one field, if they're doing circle pivots and irrigation. And it seems like law enforcement, some places, would tell them they couldn't do that. But yet again, the law was somewhat vague on it. But in your instance, you mostly wanted to use them so that you could do work around the town? [LB70]

JOHN HALLER: Around the town of Tryon. And I see your point, and I think it's true. I think it would be helpful to have a little more clarification on just what agricultural purposes entails and kind of strengthen that agricultural exception because, frankly, that's my county, that's...the whole county is geared to agriculture. So I agree that, yes, that is something that would be useful. [LB70]

SENATOR LOUDEN: You drive one? You have one? [LB70]

JOHN HALLER: I don't have one. [LB70]

SENATOR LOUDEN: I see. Thank you. [LB70]

JOHN HALLER: Um-hum. [LB70]

SENATOR LOUDEN: Thanks for testifying. [LB70]

SENATOR STUTHMAN: Thank you. Are there any other questions from the committee? Thank you, Sheriff. [LB70]

JOHN HALLER: Thank you. [LB70]

SENATOR STUTHMAN: Are there any other proponents for this bill? [LB70]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

PATRICK McNEIL: Good afternoon. My name is Pat McNeil. And I'm...my last name is M-c-N-e-i-l. I'm the sheriff of Logan County, Nebraska, which is Stapleton. I've got about 23 years of law enforcement experience in the state. I'm also a defensive driving instructor for STOP Programs and ADD Programs and such as that. I come here today probably as one of the main people that bugged Senator Fischer over this. Our village does not own a city vehicle. The only thing they own was a four-wheeler. And one day another law enforcement agency came through town and asked, why is that person allowed to drive that vehicle around town? Well, it was my assumption, I plead ignorance, I had not quite closely read the statute. We were calling him our utility worker based on that LB that allows utility workers to use ATVs, which one was that? Got them all here somewhere, 60-6,356, but upon a closer inspection it says, utility workers can use them outside of corporate city limits, not inside corporate city limits. So that was where our problem was. I believe Senator Mines stated part of our big problem, and also Senator Louden here, is the understanding of what the certain statutes mean, what is incidental to agricultural work? I don't know; it's not defined. What is...is spraying weeds agricultural work for the city? I don't know. We also were looking at the whole issue of driving on the highways. The problem was the statute we found on highways defines a highway. We were thinking, fine, he just won't cross the highway, he'll just drive it in town on the city streets and the alleys. State statute defines a highway as any street, or alley, or thoroughfare that is maintained by the public. So that eliminated anyplace. So the definition of a highway wasn't what I was thinking as being a federal or state highway, it defines it as any roadway, period. So that kind of eliminated that. Like I say, it's a cost thing for our village. Our man in town uses it to haul a trailer with a big mower to the parks, he uses it to haul trailers that pick up other equipment around town, he uses it with a snow blade to clear snow off the sidewalks and part of the alleys and entrances to streets and parking lots. He uses it to run plumbing and things and stuff even sometimes for the fire department. But technically, he's been in violation of the law. So last summer, the former sheriff shut them all down and said that they couldn't drive them. Well, that threw the city into a real bind because it was about weed spraying time, and he had a special designed rig that fits on an ATV to spray the weeds, now he couldn't go spray for all the weeds, you know. But we...after the problem was brought to our attention, we didn't feel in good conscious that we could just turn a blind eye, because, you know, it was against the law and we had other people in town saying, if he can use it, why can't we? And we couldn't point to a law saying why he could use it, you know, not specifically. And so that is where that came. The issue, somebody asked...I heard them asking the other sheriff about is it abused. I don't know if it's abused, but I do get farmers and ranchers that drive all the way into town to go pick up a little part and they claim it's for agriculture purpose. I don't know if that's incidental to agriculture to drive it all the way to town. And how do I know that just seeing a guy drive it down the street? I don't know without stopping him to begin with. And so that becomes somewhat of an issue. It's a big money-saving issue for our villages like that. Like I say, we would like to see something, either clarify the definitions or to authorize the cities to use them for city employees. So I am a proponent of LB70 in that sense. And I'm not speaking to



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

Transportation and Telecommunications Committee  
January 29, 2007

---

the overall safety of it or other issues. I do understand, and you know, we're in a bit of a unique situation. We're near Halsey Forest, which allows ATV usage for recreation. So we see trailer loads of them coming by the highway all the time, heading up there to drive around. My own county attorney had gotten a lot of calls on this issue when we were shutting them down for a while, and when he came over into town one day, he says, I don't get it, he says, you can't use it and let the guy do his job to spray weeds, but coming into town I saw ten old guys riding their lawn and garden tractors around and that was okay. So it was kind of an issue and we were trying to figure out, what do we do? We just want to make it clear when people call and say, can I or can't I, we would like to be able to say, the law says the city guy can use it for legitimate purposes, and so it alleviates some problems there. It does become a big issue. There were several people wanting to sign petitions and all sorts of things over when we shut down the ATVs for a while. So it does become a big issue. So we'd sure appreciate your help, you know, in any way you could see fit to help us alleviate the situation. So once again, like I said, thank you for this opportunity to come speak to you. And if anybody has any questions, I'll try to do my best here. [LB70]

SENATOR STUTHMAN: Thank you, Sheriff. Does the committee have any questions? Senator Louden. [LB70]

SENATOR LOUDEN: I don't know if it's a question, I guess a comment. When you mentioned what they're being used for nowadays, I feel that when these statutes were put in, ATVs were a different kind of an animal than what they are now. We used to see all three-wheelers, whereas now, like you say and Senator Stuthman has pointed out, you know, they have a lot of power, and you've got all kinds of attachments nowadays. And that's come about in the last, what, three, four years, all the way from automatic transmissions in them to power steering on them nowadays. So the things have progressed along quite a ways. And when you say you can ride your lawn mower downtown, but you can't ride one of these, and the same way you could drive your little tractor downtown, but you couldn't drive one of these. But the horsepower might be the same. So I understand your plight out there because they are being used in these villages for maintenance work, unbelievable because of the way of...the cost and everything. So thank you for testifying. [LB70]

PATRICK McNEIL: Yes, sir, yes. And I think maybe it was your question. We definitely...I don't know if it's good or bad, but we're seeing the ATV replace the horse for the cowboys out our way. I mean it's just the way they're doing the cattle drives and everything now. [LB70]

SENATOR STUTHMAN: Thank you. Any other questions? I have one. Sheriff, do you feel that in the situation that you was saying where your...the community, you know, has the four-wheelers, and then you shut them down for a little while mainly because of interpretation of law or not clarified enough in the law. In my opinion, in those

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

Transportation and Telecommunications Committee  
January 29, 2007

---

communities running the four-wheelers and stuff would be property tax relief, because it cost a heck of a lot less to run those four-wheelers. Now maybe that isn't true, but I think that would be...could you comment on that. [LB70]

PATRICK McNEIL: Well, that was part of the whole point that the village of Stapleton made to me is if they had to shut that down, they were going to have to buy the city maintenance man a pickup, and they were going to have to specially equip it with weed sprayers and different kinds of things that he's adapted the four-wheeler to. And, yes, it was a definite cost-savings to them is why they...because he drives it winter, summer, all year round. He's kind of a bear when it comes to driving in the winter, but yeah, it's definitely a cost-savings, I believe, because they don't have to have a multitude of different vehicles for a little village. He just uses it and adapts it to a lot of things. [LB70]

SENATOR STUTHMAN: Okay, thank you. Any other questions? Seeing none, thank you. Are there any other proponents? [LB70]

GARY KRUMLAND: Senator Stuthman, members of the committee, my name is Gary Krumland, that's spelled G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB70. As you've heard this would be a help for city employees, village employees in smaller communities. The law would require, as it does right now, for people to use it on the highway for ag use or electric use, that they do have an operators license, that the ATV can't be operated in excess of 30 miles an hour, it has to have a head light and a tail light, and it has to have the bicycle safety flag extending not less than 5 feet above the vehicle. So that would apply in this situation, too. I'll probably be testifying on other bills today. And probably the theme that I'll be bringing is that there are different situations in different sizes of cities, but probably the ultimate thing that we would be asking is for local control so that the city themselves can determine whether it's appropriate or not. In this situation, if you have a municipal employee who's using an ATV, the city or village elected officials will be giving direction on whether and when the person can use the ATV. If it's limited to smaller communities, I think that would be appropriate, too. But that would be probably the same thing I'll be saying on these other bills, too, is that there are situations where ATVs now can be used within the community, within the corporate limits of a city that may not be appropriate. And in a larger city, during rush hour traffic, an ATV could cause a various traffic tie-ups or serious accidents. And so we do support LB70 if the committee is interested in looking at it a little farther and wants to narrow it to some of the smaller communities, I think that would be appropriate, too. [LB70]

SENATOR STUTHMAN: Thank you, Gary. Does the committee have any questions? Senator Mines. [LB70]

SENATOR MINES: Thank you, Senator. Gary, let's go to the insurance. I don't believe ATVs have to be insured, or excuse me, don't have to be licensed. [LB70]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

GARY KRUMLAND: Yes, that's my understanding, too. [LB70]

SENATOR MINES: And if a vehicle is unlicensed then involved in an accident on a roadway, have we got exposure as a...does Stapleton have exposure? [LB70]

GARY KRUMLAND: They might. I mean that's something they would...before they would make the decision to allow an employee to use an ATV on the street, or even anywhere, I assume that's something they're going to need to make sure they are covered for any exposure they would have. If an employee is injured or, well more likely if somebody else is injured or damage is done. [LB70]

SENATOR MINES: Yeah. All right, thanks. [LB70]

SENATOR STUTHMAN: Any other questions from the committee? Seeing none, thank you, Gary. Are there any other proponents for this bill? Are there any opponents for this bill? Anyone want to testify in the neutral capacity? Seeing none, yes. Come forward, please. [LB70]

JOE ELLIOTT: Mr. Chairman, my name is Joe Elliott. [LB70]

SENATOR STUTHMAN: One second, please. Could you fill that out first, please, and take it to the... [LB70]

JOE ELLIOTT: Okay. What's the LB number? [LB70]

SENATOR STUTHMAN: LB70, LB70, that way the clerk has the information. And I would ask, you know, any other ones that want to testify to have that filled out, if you could, please. But if you get the urge to testify and don't have it, we will take time and wait for you. [LB70]

JOE ELLIOTT: My name is Joe Elliott. I'm testifying on behalf of myself. Elliott is E-I-I-i-o-t-t. I have a lake cabin on Willow Point Lake, which is Linoma Beach, 20 miles, 25 miles from here. We've had one four-wheeler for 25 years, I believe, out there. And there are 50-some cabins out there, virtually everybody has, although the popular thing now is golf carts. I think I counted or someone told me the other day, of the 50 cabins, we've got 20 golf carts running around. And some of the older people find it convenient to sit on those. I buy three-wheeler insurance, \$70 for liability only. I never bought it for the property damage. Maybe I should have, the four-wheeler I've got is \$5,000 plus. But most insurance companies don't want to write these. I happen to have other property, and as long as you got enough in premium they seem to be interested in it. But I called up Geico one time, and no, wouldn't touch it, so we got an awful lot of people insured with Geico all over the country. Also, going up to Minnesota, during the summer, we find

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

Transportation and Telecommunications Committee  
January 29, 2007

---

out they have requirements for ATVs, and there you have to have signals. And so I've never even thought of "trailing" mine up there because I didn't have any signals on it, and it's not licensed. And it's not covered by insurance. When you buy insurance on your three-wheeler in a setting like we have, on a sandpit type lake, and we've got thousands of people around Omaha that are involved in that, you have insurance only on your specific piece of ground. It's a 100 foot lot, 100 foot in the back, you got liability there. If you want to buy other liability, then you have to so specify, and that premium will go from \$70 a month to a couple hundred, I think, for just base limits, \$25,000, \$50,000. So you're talking about quite a bit more money. And then I don't know if they're going to require all of the safety devices, if they're going to do any inspections? I mean they just don't like them because there's not enough premium generated to make it worthwhile to put \$100,000-\$300,000 worth of limits on it. So...and I've been on that lake, 20, 30 years, and we have had one accident on that lake of any consequence at all, and that's where someone ran into a fence. We're more concerned about the boat exposure that you have on a small lake like that. And we insist on...we don't...we insist and encourage, I should say, \$1 million liability policies on top of \$100,000-\$300,000 base limits that they have. And we feel that is extremely vital. And our insurance carrier, on the liability for the whole lake, encourages that. I mean, in some cases they might even require it. But nothing on the three-wheelers and that. So that's my comments. And I'm certainly not strongly in favor of licensing or involving all the...you can't put signals on these old three-wheelers. I mean they're worth \$100 to \$150, and we probably got 25 to 30 of them on our lake that will all be involved then if we start technically putting...requiring these things. The same way with...most of them have lights, one light and a tail light, but not the turning signals. Any questions? [LB70]

SENATOR STUTHMAN: Thank you, Mr. Elliott. Any questions? Senator Mines. [LB70]

SENATOR MINES: Thank you, Senator. Joe, just with your experience in insurance, do you...would you presume that ATVs could be covered under a municipalities insurance, just like it would cover front end loaders, for liability anyway, front end loaders, skid loaders, those kind of things? [LB70]

JOE ELLIOTT: I believe that they would probably, Senator. You're involved from the city standpoint, and the pool would be the one that would make that determination. [LB70]

SENATOR MINES: Yeah. [LB70]

JOE ELLIOTT: And their decision would probably be based upon their reinsurers. [LB70]

SENATOR MINES: Exactly. [LB70]

JOHN ELLIOTT: All of a sudden, the reinsurers say, hey, we don't want any

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

Transportation and Telecommunications Committee  
January 29, 2007

---

four-wheelers because of the power that we're talking about now... [LB70]

SENATOR MINES: Yeah. [LB70]

JOHN ELLIOTT: ...certainly is a factor. And...but other than that, I think they probably would. I'm thinking of one other company that writes a lot of them is...they probably would agree to that, since they have enough premium to cover the whole program there. [LB70]

SENATOR MINES: Thanks. [LB70]

SENATOR STUTHMAN: Thank you. Any other questions from the committee? Seeing none, thank you, Mr. Elliott. Any others want to testify in the neutral position? Seeing none, Senator Fischer, would you mind closing? [LB70]

SENATOR FISCHER: Senator Stuthman and members of the Transportation and Telecommunications Committee, as you can see from the testimony that we've had here today, this is a problem and it's a problem for small towns in my legislative district. We've heard from two county sheriffs who are trying to do their job in enforcing the law, and they have questions on just how that law can be enforced when you don't have definitions that you need in statute that apply in different areas of the state. I hope we can look at this issue. I hope we can work on it and hopefully get something out that will address the diversity that we have in the state and how some communities have different needs than others. Thank you. [LB70]

SENATOR STUTHMAN: Thank you, Senator Fischer. Are there any questions? Seeing none, thank you. I will turn it back over to Senator Fischer. I close the hearing. [LB70]

SENATOR FISCHER: Thank you, Senator Stuthman. The next bill we have on our agenda is LB288. This was introduced by Senator Louden.

SENATOR LOUDEN: Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. I'm LeRoy Louden, that's spelled L-o-u-d-e-n, representing the 49th Legislative District, and I'm here today to introduce to you LB288. LB288 deals with all-terrain vehicles, known as ATVs and four-wheelers. Current statutes permits ATVs to be operated on public roads, if such operation is incidental to the vehicle's use for agricultural purposes. This bill removes that restriction. All other restrictions currently in place remain, including operation as permitted between sunrise and sunset only, the operator must have a valid Class O operators license or a farm permit, vehicle speed cannot exceed 30 miles an hour, head light and tail light must be on, the vehicle must have an attached bicycle safety flag of specified size and height. A couple of other restrictions of existing statute also remain unchanged. Restrictions on how ATVs may cross highways are not changed. For bill drafting purposes, the bill

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

Transportation and Telecommunications Committee  
January 29, 2007

---

strikes the restriction, but it restates them as new language, "ATVs are prohibited from operating on or crossing controlled access highways." LB288 does not remove those prohibitions. I introduced LB288 because it is unclear what agriculture related purposes are. It seems that phrase, "incidental to use of the vehicle for agriculture purposes" is opened to interpretation. For example, if a farmer or rancher rides an ATV into town to pick up engine parts for a piece of farm equipment and stops at the post office on the way, is the ATV being used for agriculture purposes? Would this trip be interpreted differently from one law enforcement officer to another and from one county to another? For example, does incidental use mean traveling from one pasture or field to another, or does it mean chasing livestock down a public road? I think its to say that the statute allows a variety of interpretations. If so, I think it is worthwhile to change the statute so the chance for different interpretations is reduced. ATVs are more widely used and better designed than they were originally. That's another reason I introduced LB288. I think that it may be time to reconsider restricting their operation on public roads to incidental...to agricultural purposes. The bill retains all other safety related restrictions. Lights, flags, speed operation during daylight hours, and a licensed operator are still required under LB288. The bill also makes a change to the current provision on electric utility personnels use of ATVs. Currently, electric utility personnel may operate ATVs outside corporate limits of municipalities, as long as such operation is in compliance with the restrictions. This bill retains that language, except that such operation need not be limited to the hours between sunrise and sunset. At the present time, I can ride my horse down the highway, I can drive my tractor down the highway, but I can't just drive my ATV down the highway. So I would think that changes proposed in LB288 are reasonable. And I'd be happy to answer any questions. [LB288]

SENATOR FISCHER: Are there any questions for Senator Louden? Senator Aguilar. [LB288]

SENATOR AGUILAR: Thank you, "ChairFisher." (Laugh) LeRoy, wouldn't it be the safer course of action if you had livestock get loose on a roadway and they're endangering traffic, wouldn't it be a safer course of action to use your ATV to get those off the highway a little quicker, the roadway. [LB288]

SENATOR LOUDEN: Well, true. I mean, you have to get them off with something, and you can't outrun them on foot. So, yes, it would be safer to use an ATV rather than a pickup, or for that matter a saddle horse or something like that. [LB288]

SENATOR AGUILAR: Thank you. [LB288]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator Louden. Could I have a show of hands on how many people plan to testify on this bill? Okay, thank you. Next we will have the proponents of LB288, please. Are there any proponents? Are there opponents to LB288? I see none. Is there anyone who would like to testify in the

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

Transportation and Telecommunications Committee  
January 29, 2007

---

neutral capacity? Welcome. [LB288]

GARY KRUMLAND: Senator Fischer, members of the committee, my name is Gary Krumland, that's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in a neutral position on LB288 to raise the same concerns that I discussed a little bit under LB70, is that this bill does expand the use of ATVs. And it says on all highways, which, as you heard, is defined as not just state highways, but it's defined in the statutes as basically all streets. It does not have any exception for city streets or highways through cities. And there are situations where it's just not appropriate for an ATV to be driving down a city street, especially a larger street in rush hour. And so, for example, on page 4, line 2, if you look at the bill, if you look at current language, there is a provision in the law right now for electric utility personnel that they can ride on the highways, but it's outside of the corporate limits. And so I would hope that if the committee does decide to advance this bill, that they would consider that and either put some language like that, or to make something specific in the bill...the law to allow cities to regulate ATVs within the corporate limits of the city. There is a question right now, as you've heard, in the law on what the law is. I know the Department of Motor Vehicles, right now, interprets the law to say that basically all off-road vehicles, except for ATVs under these certain exceptions, but golf carts, mowers, etcetera, like that cannot be driven on any streets or highways in the state. And cities really have little control over that. So we would just ask that if this goes forward that that exception be made, and maybe make it outside of the corporate limits, or make it clear that cities can control that. So the larger cities would be able to limit the use on certain times. [LB288]

SENATOR FISCHER: Are there any questions for Mr. Krumland? I see none. Thank you very much. [LB288]

GARY KRUMLAND: Um-hum. [LB288]

SENATOR FISCHER: Anyone else who would like to testify in the neutral capacity? Senator Louden, would you like to close? [LB288]

SENATOR LOUDEN: Thank you, Senator Fischer and members of the committee. I'm sure this bill could be worked in with the other two bills besides this one that we're working on today, because this seems to be a problem with ATVs. And to answer Senator Mines question a while ago about insurance, yes, we do, there's a little slot on my insurance policy that I have to buy liability insurance on my ATVs, that's all part of it. And as far as licensing them, we have to pay a sales tax, just like we would with our farm machinery. And as far as having a license on them, I don't see why we'd have to have them licensed any sooner than we'd have to have a tractor licensed in order to be able to drive on the highway. And then not only are...most everybody thinks of your ATVs as your small four-wheeler type deals, but there are some huge ones out there. I think there's that one made in Germany, called a Moog or something like that, and that's

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

Transportation and Telecommunications Committee  
January 29, 2007

---

a fair sized tractor. And out there in Alliance why there's a fellow that has one, and he drove it downtown to the bank a time or two, and the sheriff got on his case about it because it wasn't licensed. And he didn't want to call it a tractor, but nonetheless it is an all-terrain type vehicle. So there are...I guess the wording has changed on ATVs considerably from what we used to think they are. And I would like to see something worked out on this. Thank you. [LB288]

SENATOR FISCHER: Thank you, Senator Louden. Questions? Thank you very much. With that, I will close the hearing on LB288 and open the hearing on LB307, introduced by Senator Stuthman. Welcome. [LB288 LB307]

SENATOR STUTHMAN: Thank you, Senator Fischer and members of the Transportation Committee. For the record, I am Senator Arnie Stuthman, spelled S-t-u-t-h-m-a-n. I introduced LB307 to hopefully clear up some of the concerns as to who has the jurisdiction over all-terrain vehicles. LB307 amends Section 60-6356 of the state law regarding all-terrain vehicles. This statute prohibits all-terrain vehicles from operating on the highways of the state. There are three exceptions in the statute to allow certain all-terrain vehicles on highways. One of these exceptions allows all-terrain vehicles used for agriculture purposes to drive on the highways. LB307 changes the exception so that it applies only to the highways outside of the corporate limits of any municipality. The intent of the amendment is to give cities authority over all-terrain vehicles within the corporate limits of a city. This change is consistent with another section in this statute, 60-6356, number 5, that allows electric utility personnel to use all-terrain vehicles on highways outside the corporate limits of any municipality. So these are my opening comments, and I will try to answer any questions. [LB307]

SENATOR FISCHER: Are there any questions for Senator Stuthman? I see none. [LB307]

SENATOR STUTHMAN: Thank you. [LB307]

SENATOR FISCHER: Thank you very much. Could I have a show of hands of the people who plan to testify on this bill? Okay, thank you. Would the first proponent come forward, please. Good afternoon. [LB307]

WILLIAM GUMM: Good afternoon, thank you. Senator Fischer, members of the committee, thank you for your time. I am William Gumm, last name is G-u-m-m, I'm the chief of police in Columbus, Nebraska and I'll also provide your some comments on behalf of the Police Chiefs' Association of Nebraska. Simply, I support LB307, the changes that it will provide in the statute. The Police Chiefs' Association also supports LB307. For the record, they are opposed to the previous LB70 and LB288. Be happy to answer any questions. [LB307]



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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR FISCHER: Are there questions for Chief Gumm? Senator Louden. [LB307]

SENATOR LOUDEN: How come there are opposed to LB70 and LB288? [LB307]

WILLIAM GUMM: I believe the consensus was that there was not enough information yet to validate the changes yet. They were concerned that by allowing one group, or providing for one group to operate ATVs on highways, they would be opening the door for other groups to come before you asking for the same consideration. [LB307]

SENATOR LOUDEN: Okay. This bill still has in there that you can operate it on a highway that's incidental to farm work, or whatever it is, through agriculture purposes. Do you think that that part should stay like that, or do you think that that should be refined so that that's a little bit more clear on what agriculture purposes are? [LB307]

WILLIAM GUMM: I agree, Senator Louden. And based upon other testimony before your committee today, I think that that definition needs to be refined. [LB307]

SENATOR LOUDEN: Okay, thank you. [LB307]

SENATOR FISCHER: Other questions for Chief Gumm? I have a question. [LB307]

WILLIAM GUMM: Yes, ma'am. [LB307]

SENATOR FISCHER: You're after my bill, too, so I have a question. In your support of LB307, you're saying that it's all right that ATVs can be used in any manner on any highway outside of the city limits? [LB307]

WILLIAM GUMM: Yes, ma'am. [LB307]

SENATOR FISCHER: Would you agree to a bill that would leave it up to cities to decide on the use of ATVs within their city limits? [LB307]

WILLIAM GUMM: Yes, I would agree that the cities should be allowed to govern the use of those vehicles within their communities and not on state or federal highways. [LB307]

SENATOR FISCHER: Okay, instead of having the state say no city can have an ATV used within their city limits... [LB307]

WILLIAM GUMM: Well, I think there needs to be some floor in the statute that says if there is no other provision for the use of those things, that they shall be prohibited. [LB307]

SENATOR FISCHER: Okay, thank you. Senator Louden has another question. [LB307]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR LOUDEN: Yes, I have along that line there. We have some of these smaller towns around and there's handicapped people that have to drive these wheelchairs on some pretty rough roads. Do you think there should be something set up in there so that some of these handicapped people can drive them around? Because you know, you get out in the country, a lot of people that are somewhat handicapped use those instead of a wheelchair type deal and...because they can get around a lot better, ground and that sort of thing. What's your thoughts on that? [LB307]

WILLIAM GUMM: To use an ATV in lieu of a personal... [LB307]

SENATOR LOUDEN: Well, yes, on... [LB307]

WILLIAM GUMM: ...of a personal transport device? I suppose, since that's already provided for in law, there might be some specific provision provided for in the personal equipment device that would allow a person with a handicap certificate from their doctor to somehow use an ATV. But still, those people appear...an ATV requires a certain level of being able to handle a variety of things at one time--speed, control, turn signals, brake lights. I don't know that all those coming into play with a handicapped person would be safe. [LB307]

SENATOR LOUDEN: Well, it's all right there on your handlebars. [LB307]

WILLIAM GUMM: Well, that's true, but many of those are operated...some of those are operated by breath, some of those are operated by a person's tongue. So if you're going to allow an individual who has a handicap, I think it's going to require some specific definitions. [LB307]

SENATOR LOUDEN: Okay, thank you. [LB307]

SENATOR FISCHER: Other questions for the Chief? I see none, thank you. [LB307]

WILLIAM GUMM: Thank you. [LB307]

SENATOR FISCHER: Are there other proponents? Hello. [LB307]

GARY KRUMLAND: Senator Fischer, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB307. And as you heard today, the concern that the cities have about the current law is the problem that the law does say ATVs for certain uses can drive on the highways or the street. And the cities have no control over that. In certain situations, this just causes a traffic hazard and could be a danger, both to the ATV driver and to other drivers. And so we do support LB307 and thank Senator

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

Transportation and Telecommunications Committee  
January 29, 2007

---

Stuthman for introducing this. This has been before the committee in other forms before. LB1138 was introduced in 2004, and this was part of LB275 in 2005-2006, so it has been an issue that we've been concerned about for the last few years. The bill is drafted this way just to allow the exception to take place outside the corporate limits, to mirror what is already in the statute for electric utility personnel. But if the committee thinks it would be a wiser choice to say that within the corporate limits it's the city or village who makes that decision and can regulate it, we would support that. And that might be the preferable way to go because there is a concern and a question of interpretation of law about what authority cities do have to control, not only ATVs, but golf carts and everything else within the corporate limits. And anything that can be done to clarify that would be helpful. I'd be happy to answer any questions. [LB307]

SENATOR FISCHER: Any questions for Mr. Krumland? I...oh, Senator Louden. [LB307]

SENATOR LOUDEN: Go ahead. [LB307]

SENATOR FISCHER: I have a question. When you talk about allowing cities to pass the laws within their own corporate limits, what do you do in a case of Tryon, in a county where there is no incorporated city? [LB307]

GARY KRUMLAND: Well, I guess looking at gnarly... [LB307]

SENATOR FISCHER: They probably don't belong to the league, though, do they? [LB307]

GARY KRUMLAND: Well, they are not incorporated, so they aren't a city or village. So if you did that, it wouldn't apply to them. So maybe it would...I mean you would almost have to say give the authority to a county to do that outside of the corporate limits of the municipality, if you wanted to reach somebody like that. [LB307]

SENATOR FISCHER: Would you support possibly an amendment that would say that the county would have authority in a situation where there is not an incorporated city or village within that counties boundaries? [LB307]

GARY KRUMLAND: Yeah, I would have no problem with something like that. Yeah. [LB307]

SENATOR FISCHER: Okay, thank you. Senator Louden. [LB307]

SENATOR LOUDEN: Yes, Gary, would you...what about this phrase in here, incidental to agricultural use? That's what's been the topic of a lot of conversation here today. Are you...do you want to keep that in the bill? [LB307]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

GARY KRUMLAND: Well, I guess, I...my concern is the use of any ATV within the corporate limits of a municipality. But I do think that is a problem, probably, if you are looking at this issue. It's something that could be or should be clarified. [LB307]

SENATOR LOUDEN: Now getting back to your interest, municipalities, why can't you use them? You've got a lot of suburbs in some of those areas, and people don't run them that far. And for one thing, you can't drive these on any kind of a highway that's got any kind of access or something like that, you know, controlled access highways. So it isn't every highway you can drive this thing on. [LB307]

GARY KRUMLAND: Well, it works about any...a lot of the highways through...well, first of all, highway is defined as for...it's not just what we consider state highways, but it's in the public street, too. And what the law says is that under these circumstances somebody can drive it. The city would have no control whatsoever. So even during a rush hour in Lincoln, Omaha, Grand Island, whatever, the city would...if someone wanted to drive an ATV, the city would have no control over whether that's appropriate or not. [LB307]

SENATOR LOUDEN: Would they be any more dangerous than riding a bicycle? You know in Lincoln here we've got bicycle lanes and stuff like that. Is there any reason why an ATV couldn't be driven down that bicycle lane during rush hour? [LB307]

GARY KRUMLAND: Well, and...but it's the city of Lincoln who has made that determination, and I guess that's what we're asking for is to let the cities make that choice. [LB307]

SENATOR LOUDEN: Because they don't outlaw bicycles during rush hour here in Lincoln, do they? [LB307]

GARY KRUMLAND: I don't know the answer to that. [LB307]

SENATOR LOUDEN: One other question. What's the difference between an ATV and one of these bigger electric wheelchairs that I've seen some people have to drive them down the street? [LB307]

GARY KRUMLAND: Well, I don't know that I can answer that. I know that there is a statute that talks about all of those that defines them pretty much as off-road vehicles. I think...I assume ATV is defined more specifically. I don't have that in front of me. I can see what I can find for you. [LB307]

SENATOR LOUDEN: But I mean as far as a person, what difference if they were driving their big wheelchair or they driving an ATV? [LB307]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

GARY KRUMLAND: I'm assuming part one of it is that the ATVs, however they're defined, are...have the ability to go faster and are built a little different than a motorized wheelchair, or golf cart, or something. [LB307]

SENATOR LOUDEN: Okay, thank you. [LB307]

SENATOR FISCHER: (Exhibit 1) Other questions? I see none. Thank you. Are there other proponents for the bill? I see none. Opponents to LB307, please step forward. I do have a letter from the Nebraska Safety Council, Incorporated, signed by Laurie Klosterboer, K-l-o-s-t-e-r-b-o-e-r, in opposition to LB307. Is there neutral testimony? Please step forward. Welcome. [LB307]

ROBERT KAY: Good afternoon, thank you. My name is Robert Kay, K-a-y. I'm the president of Star City Motor Sports, here in Lincoln. I'm actually here to testify on LB163, but listening to the other bills, I thought I'd add my two cents worth, and I appreciate the opportunity. One of the things that we have a problem with in the industry is the industry is rapidly evolving, and I'm talking about ATVs and those sort of things. And a lot of the laws that Nebraska has were written many years ago, sort of a rear view picture and we're looking forward. I would like to offer my dealership's assistance, if you'd like some help, in addressing these definition questions that people seem to have on what an ATV is versus a dirt bike. Nebraska uses a term that's unique to Nebraska, mini bike, to define anything that's an off-highway motorcycle. The definitions are vague. They don't...they seem to be applied inconsistently. We see it with titling of off-road vehicles. The definitions don't really line up with those of the rest of the industry and the rest of the nation. There are all kinds of things that have been invented recently, the little Segway, that little two-wheeled gyroscopic scooter thing that you see people taking tours off in downtown Washington, D.C. or mailmen using them out in the suburbs and those sort of things. There are neighborhood electric vehicles, they look like a golf cart, sort of, but they're a little bit faster, they can have four seats, and they can have doors, and they're designed for these enclosed neighborhoods, gated communities you see in a lot of places. There's a whole new industry growing, what they call the side-by-sides, Kawasaki, here in Lincoln makes the Kawasaki Mule, it looks like a pickup, golf cart sort of a combination thing. And a lot of manufacturers are making those things now. You see these little tiny mini trucks that they import from Japan and other countries in Asia that they're...the railroads use and people use on their facilities or their industrial sites, but you can't take them out on the streets. There's definitions to do with the weight of an ATV. In Nebraska one can't exceed 600 pounds, and yet everybody makes them well over 600 pounds these days. There's just a lot of confusion and a lot of definitions that don't make sense in light of what the industry is doing today. And I don't have an opinion one way or the other on the other bills, but I'd like to offer our help, if we can help you at all, with defining what exists today and what we see coming in the future. [LB307]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR FISCHER: Thank you, Mr. Kay. [LB307]

ROBERT KAY: Thank you. [LB307]

SENATOR FISCHER: Any questions? Senator Louden. [LB307]

SENATOR LOUDEN: You mentioned this Kawasaki Mule or something like that. Around the State House here they have, well their John Deere's, but they are something like that thing. And they just tool around on the streets like a pickup or something. They got an SMV sign on them. How do they get by without? Is it because they're the State House, or are they supposed to be out there legally? [LB307]

ROBERT KAY: I have no idea. I don't know. We hear anecdotally all kinds of stories. You know, you hear about the guy who loses his license for DUIs or something, slaps a triangle on the back of his tractor and he drives it to work. What's true? What's not true? What's legal? I don't know. But I would like to help define the machinery. I don't want to define the law, that's not my job, but I can help you, perhaps, define what an ATV is, and a side-by-side, and neighborhood electric vehicles, and all these different categories that have...people are clever, they come up with all kinds of new ideas. And sometimes the law doesn't quite keep up with them. [LB307]

SENATOR LOUDEN: Now that 600 pounds you're talking about, is that in statute someplace? Or... [LB307]

ROBERT KAY: That's my understanding is that they can't exceed 600 pounds. But I would say half of what the industry makes is past 600 pounds. [LB307]

SENATOR LOUDEN: Well, I wondered why ours weighed 600 pounds. That's all they ever weighed. [LB307]

ROBERT KAY: Yeah, they all weigh 599. [LB307]

SENATOR LOUDEN: Yeah. Okay. And...but some of the newer ones, I'm sure, are way up above that. [LB307]

ROBERT KAY: Oh yeah, yeah. [LB307]

SENATOR LOUDEN: Like these light pickups and stuff, because I'm sure there are weights on there. Well, thank you. [LB307]

ROBERT KAY: Thank you. [LB307]

SENATOR FISCHER: Any other questions? I see none. Thank you very much. [LB307]

ROBERT KAY: Thank you. [LB307]

SENATOR FISCHER: Are there others that would like to testify in the neutral capacity? Senator Stuthman, would you like to close? [LB307]

SENATOR STUTHMAN: Thank you, Senator Fischer. In closing, I would like to say that I feel the real intent of my bill is to try to define who has the jurisdiction over these ATVs in municipalities. Because you know in most of them, and I can illustrate like Columbus we have a highway goes right through it, you know, where farmers have an exception that they can travel from farm to farm on a highway. Well, they go right through the middle of town then. But I think what I would like to try to accomplish is to, you know, make sure that a group has the jurisdiction over these, like in the city of Columbus, that they can have the jurisdiction over, you know, which four-wheelers, all-terrain vehicles they're going to allow in the city and which ones they are not going to allow in the situation. I realize that, you know, this is not one community, one size don't fit all, because there are real small communities. But I think if we can clarify some language in the law, in the statute as to who has the jurisdiction. And I really think that's all, like the sheriff's department is trying to accomplish, you know, with this. So another comment that I would like to make, I know that Senator Loudon stated that he pays sales tax on, you know, all-terrain vehicles. Yes, you can either pay a sales tax or you can put them on your depreciation schedule. Which the depreciation schedule, you know, the majority or nearly all of the money goes to the county and not to the state. So it does benefit the county for the...on your depreciation schedule, if you use it as business equipment. So with that, are there any questions? [LB307]

SENATOR FISCHER: Any questions for Senator Stuthman? Senator Mines. [LB307]

SENATOR MINES: I do. Senator Stuthman, the example of Tryon came up. They're an unincorporated area. Omaha is surrounded by sanitary improvement districts that are also not within city limits and that are wholly in the county. How would you handle sanitary improvement districts that have 1,000 residents? [LB307]

SENATOR STUTHMAN: And that, Senator Mines, that would be the...you're trying to develop a SID, sanitary improvement district, or... [LB307]

SENATOR MINES: There are dozens and dozens in my district, sanitary improvement... [LB307]

SENATOR STUTHMAN: That are not in the incorporated area? [LB307]

SENATOR MINES: Right, that's why they're a sanitary improvement district. [LB307]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR STUTHMAN: Yes. [LB307]

SENATOR MINES: How would your bill...your bill doesn't include them, but it also excludes just because they're out in the county. So should we look at a practice or an amendment that would include sanitary improvement districts, or identify them separately? [LB307]

SENATOR STUTHMAN: But...yes, we could take a look at that. But I think we're...we've got two different subjects that we're trying to talk about. We're talking about vehicles, you know, that can travel anywhere and they come into these, you know, they could be traveling in these sanitary, or as closing, I guess, I'm not supposed to ask a question. But if you would explain to me a little bit further as to what you realistically need and what you're trying to accomplish by the sanitary improvement districts? [LB307]

SENATOR MINES: We have sanitary improvements districts in Nebraska that about municipalities, most prevalent is in Omaha. And in traveling from one...from Omaha to a sanitary improvement district, you don't know where you're at. I mean it all looks exactly the same. Some sanitary improvement districts are in the heart of Omaha. So your bill addresses municipalities. I'm just asking, we have the same...would have the same issue with ATVs traveling on city streets, but it would fall under the control of the county. And since yours doesn't address the county, do you have any thoughts on what we might do, as an old county official? [LB307]

SENATOR STUTHMAN: Presently, I don't. I would have to take a look at that and study that a little bit more. [LB307]

SENATOR MINES: Okay. [LB307]

SENATOR STUTHMAN: I don't have a thought on it right now because that's really never entered my mind because, you know, whether you're traveling on a street in the city of Omaha, or you're traveling on the street in that sanitary improvement district, or if you're traveling in the county. [LB307]

SENATOR MINES: Yeah. Well, again, those streets connect each other. [LB307]

SENATOR STUTHMAN: Yeah, and they're all together. [LB307]

SENATOR MINES: And it all...it feels like you're just moving from one housing development to another. [LB307]

SENATOR STUTHMAN: Yeah. [LB307]

SENATOR MINES: It will be worth discussion. [LB307]



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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR STUTHMAN: Okay. [LB307]

SENATOR MINES: Thank you. [LB307]

SENATOR FISCHER: Other questions? Thank you, Senator Stuthman. [LB307]

SENATOR STUTHMAN: Thank you. [LB307]

SENATOR FISCHER: I will turn the chair over to Senator Stuthman at this point and have him open the hearing on LB163. [LB163]

SENATOR STUTHMAN: Thank you, Senator Fischer. We will now open the hearing, Senator Fischer's bill, LB163. Welcome, Senator Fischer. [LB163]

SENATOR FISCHER: Thank you, Senator Stuthman and members of the Transportation and Telecommunications Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r. I am the senator representing the 43rd District in the Nebraska Unicameral. LB163 was introduced at the request of Nebraska retailers that sell all-terrain vehicles, most commonly known as ATVs. ATVs are, by definition, not motor vehicles and do not come under the tax collection process established for motor vehicles. The bill requires an application for a certificate of title for an ATV to be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the vehicle, or that the transfer of title was exempt from sales and use taxes. The county officials shall issue a certificate of title, but not deliver the title unless the certificate required under this section accompanies the application. The failure to have a certificate does not prevent the notation of a lien on the certificate of title and delivery of the title to the holder of the first lien. Legitimate retailers hold a sales tax permit and they collect the sales tax on these products. As more and more of these ATVs are being sold through nontraditional sources, purchasers are avoiding the sales. We are seeing ATVs being sold on vacant parking lots, over the Internet, and by transient businesses. In addition, buyers often are lured across state lines to buy ATVs with the buyer believing Nebraska sales tax can be avoided in that manner. When a seller without a sales tax permit or an out-of-state seller can beat a legitimate retailer by 5.5 cents or 7 cents on every dollar of the deal, it is unfair to the dealer and to the state. LB163 does not create any new tax, it only requires that the purchaser show proof that the sales tax applicable to the sale has been paid. It levels the playing field for everyone involved with the sale of ATVs. With that, I would be happy to answer any questions. [LB163]

SENATOR STUTHMAN: Thank you, Senator Fischer. Does the committee have any questions? Senator Loudon. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR LOUDEN: Yeah, Senator Fischer, I guess...I know this has been a problem. People down at this end of the state they talk about running over to Iowa and buying a four-wheeler. In the business like I'm in we depreciate it, so it goes on our depreciation statement and the county picks it up, and we either pay the sales tax or we pay the, as Senator Stuthman said, we pay the personal property tax and the county gets the money. So I mean that's not the problem. How would you police this? You know, I jump in my pickup, I run over to wherever and buy this little...you see these little four-wheelers that they use to just tear around with, and I pay cash or whatever, but I never depreciate anything, and I take it home and tear around the hills or whatever. How do you...how can you police that, because I mean they're doing it and that's probably the reason we haven't been able to do anything about it, because how do you get away from it? [LB163]

SENATOR FISCHER: I think you could police it somewhat when you have the...when you have to have the certificate of title. In the bill it states that when you apply for the certificate of title, you have to have that accompanied by a certificate that states that the sales or use tax has been paid. So when you have your certificate of title, you go to the courthouse, you have to have your other certificate. Maybe not in the case of when you depreciate it. But you'd have to have that other certificate saying from the dealer, from the person you bought the ATV from that the sales tax was paid. [LB163]

SENATOR LOUDEN: In other words, you got to have a certificate of title on all these...on any of these? [LB163]

SENATOR FISCHER: Well, hopefully not all of ours. [LB163]

SENATOR LOUDEN: But I mean these that you see running around. I mean, who checks that? I can understand like on a car, you know, you don't get your license plate unless you show all that. But with these, unless there's something obvious, how do you tell whether or not that thing has a title on it? [LB163]

SENATOR FISCHER: Well, you'd have your title that you have to take to the courthouse, whether it's for personal property or not, wouldn't you? I assume that you take your certificate of title down. [LB163]

SENATOR LOUDEN: Well, if you, yeah, but if you pay...that's if it shows up...but I mean, to find out whether you've done it because it will show up on my depreciation schedule. But if some of these people that don't...that aren't in a business and they don't have any depreciation schedule, and I know what you're doing and I agree that there's a whole lot of bucks slipping by here. But I never quite understood how we can police that? I mean, the honest people will do it and they probably already do it, those that aren't, don't. And I was wondering if that law...if this went far enough to take care of that problem, I guess, is my...more my question. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR FISCHER: Perhaps some of the people coming after me can explain that a little better than I have. But I would say that as you all know I'm always looking for ways to get more revenue into this state to cover expenses that we have coming up. [LB163]

SENATOR LOUDEN: I agree. If we're entitled to it, we should have it. Thank you. [LB163]

SENATOR FISCHER: Thank you. [LB163]

SENATOR STUTHMAN: Thank you, Senator Louden. Any other questions from the committee? I will wait and ask a question later. Thank you, Senator Fischer. Can I see a show of hands of how many people are going to testify on this, on either proponent, opponent, or neutral? I see, one, two, three, four. Okay. We will have the proponent testimony, please. [LB163]

ROBERT KAY: Good afternoon again. My name is Robert Kay, K-a-y, and I'm the president of Star City Motor Sports on the north side of Lincoln here. I've got a number of issues I'd like to bring up regarding this bill and perhaps I could start with the last piece of my notes, and that is to address Senator Louden's question on how do you enforce or police such a thing. This bill isn't going to make everything in the world right, but it's going to be a step in the correct direction, I believe. Right now there's a lot of confusion with DMV. If you go down to DMV in Lincoln, up until recently, depending on the clerk that you were assigned to, you were told you did or did not need a title for a dirt bike or an ATV. They have now realized what the law actually says and they are applying it consistently. But every county in the state has the same problem. I would like to see some more consistency in how the law is interpreted and understood by all the county clerk people. My belief is that if people figure out that just like their car or their pickup truck they have to have a title to buy or sell or to finance, that by itself will cause most people to do the thing correctly, get their title and therefore pay their sales tax. It's inconceivable that a person would buy or sell a car today and not have a title involved in the process; it just wouldn't even make sense to a person. We need to have that same culture, or that same attitude for off-road vehicles that they have to have a title, and this is one step in that direction. The reason this bill was brought up, I'm part of the blame, I suppose, I asked for this. Right now our dealership is losing anywhere from 100 to 200 sales a year to people who will cross over into Iowa or Kansas or some other place and buy their four-wheeler or their dirt bike and dodge the sales tax. And some people know that they're supposed to come back and contact the Department of Revenue and pay, some people don't know. I can guarantee you that nobody is doing it, nobody is going to make the trip to Council Bluffs, buy their dirt bike, and come back here and then go, oh, I bought this thing, I owe you the sales tax. This is somewhere between \$600,000 and \$1.2 million in lost sales revenue for our single dealership. The sales tax on that to the state and the city is going to be \$40,000 to \$75,000, \$85,000 just from our one

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

Transportation and Telecommunications Committee  
January 29, 2007

---

dealership. It also means that we have less employees because we have less sales, we have less income as a dealership, so we pay less income taxes to the state. There's a lot of taxes and a lot of employment dollars that are being lost because these people are going across state lines and dodging the sales tax. It's unfair to the people in the state of Nebraska who are currently doing things properly and paying the tax at the dealership. It's unfair to the dealers in Nebraska that are doing the right thing and charging the sales tax as we are, in our store, 7 percent uncompetitive if we price match, because we charge sales tax and the other dealer does not. It's also costing the state a lot of revenues. I'd like to point out, as Senator Fischer did, this does not add any new taxes. People right now are required to pay the taxes. They have just found a convenient loophole to avoid paying the taxes. A lot of the people in this community, people who ride dirt bikes and ATVs, especially people who race them, they're together all the time. They go to the races every weekend, they go to each others houses during the week and they...it's their hobby, it's their passion. The minute one of them discovers a way to save some money it becomes common knowledge. And so if one guy figures out that he can go to an Internet company some place and their tires are cheaper, all of a sudden they're all doing that. And it's the exact same principle holds true with the sales taxes. The minute one guy figured it out, they all knew it. It was like a cancer that spread through all these people. It's just costing everybody a lot of money. And in the past we've talked about having some sort of a registration, an OHV sticker of some sort, like many of the surrounding states have. I remember last time we brought that idea up a lady testified that, boy, her family would be unable to participate in the sport if that happened, they were going to pay \$10 for a sticker and they already have a motor home and a trailer and six ATVs, and they've spent hundreds of thousands of dollars on all this equipment, but 50 bucks a year for a sticker, that's going to put them out of business, and they're already buying stickers in Colorado for \$25 apiece. Obviously, she didn't take time to come down here to testify against \$10, she came down here because she was buying, I'm assuming, I don't know the lady personally, I shouldn't, I guess, put words in her mouth, but the assumption I had was that she was buying them somewhere else, not paying the sales taxes, and she was coming down here because it was going to cost her a lot of money in sales tax that she knew she owed, but up until now she'd found a convenient way to dodge. [LB163]

SENATOR STUTHMAN: Okay, thank you. Are there any questions from the committee?  
Senator Schimek. [LB163]

SENATOR SCHIMEK: Mr. Kay, I want to make sure that I heard you correctly. Did you say that you have \$600,000 to \$1.2 million in sales tax that you collect on... [LB163]

ROBERT KAY: No, in gross sales. [LB163]

SENATOR SCHIMEK: In sales. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

ROBERT KAY: Revenue, yeah. These machines cost \$5,000, \$6,000, \$7,000, sometimes \$8,000 each. [LB163]

SENATOR SCHIMEK: Okay. [LB163]

ROBERT KAY: And I feel we are losing...if you talk to my sales staff, every single day we lose a sale because of it. Cut their numbers in half, 100, 200 units a year. [LB163]

SENATOR SCHIMEK: Well, the reason I'm asking is because I'm looking at the fiscal note that was prepared by our Fiscal Office. [LB163]

ROBERT KAY: Okay. [LB163]

SENATOR SCHIMEK: And actually they asked the agency for input on it, and the agency pretty much says that the cost for the department to provide the forms for the certificates and any increase in sales and use taxes paid pursuant to the new requirements will be minimal. [LB163]

ROBERT KAY: Well, I've got to think that the cost on a single piece of paper versus the sales tax on an \$8,000 unit would be dramatically different. [LB163]

SENATOR SCHIMEK: But we don't have any way of knowing how many of those vehicles are sold out of state, do we? I mean... [LB163]

ROBERT KAY: Sold from other states into Nebraska? [LB163]

SENATOR SCHIMEK: Right. [LB163]

ROBERT KAY: I've tried to come up with that figure, and I've spoken with the manufacturer's reps. I don't have a good way to come up with the number. I'd be...a total number. [LB163]

SENATOR SCHIMEK: But you... [LB163]

ROBERT KAY: I can say from my dealership, in particular, we're losing at least 100 sales a year, at least. We sell in the neighborhood of 250 off-road motorcycles and probably double that in ATVs in a year. [LB163]

SENATOR SCHIMEK: So how much in sales tax are you guessing that would be then? [LB163]

ROBERT KAY: Sales tax for our dealership on those things would be probably, based on \$5 million a year in sales, 7 percent of \$5 million is \$350,000 from our store. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR SCHIMEK: And I'm assuming that there are a number of these sales outlets throughout the state. Are you one of the bigger ones or... [LB163]

ROBERT KAY: There are about...near as I can tell, about 50 franchised motorcycle dealers in Nebraska. I have no idea how many other nonfranchised stores there are. There are two or three right here in Lincoln. And then you have the fly-by-night guy, the guy who shows up with a van and a trailer on an empty street corner someplace he sells these little Chinese knockoff ATVs for \$400 to \$1,000; he's there for two or three days, over a weekend, he sells what he has and he's disappeared. And that's almost a whole separate can of worms. Yeah, there's a sales tax issue, there's also safety issues, there's follow-up parts and service availability which does not exist for those things. ATVs are a potentially dangerous item. And the CPSC, Consumer Product Safety Commission, back 20 years ago, banned, with the agreement of the industry, they agreed to get rid of three-wheelers because of safety issues and replace them with four-wheeler ATVs. And then also we have very specific age requirements. I can't sell, if you come in with a nine-year-old child, I can't sell you a large machine, even if he may be a great big kid. These fly-by-night people, who aren't charging tax and don't obey any of the rules that we have to obey, they'll sell you anything, they don't care. [LB163]

SENATOR SCHIMEK: So it's not incorrect to say that you could estimate it's millions of dollars that the state of Nebraska may be losing? Would that be incorrect? [LB163]

ROBERT KAY: Boy, I would think so. If it's...say it's \$75,000 from our one store, and we're the largest dealership, I don't want to mislead you, we're the largest dealership in Nebraska. But even the smallest guys it may be \$10,000, \$15,000. Average it out at \$40,000... [LB163]

SENATOR SCHIMEK: So maybe a half a... [LB163]

ROBERT KAY: ...a dealer maybe, times 50 dealers, that's a couple million dollars; that's a lot more than the paperwork should cost, I would think. [LB163]

SENATOR SCHIMEK: Thank you very much. [LB163]

ROBERT KAY: Thank you. [LB163]

SENATOR STUTHMAN: Thank you. Any other questions from the committee? Thank you, Mr. Kay. [LB163]

ROBERT KAY: Thank you. [LB163]

SENATOR STUTHMAN: Any other proponents? Welcome. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

LOY TODD: Thank you, Senator Stuthman, members of the committee. My name is Loy Todd, that's L-o-y T-o-d-d, I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association, testifying in support of LB163. I will not be repetitive. I would point out to the committee that current Nebraska law does require a title on these ATVs to be obtained from the state. I don't remember the cut-off date, but there is a date which initiated the requirement that you get a title. And so there is a...I'm certainly not going to pretend that everybody is doing it. And if you're going to go buy one and keep it on your property and wear it out and throw it away, you know, maybe nobody is going to get a title. But at the point where you go to trade it in to one of the dealers, or do something, or go to convey it you will probably run into a situation where you've got a problem and you have to go get a title, eventually. So this bill was introduced, and thank you, Senator Fischer, for doing it. Basically, we're going to try and walk before we try to cure all the problems. Most of the calls I've gotten about this bill are people saying, well, you got to do this, too. You know, everybody...and we're trying not to make perfect the enemy...pretty good. So while this doesn't solve every problem, we think it's a start. And we'd like to see this bill advanced for that purpose. I would point out one thing I should have caught in the initial draft of this, looking through all the definitions, I think we have to add mini bike to the type of vehicle that we're talking about here because Nebraska law does define these off-road motorcycles as mini bikes, to distinguish them from motorcycles, which require the registration and all the other things. So I would suggest that to the committee. And I will furnish to the committee counsel very shortly the language necessary to add mini bikes to that. With that, I would answer any questions you might have. [LB163]

SENATOR STUTHMAN: Thank you. Are there any questions from the committee? Loy, currently we have, when you buy an all-terrain vehicle you make the purchase, they fill you out a certificate of title, you pay the tax on, or in my case, you know, you can not pay the tax and exempt from going on the depreciation schedule. Then that tax is sent in by the dealer, right? [LB163]

LOY TODD: That's correct. [LB163]

SENATOR STUTHMAN: To the state of Nebraska? [LB163]

LOY TODD: In part, Senator. The one thing that I would clarify is that you would...on a new ATV you would have an MSO or the birth certificate for one. So you would fill out an application for title. The title would actually be issued by the state. But you're correct in that the dealership would collect the sales tax. But the title documents would come from the state. But there would be no showing of the payment of that sales tax or no need to demonstrate that. [LB163]

SENATOR STUTHMAN: And currently there is no need or no reason to go to the county

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

Transportation and Telecommunications Committee  
January 29, 2007

---

assessor or the treasurer, because there is no title, there's no licensing or anything for them, correct? [LB163]

LOY TODD: Well, you would go to the courthouse and you would go to the clerk's office to get that title. You would need a title under current law. I know people don't do it, but under current law you're supposed to. Previously, you didn't need to. There is a cutoff date. You didn't used to have, it was optional, and it's still optional on the older ATVs. But currently, under Nebraska law, you are supposed to go get a title. [LB163]

SENATOR STUTHMAN: And...but when you transfer them, a used one sold on a street corner by an individual may never get a sales tax charged to it, possibly. [LB163]

LOY TODD: It's highly likely that you're not going to pay anybody sales tax. They probably don't even have a sales tax permit. But when you go to convey it now, you're supposed to convey it on that certificate of title. So that if you sold your used one to me, I should, if I'm smart, I'll ask you for the certificate of title, and also if it needs financed the lender is going to require a title at this point, no matter whether it's exempt or not, they're going to still want you to have a title so they can record their lien, if they need to do so. [LB163]

SENATOR STUTHMAN: Okay, thank you. Any other questions from the committee? Seeing none, thank you, Mr. Todd. [LB163]

LOY TODD: Thank you. [LB163]

SENATOR STUTHMAN: Any other testifiers in the proponent? Welcome, Tim. [LB163]

TIM KEIGHER: Good afternoon, senators and members of the committee. My name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today as a registered lobbyist for the Iowa/Nebraska Equipment Dealers Association in favor of LB163. And we would also like to thank Senator Fischer for introducing this bill. I'm not going to reiterate any of the other things that were already said by the previous testifiers. But I think the biggest thing is what Mr. Kay said, that our members are losing sales to surrounding states and other dealers. So with that, I'd try to...be happy to answer any questions. [LB163]

SENATOR STUTHMAN: Thank you, Mr. Keigher. Any questions from the committee? Senator Louden. [LB163]

SENATOR LOUDEN: Yeah, Tim, when they talk about this shady character on the street corner selling these things, well if the dealers are collecting the sales tax, then he has to have a license to sell that, doesn't he? Or if not, he's in violation of something? [LB163]



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

Transportation and Telecommunications Committee  
January 29, 2007

---

TIM KEIGHER: Correct, but what the association has told me is happening is individuals are going over to Iowa, purchasing the vehicle, telling them it's for ag use when it is not, and then bringing it back over here and never titling it, and thus never paying the tax. And like you alluded to, if they never sell it or trade it in, they may never title it. [LB163]

SENATOR LOUDEN: Right, I... [LB163]

TIM KEIGHER: And thus never have to prove they had the sales tax. [LB163]

SENATOR LOUDEN: I understand that part. But as far as somebody selling them in Nebraska, if they are the ones that collect sales tax, then they would have to have a license, a sales tax license or number or something like that, or they wouldn't be allowed to sell anything. Is that correct? [LB163]

TIM KEIGHER: I believe that is true, yes. [LB163]

SENATOR LOUDEN: Yeah, I mean your car dealers, your sales tax, you have to have a number to sell parts or whatever if you're selling in Nebraska. Yeah, that's what I don't...yeah, I understand when you get down east here why you're too close to the Missouri River, I guess, to make people honest. Thank you. [LB163]

SENATOR STUTHMAN: Any other questions? I have one. Mr. Keigher, do the ATVs all have a vehicle number on them or an identification number on them? [LB163]

TIM KEIGHER: I'm not sure of that. I would assume they have some VIN number on them, yes. [LB163]

SENATOR STUTHMAN: Okay. But what I'm getting to is, you know, when there are ATVs that are stolen and, you know, they don't have a license plate or anything like that and they come up at the bottom of a lake or something, they pull it up, you know. If you didn't have that certificate of title, you would realistically not know if that was yours. Yes, you think it was yours, but you couldn't prove it as far as the law enforcement is, you know, to... [LB163]

TIM KEIGHER: Unless you could go back to the dealer and they would have a record of which VIN number you had. [LB163]

SENATOR STUTHMAN: Yeah. Okay, thank you. [LB163]

TIM KEIGHER: Um-hum. [LB163]

SENATOR STUTHMAN: Any other questions? Thank you for your testimony. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

TIM KEIGHER: Thank you. [LB163]

SENATOR STUTHMAN: Any other proponents? Welcome. [LB163]

JACK CHELOHA: (Exhibit 1) Thank you. Good afternoon, senators. For the record, my name is Jack Cheloha. I'm the registered lobbyist for the city of Omaha. The last name is spelled C-h-e-l-o-h-a. I'd like to testify in support of LB163 today. Normally, a story like this, I would tell it in the Revenue Committee, but I get an opportunity today to come in and say anything we can do to help close some loopholes, if you will, on sales tax, we're in favor of that. Not only does it help the state with their percent, but local options sales tax if it's sold within the city limits would benefit the city of Omaha. And we do have the full 1.5 cent local option that our voters approved. And most of it was sold to the voters, if you will, as a way of keeping our property tax down. Right now, our sales tax in Omaha funds roughly about 48 percent of our General Fund budget. So any of these items relative to the sales tax are important to us. So we support that. Finally, I wanted to make a point on this and I wanted to say I've got a resolution to hand you that we passed in advance of the session starting. And this relates more so to any motor vehicle that we would, like to collect the sales tax at the time that vehicles are titled. I understand, you know, from listening to the discussion here that ATVs aren't considered motor vehicles. However, maybe we could take a step back and look at the big picture. These items, you know, cost \$5,000 to \$8,000, maybe it's to the point where they need to be redefined. I know in the city of Omaha there are a number of people that buy these for recreational purposes, whether they have cabins outside the city limits, in Fremont, or down south at, you know, Pawnee Lake or other things like that. So that's just something to think about. I don't have any specific amendments drafted. I don't have anything, you know, to say how you would do that. Yet at the same time, I know there would be concerns in the rural community in terms of registering these as a true motor vehicle, because it brings into effect other, you know, conditions and revenue sources, if you will. But I offer this resolution to you because we, in the past Senator Redfield put in a bill that would state essentially the same thing on motor vehicles, that you would have to present a certificate of sales tax being paid before you could get your title issued on a motor vehicle. And that also closed a loophole. Our Douglas County treasurer used to come in and testify, but she would tell us, from the city of Omaha, that we were losing revenues on sales tax because people would do what they consider title jumping, and they would sell cars to one another and pass the title. And you could go and get your title reissued by the court or by the county treasurer without ever having to pay that sales tax. And so I didn't see any other bill introduced that specifically dealt with that, so I thought, well, if it's a good idea for ATVs, let's look at it for motor vehicles. I think it's a good idea for those as well. And that way you can collect some of that other revenue that you may be missing out that the schools benefit from as well as the counties. So with that, I'll close and try and answer any questions. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

SENATOR STUTHMAN: Thank you, Mr. Cheloha. Any questions from the committee? Senator Louden. [LB163]

SENATOR LOUDEN: You're the fellow I need to ask this question. Does anybody in Omaha...what does Iowa do about ATVs? I mean do they have a sales tax over there, or what do they do? [LB163]

JACK CHELOHA: Boy, that's a good question, Senator. I can't answer it. I'm not certain on that. I imagine they do have, you know, broad sales tax on vehicles and ATVs, etcetera, but I can't tell you for sure. [LB163]

SENATOR LOUDEN: I guess, my question is, are people from Iowa coming over to Nebraska, buying them, taking them back over there if they can get a better price? Do they have to pay a sales tax on it, or how is it handled on the other side of the river? [LB163]

JACK CHELOHA: Boy, I don't know. I haven't run into that. I just can't answer your question. I apologize. [LB163]

SENATOR LOUDEN: Okay. [LB163]

JACK CHELOHA: But maybe I can ask the dealer here, and maybe he has some information relative to that. But we'll try and get it to you afterwards. [LB163]

SENATOR LOUDEN: Okay, thank you. [LB163]

SENATOR STUTHMAN: Thank you. Any other questions from the committee? Seeing none... [LB163]

JACK CHELOHA: Thank you. [LB163]

SENATOR STUTHMAN: ...that you for your testimony. Any other proponents for this bill? [LB163]

BOB HALLSTROM: Senator Stuthman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB163. We appreciate the fact that the bill is drafted as it is in terms of providing the back end protection for lenders. Lenders, under state law and federal bankruptcy provisions, are required to perfect their interest in titled vehicles, motor vehicles or otherwise, within 30 days of the time that it's extended its financing and given value. As a result, it's very important for the clerks to have the ability to issue the title, to duly note the lien on the title, and to deliver it to the lienholder or financial institution. So we appreciate the bill introduced in the shape that it is. Be happy

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

Transportation and Telecommunications Committee  
January 29, 2007

---

to address any questions that you might have. [LB163]

SENATOR STUTHMAN: Thank you, Mr. Hallstrom. Any questions from the committee? Seeing none... [LB163]

BOB HALLSTROM: Thank you, Senator. [LB163]

SENATOR STUTHMAN: ...thank you. Any other proponents for this bill? Any opponents? Anyone that wants to testify in the neutral capacity? Seeing none, Senator Fischer, would you like to close? [LB163]

SENATOR FISCHER: Senator Stuthman and members of the Transportation and Telecommunications Committee, in my closing I'd like to say that for the most part we've heard about the importance of closing this loophole, so to speak, so that the state and municipalities can realize their fair share of sales tax. But there's another point here, and Mr. May (sic) touched on that in his testimony, and that's protecting the consumer. And when you think about this bill and what we're trying to do is, yes, encourage people to buy their ATVs and their mini bikes and things in this state and pay their sales tax, but shouldn't we also be encouraging them to do so because it's going to offer them protection when they deal with a reputable dealer. And that dealer is going to have that certificate for the sales tax and they are going to collect it. And down the road, when the consumer needs repairs, service on that ATV or mini bike or whatever, they'll be able to get that from a dealer here in Nebraska who's equipped to offer those services. So that's a point that I was really happy that Mr. May (sic) brought out and I think we need to keep that in mind when we discuss this bill, too. With that, I will close. Thank you, Senator Stuthman. [LB163]

SENATOR STUTHMAN: Thank you, Senator Fischer. Are there any questions for Senator Fischer? I have one. Senator Fischer, what you're trying to do is create the sales certificate, but you're really not going for licensing these vehicles at the present time? [LB163]

SENATOR FISCHER: Not in this bill, no. [LB163]

SENATOR STUTHMAN: What is it to stop a person, like myself or Senator Loudon, to buy it, take it home, leave it on the farm and never get a title to it and it will just stay there to be utilized on the farm? Will you ever...there's nothing that really forces us to get that certificate changed over. Do you feel that this could happen? [LB163]

SENATOR FISCHER: I think that that happens now, and it would continue to happen under this bill. I guess, I'm not to the point that I would want to require ATVs to be considered motor vehicles, although of course that would bring more revenue into the Highway Trust Fund, which we all dearly love. And I don't think we're ready for that step,

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

Transportation and Telecommunications Committee  
January 29, 2007

---

but possibly that's something we could discuss in Exec Session of the committee.  
[LB163]

SENATOR STUTHMAN: Okay. I also think, you know, making them be a licensed vehicle, you know, that opens up another can of worms, you know, allowing them on the streets or anywhere then as a licensed motor vehicle. So... [LB163]

SENATOR FISCHER: That's true. Then we would probably have, Senator Stuthman, you and I and Senator Louden a lot more discussion on our three previous bills that we had before the committee. [LB163]

SENATOR STUTHMAN: That's true. Thank you. One more question. Senator Louden.  
[LB163]

SENATOR LOUDEN: Yes. I want, you know, for the record, that I'm paying taxes, personal property taxes on my ATVs, I'm not taking them out there and wearing them out and throwing them away. (Laughter) I just got my personal property tax statement the other day, so I know what I'm paying on it. So... [LB163]

SENATOR FISCHER: And we all thank you for that. And I certainly didn't want to imply that you weren't, Senator. [LB163]

SENATOR LOUDEN: Okay, thank you. [LB163]

SENATOR STUTHMAN: Thank you. Any other questions for Senator Fischer? If not, thank you. [LB163]

SENATOR FISCHER: Thank you. [LB163]

SENATOR STUTHMAN: And that closes the hearing. I will turn it back over to Senator Fischer. [LB163]

SENATOR FISCHER: Thank you, Senator Stuthman. We've concluded the hearing on the four bills before us today and the hearing is closed. [LB163]

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

Transportation and Telecommunications Committee  
January 29, 2007

---

Disposition of Bills:

LB70 - Indefinitely postponed.

LB288 - Held in committee.

LB307 - Advanced to General File, as amended.

LB163 - Held in committee.

---

Chairperson

---

Committee Clerk