

Transcript Prepared By the Clerk of the Legislature
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Transportation and Telecommunications Committee
February 11, 2008

[LB712 LB780 LB874 LB1051 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 11, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1051, LB874, LB712 and LB780 and gubernatorial appointments. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; LeRoy Louden; Scott Lautenbaugh; Dwite Pedersen; and DiAnna Schimek. Senators absent: None. []

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer, I'm the Senator from District 43, Valentine, and I'm chair of the committee. At this time I'd like to introduce our committee members who are present. On my far right is our committee vice chair, Senator Arnie Stuthman, and he's from Platte Center; next to Senator Stuthman is Senator Ray Aguilar from Grand Island; to my immediate right is our legal counsel, Mr. Dustin Vaughan; to my immediate left is our committee clerk, Mrs. Pauline Bulgrin; to her left is Senator Scott Lautenbaugh, he is from Omaha; and on the far left is Senator Carol Hudkins and she is from Malcolm. You will see that we will have Senators coming and going during this hearing and please do not take offense at that. We still have bills being introduced in other committees so Senators do come and go as their bills come up in other committee hearings. Our pages today are Matt Pederson from, oh, we don't have Matt. Will he be coming? Okay. Matt Pederson from North Platte and Rhianna Needham from Bellevue. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep this hearing moving. Please complete the yellow sign-in sheet at the on-deck table which is back there and have that ready to hand in when you testify. A computerized transcription program is being used so it is very important that the directions on the sign-in sheet are followed. You will need to hand the sign-in sheet to our committee clerk, Mrs. Bulgrin, 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 in 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 that are here to testify on the bill we may have to place some time limits on that bill in order for everyone to be heard. If you do not want to testify but you want to voice your support or your opposition to a bill you can indicate so at the on-deck table on the sheet provided. This will be part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete the yellow sign-in sheet and actually testify even if you just state your name and your position on the bill. If you do not choose to testify you may submit comments in writing and have them read into the official record. I would ask that you turn off all your cell phones. We do not allow cell phones in this committee so please turn them off, and that means not on mute and not text messaging. We've also been joined by Senator LeRoy Louden and Senator Louden is from Ellsworth. So at this

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time I will open our confirmation hearing and our first confirmation hearing is on the Nebraska Railway Council. Is Gary Rasmussen here, please? Would you like to step forward? Good afternoon. [CONFIRMATION]

GARY RASMUSSEN: Good afternoon. [CONFIRMATION]

SENATOR FISCHER: And welcome. [CONFIRMATION]

GARY RASMUSSEN: Thank you. [CONFIRMATION]

SENATOR FISCHER: Could you tell us just a little bit about yourself and your interest in being a member of this board? [CONFIRMATION]

GARY RASMUSSEN: (Exhibit 1) I'm Gary Rasmussen from Elba, Nebraska, and I have... [CONFIRMATION]

SENATOR FISCHER: I need you to spell your last name. [CONFIRMATION]

GARY RASMUSSEN: R-a-s-m-u-s-s-e-n. [CONFIRMATION]

SENATOR FISCHER: Thank you. [CONFIRMATION]

GARY RASMUSSEN: Gary, G-a-r-y. I have been on this Railway Council for several years. I believe this would be the fourth time I've been up for appointment. I enjoy being on the committee, enjoy the business that goes on there and I appreciate being represented again or, I can't say the word... [CONFIRMATION]

SENATOR FISCHER: Be confirmed. [CONFIRMATION]

GARY RASMUSSEN: Be confirmed, yeah. [CONFIRMATION]

SENATOR FISCHER: Okay. Thank you very much. Are there questions by the committee? I see you're a farmer, feeder from... [CONFIRMATION]

GARY RASMUSSEN: That's correct [CONFIRMATION]

SENATOR FISCHER: Cotes... [CONFIRMATION]

GARY RASMUSSEN: Elba. [CONFIRMATION]

SENATOR FISCHER: Oh, Elba, from Elba, even though your address is Cotesfield, is that right? [CONFIRMATION]

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GARY RASMUSSEN: Well, Elba and Cotesfield are within six miles of each other. They both have the same zip code, 68835. A few years ago they put them together.
[CONFIRMATION]

SENATOR FISCHER: Okay. What does, what does the Railway Council do?
[CONFIRMATION]

GARY RASMUSSEN: The Railway Council was set up, I believe, back in the '80s with money appropriated by the federal government and the state government. Somewhere around \$3 million was appropriated. The money was to be used to, to be loaned to short line railroads to repair their track or whatever they needed. For several years the stipulation was, that they had to have 125 percent equity and so for several years we kind of fought that because nobody wanted to borrow any money, or nobody wanted to enter into an agreement and give 125 percent equity. But just in the past year, or two years, the Legislature changed that requirement. I can't...there's some gentlemen in the back of the room could answer that question but the equity was reduced and we did get to a point where we grant, made three grants. One to the Northeastern Railroad, I do have this written down. [CONFIRMATION]

SENATOR FISCHER: Come prepared, right? (Laugh) [CONFIRMATION]

GARY RASMUSSEN: I did go down to the office this morning because I thought somebody might ask some questions but we did offer a grant to the Nebraska Northeast Railroad for a rehab project between Osmond and Dakota City in the amount of \$1.2 million. That railroad for some reason turned it down. I don't think they wanted to get tied into all the stipulations. The next grant was to the Nebraska Central Railroad and they want to build what's called a classification yard at Oconee which is close to Columbus, and it kind of ties into the big ethanol plant at ADM. And a lot of the ethanol is coming down from Albion, I believe, on that track and there's a lot of other rail traffic in there. That grant was for \$1.3 million and they have agreed to go ahead with this project. And I was told this morning that within a week to ten days, that project should be completed or the paperwork should be completed, that they can go ahead and start on that. The third grant that we approved was for the Nebraska, Kansas, Colorado RailNet. That was for work on their track, their ballast and rails between Madrid and Venango into Gerald Gentleman Station and that project is under way and nearly completed. And that grant was for \$700,000. So all the years I've been on there, this is where we finally got to. They had a loan before that to Nebraska Central and I believe that is, I don't think it's quite all paid off yet, but it's close. And I don't know what that project was but that project kind of started before I got on. And I do represent the general public. There is, I believe there's seven people on our board, on our council. John Craig, Department of Roads, chairs it. [CONFIRMATION]

SENATOR FISCHER: Okay. Thank you. Other questions? Senator Stuthman.

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[CONFIRMATION]

SENATOR STUTHMAN: Thank you, Senator Fischer. Mr. Rasmussen, thank you for serving on this board. I think it's very important for commissioners of counties to serve on a board like this. Do you see that there's a real future for short line rail?

[CONFIRMATION]

GARY RASMUSSEN: I live in Howard County, Nebraska. We have, north of us at Ord, we have an ethanol plant. I believe it's a 40 million gallon plant and the ethanol is all coming down the rail. There's also a major grain distributor up there, Cargill, has a big elevator at Ord. A lot of corn comes down that track. That track's very important. I think it's very important to the Department of Roads because if anything would happen to that track, obviously all the ethanol and all the corn is going to have to come down the highway rather than down the track. The track has been there a long time, if you know what I mean. The trestles been there a long time. There's some trestles they go very slow over. They slow down. [CONFIRMATION]

SENATOR STUTHMAN: Gary, would you feel that there's going to be additional emphasis in the future for short line rail utilization of that as compared to the highways, especially with the expansion of ethanol and the fact that we don't have the monies to repair the roads like we used to and we're going to have to be sending more stuff down the rail. [CONFIRMATION]

GARY RASMUSSEN: It's very, very important. I happen to be running for the Legislature and it's one of the things I'm talking about is infrastructure and being able to move these commodities. There's a lot of heavy truck traffic on them highways now with corn in and the wet distillers coming out. And around these ethanol plants, there is going to be a lot of traffic. And at the county level, I sit on the county board, you know, we're working to make sure we can at least keep some good, you know, well built roads to carry the heavy traffic of the trucks. [CONFIRMATION]

SENATOR STUTHMAN: Thank you. [CONFIRMATION]

GARY RASMUSSEN: I'm just concerned there's a lot of these short line railroads in the state. Now there's one that goes to Albion that I'm very familiar with. About the same kind of deal, you know, a lot of ethanol coming down there. [CONFIRMATION]

SENATOR STUTHMAN: Okay. Thank you very much. [CONFIRMATION]

GARY RASMUSSEN: Yeah, thank you. [CONFIRMATION]

SENATOR FISCHER: Other questions? Senator Loudon. I would like to mention at this time that we have been joined by Senator Pedersen from Elkhorn. Senator Loudon.

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[CONFIRMATION]

SENATOR LOUDEN: Where do you get your grant money from? [CONFIRMATION]

GARY RASMUSSEN: The money appeared before I got on the council. I think it was a 50-50 deal between the federal government and the state of Nebraska and I think it was \$3 million to start with. I can't say for sure. A couple gentlemen in the back can you from the State of Nebraska Department of Roads. That's where it came from.

[CONFIRMATION]

SENATOR LOUDEN: But at the present time you don't have a fund that is...

[CONFIRMATION]

GARY RASMUSSEN: When, if all this money would have been used, we would have depleted it down pretty low. We were trying to get it, trying to get it used by these railroads. Now since the Nebraska Northeastern Railroad didn't use theirs, I think we put a date of February 15 on for anybody, for them if they wanted it and if they do turn it down, then after that date we'll meet and probably readvertise that we have this money available to another short line railroad if they want to use it. [CONFIRMATION]

SENATOR LOUDEN: Now you mentioned there was a \$700,000 grant out there around that Bill Gentleman, or Gerald Gentleman. Which railroad got that, is that a short line railroad that got that? [CONFIRMATION]

GARY RASMUSSEN: Nebraska, Kansas, Colorado RailNet, does that sound right? [CONFIRMATION]

SENATOR LOUDEN: Do they serve that Gentleman plant? [CONFIRMATION]

GARY RASMUSSEN: I believe they do, yes. Maybe not the whole...they pick the coal up at a certain point and take it on in, I think is what happens there. I'm not sure, but... [CONFIRMATION]

SENATOR LOUDEN: Do they take it off the Burlington Northern then and take it in or what? [CONFIRMATION]

GARY RASMUSSEN: Yes, yes, They take it off Burlington to the best of my knowledge, yes. Somewhere out there they take it on Burlington. [CONFIRMATION]

SENATOR LOUDEN: Because I thought they was two different railroads that served that, Union Pacific on the north and Burlington Northern on the south but... [CONFIRMATION]

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GARY RASMUSSEN: And that...I believe you're right there. I believe that's true but this one comes from the Burlington. [CONFIRMATION]

SENATOR LOUDEN: They're the short, just the short line to deliver it into there. [CONFIRMATION]

GARY RASMUSSEN: Yes, yes. [CONFIRMATION]

SENATOR LOUDEN: Okay. One other question. You work for the Union Pacific do you, or what? (Laughter) [CONFIRMATION]

GARY RASMUSSEN: I wish I did. (Laughter) No, I'm a farmer and cattle feeder. [CONFIRMATION]

SENATOR LOUDEN: Okay. I noticed on your resume here that's the reason I wondered. Okay, well, thank you, Mr. Rasmussen. [CONFIRMATION]

SENATOR FISCHER: Other questions? I would like to thank you, Mr. Rasmussen. I see that you have served on this council since 1994, so thank you for your service and thank you for being here today. [CONFIRMATION]

GARY RASMUSSEN: Thank you very much. [CONFIRMATION]

SENATOR FISCHER: (Exhibit 2) At this point I would ask anyone who wishes to speak in support of this nomination to step forward, please. Anyone who would like to speak in opposition? Anyone to speak in the neutral capacity? We do have a letter of support here from Mr. Larry Dix, the executive director of the Nebraska Association of County Officials and that will be included in the record. Our next nominee is Mr. John Rebensdorf. I believe he is not able to attend today, is that correct? [CONFIRMATION]

ELLIS TOMPKINS: Obviously, I'm not Mr. Rebensdorf, Senator. [CONFIRMATION]

SENATOR FISCHER: Okay. Good afternoon. [CONFIRMATION]

ELLIS TOMPKINS: (Exhibits 3 and 4) Good afternoon, Senator Fischer, members of the committee. My name is Ellis Tompkins, E-l-l-i-s T-o-m-p-k-i-n-s, I'm the rail and public transportation engineer with the Nebraska Department of Roads. My staff and myself acts as staff for the rail council. As you are aware, that Mr. Craig is a member of the rail council and is chairman of the council. Mr. Rebensdorf could not be here today, so I'm here to just represent him. He did send a letter to you and he said, that I view my work on the council as having several dimensions. First, to represent the railroads of the state of Nebraska and to assure that there is a strong and viable core of railroad network to serve the needs of the state. Second, is to assure that the limited resources of the

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council are used in such a way as to preserve and strengthen the core light density lines in the state which serve primarily the agricultural base of the state's economy. Finally, as a railway management member, I bring operating and economic knowledge of the railroad industry to the council's deliberations. Mr. Rebensdorf has been a member of the council for 20 years and I'm here to support his reappointment. [CONFIRMATION]

SENATOR FISCHER: Thank you, Mr. Tompkins. Are there any questions? Senator Louden. [CONFIRMATION]

SENATOR LOUDEN: Yeah, thank you for being here, Mr. Tompkins. Are you the one we work through for signal lights and that sort of thing on, for the Department of Roads? [CONFIRMATION]

ELLIS TOMPKINS: That's correct. [CONFIRMATION]

SENATOR LOUDEN: Okay. That's what I thought. I've never met you before. I think I talked to you over the phone a few times. [CONFIRMATION]

ELLIS TOMPKINS: Yes, we have. [CONFIRMATION]

SENATOR LOUDEN: On...we used to hear about the Railway Commission. Now is this, is different or is this changed over to it or did the public service commission take over the Railway Commission. [CONFIRMATION]

ELLIS TOMPKINS: No, this is not a part of the public service commission. This is a separate rail council that was set up by the Legislature, I don't remember the exact time frame. It was in the late '70s I believe. [CONFIRMATION]

SENATOR LOUDEN: Do...I'll ask you then. Where did you get your funding to? [CONFIRMATION]

ELLIS TOMPKINS: The funding came from a federal program that was to assist on light density rail lines. That was in the highway act in, I think it was the first highway act in 1990 or 1991, whenever it was right in there. And then it didn't continue so that money did not continue to be put into the rail council coffer, so to speak. So there's no way of replenishing any of that money right now. [CONFIRMATION]

SENATOR LOUDEN: Do you have any money in your council? [CONFIRMATION]

ELLIS TOMPKINS: Prior to those three grants that Mr. Rasmussen talked about, there was approximately \$3 million in the budget. As he said, two of the projects will use up about \$2.3 million of that and then the Nebraska Northeastern declined to participate because they were unhappy with some of the agreement language that the federal

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government required. So then there will still be around \$700,000 to still use.
[CONFIRMATION]

SENATOR LOUDEN: When you're out of money will you be out of business then or...
[CONFIRMATION]

ELLIS TOMPKINS: For all practical purposes, yes, the council will be because there's no new money coming into the budget. [CONFIRMATION]

SENATOR LOUDEN: Okay. You don't suppose since Mr. Rebensdorf is on the Union Pacific he could get the Union Pacific to spring for some bucks to help out or anything? (Laughter) [CONFIRMATION]

ELLIS TOMPKINS: I don't know. You would have to ask him that, sir. [CONFIRMATION]

SENATOR LOUDEN: I see. I was just wondering what, how long will that \$700,000 last? I mean, you could use that all up in one grant, couldn't you? [CONFIRMATION]

ELLIS TOMPKINS: And I would say that in all likelihood, the council will during the course of this next calendar year, will put out a new letter asking for potential projects and they'll probably get a project and use up the rest of that money, would be my guess. [CONFIRMATION]

SENATOR LOUDEN: Then will you guys disband or what do you plan on doing?
[CONFIRMATION]

ELLIS TOMPKINS: No, I have plenty of other work to do in our rail division besides doing this so. As far as the Department of Roads staff, that won't be a problem but what the rail council does is something that they'll have to discuss and decide what they're going to do. [CONFIRMATION]

SENATOR LOUDEN: That's what I mean, with the rail council. [CONFIRMATION]

ELLIS TOMPKINS: They did have some discussion about whether they should disband the council. That would take some legislative action since the council was set up by the Legislature, so I don't know what they're going to do. They've had some discussion about that. [CONFIRMATION]

SENATOR LOUDEN: Yeah, there's, you...there's no possibility of any federal grants or anything for the near future? [CONFIRMATION]

ELLIS TOMPKINS: I don't think that there's...I would say that that's a very, the likelihood of that is very low. [CONFIRMATION]

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SENATOR LOUDEN: Okay. Thank you. [CONFIRMATION]

ELLIS TOMPKINS: Okay. [CONFIRMATION]

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

ELLIS TOMPKINS: Thank you. [CONFIRMATION]

SENATOR FISCHER: (Exhibits 5 and 6) Are there other supporters for the nomination of John Rebensdorf? Anyone who wishes to speak in opposition? Anyone who wishes to speak in the neutral capacity? I see none. We will move on to Frank Landis and I believe Mr. Landis is unable to be here today. Was there anyone wishing to come forward and speak on Mr. Landis' behalf? I do have an e-mail that was sent to the committee from Mr. Landis stating that he would appreciate the favorable consideration by the members of the Transportation Committee of my reappointment to the Nebraska Railway Council. I've enjoyed my service on the council and take my responsibilities seriously. Over the many years I have been a member, I don't believe I've missed a single meeting. Sincerely, Frank Landis. Anyone wishing to come forward in support of the nomination? Anyone in opposition? Anyone in the neutral capacity? I see none. With that, I will close the confirmation hearing on the Nebraska Railway Council and open the confirmation hearing on the State Highway Commission. The first gentleman here today is Mr. Ronald Books. Good afternoon. Thank you for coming. [CONFIRMATION]

RONALD BOOKS: (Exhibit 7) Good afternoon, Chairman Fischer and committee members. My name is Ronald Books, B-o-o-k-s. I'm from North Platte, Nebraska. I am the district 6 highway commissioner and current chairman of highway commission and reappointed for a third term. Lifelong resident of Nebraska, well, that's not...close enough, not to, fifth grade so I've been around for quite some time. Out in the center part of the state or so and have served on this committee and have enjoyed it very much. I think particularly when you live out in our part of the state, highways, good highways are extremely important. Not that they're aren't to folks in the eastern part but they, perhaps a little different function for some of us, than for you all. And I think it's important as you all, I am sure aware, the highway commission is made up of eight members. One from each of the highway districts and are appointed for six-year term by the Governor. Basic purpose for the highway commission is to be a conduit for public input to the projects that are done by the Department of Roads. And we meet on a monthly basis here in Lincoln, with exception of one meeting where we meet out state. And I think from time to time we give our opinions to the Department of Roads, sometimes wanted, sometimes not (laugh) but we think it's an important part of the economy in Nebraska to have good roads. And I've, like I say, completed my first couple of years so I've been on for 12 years and just about through the training program (laugh)

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and ready to move to on. So are there any questions or... [CONFIRMATION]

SENATOR FISCHER: Thank you, Mr. Books. Are there any questions? Senator Stuthman. [CONFIRMATION]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you, Mr. Books, for serving on the highway commission. You stated in your remarks that you are a conduit between the public and the Department of Roads. How good of a conduit is this, does it have any influence, does the highway commission have any influence as far as which projects are to be completed, which projects are to be put on the front burner? Do you have any influence as a highway commissioners to the Department of Roads? [CONFIRMATION]

RONALD BOOKS: I say we do but I would say probably not on specific projects, although we do discuss obviously. But in the system that we have in place that's been in place as long as I've been there and then some, we do from a policy standpoint the things, you know, give our input in terms of that. Now as far as specific projects when there is a public hearing, and most major road projects have a public hearing out in the district, of course, when it's in District 6, I chair that hearing. And then we do a formal hearing, have a record and of course that comes back to the Department of Roads. Whenever there's a contentious item, almost always we'll give input. It comes from the public hearing so, like I say, I suspect that I would say, overall most of our influence has to do with citing policies in terms of how we set those priorities. Of course, as you all know too, with the money getting tighter and tighter, that get's harder and harder to do. [CONFIRMATION]

SENATOR STUTHMAN: Thank you. [CONFIRMATION]

RONALD BOOKS: You bet. [CONFIRMATION]

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

SENATOR LOUDEN: Yes, thank you for being here today, Mr. Books. When you, the highway commission, do you have any authority at all over what happens there or do they have an executive meeting in the morning and spoon-feed to you what you're supposed to do in the afternoon or how does that work? [CONFIRMATION]

RONALD BOOKS: Well, we are an advisory committee so we have no authority other than to advise the Governor. In most cases, like I say, with major projects we'll have public hearings during that process and, of course, you know, that's a four to five to six-year project even on short-term in most cases. And so most projects we're familiar with don't by the time they come, we'll have met in the communities where those projects are going to take place and so if, you know, if there are, like I say, if there are

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contentious items that come up, you know, usually we're going to have known about those because they'll come from a hearing or something like that, if that's...if I'm understanding your question. [CONFIRMATION]

SENATOR LOUDEN: Yeah, I guess I'll ask you another question then. Does that, do you get to make policy then for the Department of Roads? [CONFIRMATION]

RONALD BOOKS: I guess I would say we certainly have input on policy depending on which policies, in terms of how we spend the money and how the priorities are set, we certainly have input to that. They're, you know, they're not obligated to follow our recommendations but I certainly think we do have positive input to them. [CONFIRMATION]

SENATOR LOUDEN: And they usually agree with you when you set that policy on what part of the state you're going to construct roads in or anything like that? [CONFIRMATION]

RONALD BOOKS: Well, I think we usually, to my knowledge, we usually, you know, come to a consensus on that kind of. I'm sure there are individual things that from time to time that, you know, I'd rather have this done than something else but that's... [CONFIRMATION]

SENATOR LOUDEN: Well, since we are such a shortfall, shortfall of money or revenue, right now I think they came out they weren't going to do much work in the rural areas or the western part of the state. It was mostly going to be spend the resources to do this six-lane interstate, you know, between Lincoln or Omaha, or sometimes they tell us from clear to Minden or something like that, depending on what newspaper you read. How are you...what's your thinking on that? Do you think the state of Nebraska can still afford to do that? [CONFIRMATION]

RONALD BOOKS: Well, I think there are parts of it. I think the whole thing including, you know, has slowed down however. You know, there are parts of it that need to be completed because of the stages and as far as the six-lane, if that's specifically what you're talking about, I think the whole six-lane program has been put on, you know, has been slowed way down. And I guess I would not, I don't have the understanding that you, that at least I heard you say, about not spending money out west. I think we're, I think percentage wise we're all going to lose some funding. I think we, what we're saying or what I understand is, the priority is going to be maintenance and within a year or two, unless something magic happens, you know, we're going to be down to where, you know, the majority of our construction dollars are going to have to be spent on maintaining the current system. And in fact, to be able to do that, we've even lowered some of the standards we had, so. [CONFIRMATION]

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SENATOR LOUDEN: I just wondered because out in the district I represent there was some of those construction projects that got plumb taken off the board but yet then I go out here and I see where they're breaking ground on some of these \$25 million interchanges and I'm wondering, you know, if that's the best way to spend the money and if that's necessary, I guess. I was wondering what you as a commissioner was thinking on that. [CONFIRMATION]

RONALD BOOKS: Well, we have those discussions and have had for quite some time and like I say, I think we, I definitely think that whole project has slowed down. It's not stopped and probably won't partly just because of where it sits. The interstate, of course, is a little different too than the rest of the highways because of the federal funding but what I...I certainly understand the question and agree with you that's it's a valid question. Personally, I, you know, my personal opinion, I think the Department of Roads has done a pretty fair job of...in a tough situation. It's probably that I agree with all of them but we certainly have some good conversations and I think they're, you know, they're doing a pretty fair job under the circumstances at least. [CONFIRMATION]

SENATOR LOUDEN: Thank you. [CONFIRMATION]

SENATOR FISCHER: Other questions? Mr. Books, the purpose of the highway commission is just advisory to the Department of Roads, is that correct? [CONFIRMATION]

RONALD BOOKS: Actually to the Governor. [CONFIRMATION]

SENATOR FISCHER: To the Governor. [CONFIRMATION]

RONALD BOOKS: To the Governor, right. [CONFIRMATION]

SENATOR FISCHER: Through the director or do you give a report specifically to, directly to the Governor or do you work through... [CONFIRMATION]

RONALD BOOKS: I think the report goes directly to the Governor or what happens for example, we'll have a project and a particular point in the project we'll have a public hearing on it about design or about location, you know, where we're going to build the bypass around Hershey for example. [CONFIRMATION]

SENATOR FISCHER: Right. [CONFIRMATION]

RONALD BOOKS: At one point then we'll have a public hearing. Usually within a month or two after that public hearing it'll...we'll at one of our monthly meetings here in Lincoln at the Department of Roads, we'll have a presentation, the commission will then vote on whether or not to recommend to the Governor if that project move ahead, and then...

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[CONFIRMATION]

SENATOR FISCHER: Have you ever had any of your advice...in your last 12 years, as a member of the commission and in taking a vote of the commission and sending on then your recommendation, do you remember any time when that recommendation has not been followed by the Governor and the Department of Roads? [CONFIRMATION]

RONALD BOOKS: No, I don't. I don't. There may have but I don't think so. Normally, again it's such a long process for most of these projects... [CONFIRMATION]

SENATOR FISCHER: It's my understanding that all recommendations, or it's a very rare occurrence when a recommendation is not followed by the department and the Governor. [CONFIRMATION]

RONALD BOOKS: Yeah. Usually if there's a problem we'll have had it solved one way or another before we ever make the recommendation, you know,.. [CONFIRMATION]

SENATOR FISCHER: Right. [CONFIRMATION]

RONALD BOOKS: ...and so normally by the time it gets to the actual recommendation of project, most of that's been worked out. [CONFIRMATION]

SENATOR FISCHER: Thank you very much. Other questions? I see none. Thank you. Appreciate you coming in today. [CONFIRMATION]

RONALD BOOKS: Thank you very much. [CONFIRMATION]

SENATOR FISCHER: Is there anyone who wishes to speak in support of this nomination? Anyone willing to speak, not willing, but anyone who would like to come forward in opposition? (Laughter) Anyone in the neutral capacity? I see none. Thank you very much. Our next nominee is Mr. Jerome Fagerland. Mr. Fagerland, would you like to come forward, please? We're going to make you come forward whether you want to or not, how's that? (Laugh) You show up, we, you have to come. Mr. Fagerland is from my district, so welcome. It's nice to see you here. If you'd like to just tell us a little bit about yourself and how long you've been on the commission and some of your duties. [CONFIRMATION]

JEROME FAGERLAND: (Exhibit 8) Sure. First of all, I'd like to greet you, Senator Fischer and members of the committee. My name is Jerome Fagerland, F-a-g-e-r-l-a-n-d. I'm from Atkinson, Nebraska. I'm a former bank executive and I'm now an executive in the ethanol industry which has its ups and downs right now, which I'm sure that's another day and another thought. I'm going to make a very brief...what I look at our role as being as commissioners. Commissioner Books did an excellent job of

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explaining what he felt our role was or is, and I agree with him thoroughly. But it appears to me, it's an evolving process what we're going through. And I really believe, as you folks are aware, with funding becoming more of a shortfall all of the time, and there's several reasons for that, that an effort of teamwork between the commission, the commissioners themselves, the Department of Roads, the Governor and the Legislature is probably more important today than it's ever been. I've been on the commission since 1999. By far, this next 12-month fiscal year is going to be the most challenging as far as completing projects and keeping the roads in excellent condition. I would like to put one thing to rest and that's, there's obviously conflict between the rural areas and the more metro, more populated areas. And this is going to be a concern for the state of Nebraska not only with the Department of Roads but as we deal with other economic issues that come up in the future. But what I would like to put to rest is, that I think it's an important role for the commission to look at the state as a whole and what's best for the state. And I do see an effort of teamwork coming together in all parties involved that exemplifies that, so thank you. [CONFIRMATION]

SENATOR FISCHER: Thank you, Mr. Fagerland. Are there questions? You served on the commission nine years since '99? [CONFIRMATION]

JEROME FAGERLAND: I'm in the middle of eight years, yes. Close to nine. [CONFIRMATION]

SENATOR FISCHER: Eight years. Have you at any time experienced a recommendation that the commission has sent to the director or the Governor that has not been followed? [CONFIRMATION]

JEROME FAGERLAND: I am not aware of any of that, those instances. As Commissioner Books explained in his testimony, there is a considerable amount of debate that goes on within the commission itself but directly to answer your question, I am not aware of any. [CONFIRMATION]

SENATOR FISCHER: You brought up looking at the state as a whole and I agree with you wholeheartedly on that. With the current funding crisis that we're seeing with our highway and roads situation, if money is not added to the budget for the Department of Roads, the director has said that we'll be on a preservation schedule. That it will be mainly maintenance projects. My understanding when the department's in a maintenance mode, the argument could be made that rural areas benefit more from that. Could you comment on that, whether you agree or not? [CONFIRMATION]

JEROME FAGERLAND: Well, I'm going to address your question... [CONFIRMATION]

SENATOR FISCHER: Since we have very little new construction in our areas. [CONFIRMATION]

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JEROME FAGERLAND: I'm going to address your question in a long statement. First of all, unless I'm mistaken in my nine years or eight and a half years on the commission in District 8 which I represent, there has not been any new construction. And I believe, Senator Fischer, you could probably endorse that. And so, we've been in a preservation mode up there that entire period of time. I think too, to make the argument that we're only going to be in preservation if the fiscal policy does not change or the availability of money does not change, I think it's a pretty bold statement. From a standpoint of when we look at the entire state, I think there are going to be instances where it is in the best interest of the entire state to add new pieces of highway or additional lanes of highway and so forth. We just need to continue to fuel our economic engine and we need to be very aware and very conscious of that. So preservation is, preservation only is a very strong statement that I would not be willing to make at this point. [CONFIRMATION]

SENATOR FISCHER: Do you work with the District 8 engineer, Mr. Kovar, on determining the priority of projects within District 8? Do you visit with him at all on any of those projects before they're brought forward? [CONFIRMATION]

JEROME FAGERLAND: We visit...once again, I rely on his expertise and his recommendations. I'm certainly not an engineer. I'm certainly not a qualified person to make the determination which projects should take priority, so I certainly listen to his recommendations, but we do visit. [CONFIRMATION]

SENATOR FISCHER: A lot of us want roads and a lot of us want highways in our area because it's the philosophy, build it and they will come. And as you said, your district hasn't seen new construction. It's on, it is on a maintenance schedule in trying to preserve the highways that we have. Do you think it is wise for the highway commission to enter into the politics of deciding where roads should be built in this state with new construction? [CONFIRMATION]

JEROME FAGERLAND: I think it's wise for the commission to continue to have an open dialogue with the Department of Roads, with the Governor. I've never felt that the highway commission's role was to determine where new roads should go but rather be a conduit to bring all of the thought process together and be a focal point of discussion and go from there. I think to rely on the highway commission to make that determination would not be in the best interest of the state. [CONFIRMATION]

SENATOR FISCHER: Thank you very much. Once again I really appreciate you driving down today. It's always nice to see you. Thank you. Anyone wishing to, anyone wishing to come forward in support of this nomination? Anyone in opposition? Anyone in the neutral capacity? I see none. We will move on to our last confirmation today. Mr. Richard Reiser, would you step forward, please? Good afternoon and welcome. [CONFIRMATION]

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RICHARD REISER: Good afternoon, Senator, committee members. [CONFIRMATION]

SENATOR FISCHER: If you would like to state your name, spell it, and then tell us a little bit about yourself and how long you've been on the commission and any thoughts you'd like to enlighten us with, Mr. Reiser, that would be great. [CONFIRMATION]

RICHARD REISER: (Exhibit 9) Sure. Thank you. My name is Richard Reiser, R-i-c-h-a-r-d R-e-i-s-e-r. I represent District 2 on the highway commissioner, on the highway commission. I'm the commissioner from Omaha. My district is Washington County, Dodge County, Douglas County, Sarpy and Cass. I've just finished my first six-year term and have been reappointed by the Governor for another six-year term. I've enjoyed serving on the highway commission. As the other commissioners pointed out, it's an advisory committee. Most of us are not engineers. I think there's one engineer on the committee. The rest of us are not. We do conduct public hearings on roads projects in our individual districts. Those are recorded, attended by the people from the highway, from the Nebraska Department of Roads. We bring back information from the citizens on those, and as result of those hearings and they do have an influence on roads projects and I've seen many cases...I think the department does an excellent job on that. I've seen many situations where an actual design, some feature of a project has been changed as a result of something a citizen brought to the attention of the Department of Roads at those hearings, and pointed out something that could be done a little differently and would solve a problem, and those recommendations have been followed. So it's been a gratifying experience and I'd like to continue. [CONFIRMATION]

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

SENATOR LOUDEN: Yeah, thank you for being here today, Mr. Reiser. You're an attorney by trade, is that correct? [CONFIRMATION]

RICHARD REISER: I am, sir. [CONFIRMATION]

SENATOR LOUDEN: And here, I think this Department of Roads raised their traffic count up to 10,000 vehicles or something like that in order to be eligible for four-lane expressway system. What's your opinion of that? [CONFIRMATION]

RICHARD REISER: Senator, that was done as the result of a study that the Department of Roads did. My opinion of it, in short is, it was a good idea. The standards that were adopted are all in conformity with AASHTO standards which is the national design criteria more or less for highways. Previously our criteria had been, maybe less stringent or maybe at 6,000 you would say, okay, now you're kind of eligible for a four-lane expressway, 6,000 average daily traffic count. Other states around here and

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around the country have always had a higher standard than we have, not all of them, but some. So my understanding was, at that and that was presented to us and we had the opportunity to ask questions about that, was that the standards do not compromise safety. They're still within the design standards that AASHTO has set and it's really done as a function of how much money there is available. [CONFIRMATION]

SENATOR LOUDEN: But by doing that, that about takes out any expressway building in rural areas then, is that correct? [CONFIRMATION]

RICHARD REISER: If based solely on that criteria, I'm not sure that's... [CONFIRMATION]

SENATOR LOUDEN: But I mean, you don't even have 6,000 vehicles going from York to Kansas line now, do you? [CONFIRMATION]

RICHARD REISER: I doubt it. I doubt it. There would be some in... [CONFIRMATION]

SENATOR LOUDEN: It's, I mean, it was under 4,000 when they built it. What I'm wondering is, you raised this criteria, and of course that's going to be impossible to get anything done in western Nebraska but yet South Dakota can build a four-lane expressway right up to the state line and there's not 6,000 vehicles coming out of Rapid City south every day. So I'm wondering why you people did it down here rather than try to build some kind of a transportation corridor. How you going to answer that if a transportation corridor has to be built? [CONFIRMATION]

RICHARD REISER: Well, if a transportation corridor, I guess, has to be built between the states, then I think the federal government is going to have to step up with some of the money to do that, instead of just directing us where to build them and telling us come up with your own money. [CONFIRMATION]

SENATOR LOUDEN: Well, that, that... [CONFIRMATION]

RICHARD REISER: This was done strictly as a function of how much money is available to build and maintain our roads, and as the other commissioners have pointed out, the prioritization of spending on highway dollars is maintenance of the existing approximately 10,000 miles of state highway. That's the number one priority is maintaining well what we have now. [CONFIRMATION]

SENATOR LOUDEN: I agree that maintenance is number one priority and I'll ask you the same question I asked the other gentlemen. Do you feel that the state of Nebraska can still afford this six-lane interstate from Omaha to wherever west they talk like they're going to do it? Do you think we can afford that now considering the fact that you don't get \$390 million budget each year? [CONFIRMATION]

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RICHARD REISER: As I understand it, we can probably still afford that depending on how much federal money we receive and it may not be built at the same speed that it was built. But if that's a priority that, there still will be eventually money to do that. Now there's a point in the future where if the federal money does not come in, that we get a point where there's nothing happens but maintenance in the entire system. We don't do anything but preserve the roads we have now and eventually actually...
[CONFIRMATION]

SENATOR LOUDEN: And that's an 80-20 match on what you're doing between the six-lane interstate is a 80-20 match, is that what you're telling me? [CONFIRMATION]

RICHARD REISER: I don't know that, Senator. [CONFIRMATION]

SENATOR LOUDEN: And you don't know how much federal money is coming in to help build on that six-lane interstate? [CONFIRMATION]

RICHARD REISER: Well, the federal government right now is, if they don't do something, I understand they go into a deficit later this year on the highway trust fund.
[CONFIRMATION]

SENATOR LOUDEN: Yeah, but I mean, where does the state get their money to do it because you just, they just let some of the contracts here in this last or last fall to do some more work on that. [CONFIRMATION]

RICHARD REISER: Yeah. That's the other, the other problem we have is that with roads, is obviously the lead time is so great on building roads and the time you get the environmental impact study done and you get these projects where you can build them, they're well planned and the money, a lot of money has been spent and so there's a desire to try to complete those projects, not waste the money. [CONFIRMATION]

SENATOR LOUDEN: Okay. Thank you. [CONFIRMATION]

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

RICHARD REISER: Thank you all. [CONFIRMATION]

SENATOR FISCHER: Is there anyone here to speak in support of this nomination? Anyone in opposition? Anyone in the neutral capacity? I see none. With that I would like to thank all of the nominees for coming in today. It's always very important, we as a committee like to have the chance to visit with you and listen to your ideas, so thank you for coming in. And we will close the hearing on the gubernatorial appointments and I will

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open the hearing on LB1051, Senator Heidemann's bill. I see he is here. Good afternoon, Senator Heidemann. [LB1051]

SENATOR HEIDEMANN: Good afternoon, Madam Chair Fischer and members of the Transportations Committee. (Laughter) I think last year... [LB1051]

SENATOR FISCHER: I always love the way you address me, it's priceless. Thank you very much. (Laughter) [LB1051]

SENATOR HEIDEMANN: I am Lavon Heidemann, H-e-i-d-e-m-a-n-n, from the Legislative District 1 and I'm here to introduce LB1051. This bill would change existing requirements regarding weed mowing and tree trimming obligations of the landowners. Current law requires landowners to mow along public roadways that are adjacent to their land twice a year, specifically before July 15 and sometime in August. LB1051 changes the requirement for the second mowing to take place before September 30. Mowing the county roadsides at a later time would provide for large farm machinery to more easily travel on roads since the mowing would be done closer to harvesttime. Current law requires landowners to trim trees along public roads adjacent to their land that cause a nuisance to road travel or obstruct the views of those traveling the roads, once a year, up to the ground, eight feet. This bill would change the requirement for landowners to trim trees up from the ground at least 15 feet. The change would allow county roads to be more easily traveled by large farm machinery. In addition many other vehicles that currently travel the roads are taller than eight feet. I was contacted by county commissioners in my district, and some of whom you may hear from shortly, who have concerns that the current requirements are not adequate to facilitate large farm machinery and trucks. If the roads are not easily traveled due to the allowable weed and tree growth under the current requirements, the duty to see that more work is done falls on the county. If a landowner neglects to mow and trim along public roads, then it's up to the county to go through the process, to establish by law, to see that it gets done. This enforcement mechanism seems to work in my district. It may, however, be time to adjust the time line for required mowing and to raise the height requirements for tree trimming. Again this bill does not add new requirements. It just alters the requirements that are currently in law to facilitate the traveling with ease. Thank you for the opportunity to present this bill. If you have any questions, I'd be more than happy to try to answer them for you at this time. [LB1051]

SENATOR FISCHER: Thank you, Senator Heidemann. Are there questions? Senator Stuthman. [LB1051]

SENATOR STUTHMAN: Thank you, Senator Fischer. Thank you, Senator Heidemann, for bringing this issue up again. Currently, don't we have on the record book that it's the law that a property owner is to keep the ditch, the whole works is supposed to be free from trees and brush or anything like that? [LB1051]

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SENATOR HEIDEMANN: I don't know if it states that. It just states that they're supposed to be trimmed. I'm not for sure if it's supposed...it says free. [LB1051]

SENATOR STUTHMAN: Yeah, I'm not sure on that too, but I think one of the things and serving as a county board member, you know, before coming down here, the problem with enforcement became a real problem with even mowing the weeds, you know, what do you charge if the county had to mow them. We have some counties that are, that have put into their regulations that the county mows the roads. I would not in favor...I'm not in favor of that whatsoever because then they can say, well, you got to mow it the complete distance, or the seven foot or the 16 foot but I think we need to discuss this and try to get something on the books as to what is really expected of the landowners. [LB1051]

SENATOR HEIDEMANN: I would have to think probably right now it's not as clear as it probably could be. I'd have to think that if they would be following it, it's supposed to be mowed twice a year that theoretically there shouldn't be any trees to trim. [LB1051]

SENATOR STUTHMAN: Yes, very true. [LB1051]

SENATOR HEIDEMANN: I think it'd be best, in my thought anyway, that there wouldn't be trees on county right-of-way because once you do that, then you have to deal with the trimming part of it and as you and I both know, the machinery has got a lot larger today and as we try to move down county roads, there's some county roads that we just will not go down anymore. We just will either go a mile over or travel extra distance because when you pay a quarter of a million dollars for a combine you don't want to see it scratched up and get hurt by all the trees and the brush. [LB1051]

SENATOR STUTHMAN: One of the other concerns that I think is very important is, you know, snow removal. Sometimes they're the most beautiful snow fences along there and they're, where the fence line is and they catch a lot of snow and that's a real expense to counties. So I think we need to, I mean, I think we should put something into some type of law. Don't you feel that way too? [LB1051]

SENATOR HEIDEMANN: It would be good. I mean, I will say that, you know, you could almost be on both sides of the fence on this one because you see where it needs to be done but you don't want to be too much of a burden to the landowners. But that's a little bit talking on both sides. I understand as a farmer, I want to be able to travel the roadways but I could see where some people would be a little bit bothered by the expense that could be expected, especially if you buy a farm and there's more trees than you could ever imagine to start cutting and then you would have to deal with that. I suppose you would have to realize that when you're going into it when you're buying a farm though. [LB1051]

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SENATOR STUTHMAN: Thank you. [LB1051]

SENATOR FISCHER: Other questions? Senator Louden. [LB1051]

SENATOR LOUDEN: Yeah, Senator Heidemann, I don't know how much this reflects on where I live because usually if there's any grass in there we hay it and not too many trees that can get over 15 feet tall so we don't have that much of a problem. But there are some areas that when you say, it says in here you've got to mow to the middle of the road and I don't know if anybody does that. Most in our area, they mow a swath down each side of the road and that's about the size of it. Does that need to be clarified while you're into that part of the statute? [LB1051]

SENATOR HEIDEMANN: I think, in my thought, it would be just you're responsible to the middle of the road and mowing out to your side of the county right-of-way. That's the way I take it. [LB1051]

SENATOR LOUDEN: I see and then if you don't own on both sides of the road you don't have to worry about the other side? That's whoever lives over there? [LB1051]

SENATOR HEIDEMANN: Yes. It's adjacent landowner. [LB1051]

SENATOR LOUDEN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB1051]

SENATOR HEIDEMANN: Thank you very much. I have some matters that are happening in appropriations and if it'd be all right with you, I'll just waive closing. [LB1051]

SENATOR FISCHER: Okay. Thank you. [LB1051]

SENATOR HEIDEMANN: Thank you. [LB1051]

SENATOR FISCHER: Appreciate your being here. Could I have a show of hands of how many people are here today to testify on this bill? We have four, five, six. Okay, thank you. Would the first proponent for the bill please step forward if you're in support of the bill. Good afternoon. [LB1051]

WILLIAM ELY: Good afternoon. My name is Bill Ely, E-I-y. I am the county commissioner, third district of Richardson County. I'm a farmer and a county commissioner also. I guess I would try to emphasize the safety of this new proposal. Whenever you come up to a, especially like a top of a hill, and it could even be with the

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car, but all the farmers usually think of some of our bigger machinery and there's overhanging branches and we have to, you know, take the middle of the road in order to even get through. If there happens to be someone coming from the other side, there's a potential of a head-on collision and a very much of a safety issue. And those of you that are from the rural area knows that the, like the Senator said, that they're a great snow fence and those don't dry out and they continue to be snowy and ice covered in our district. And if there happens to be a intersection or a railroad crossing there and you come up there with those, that extra snowpack that you get even today after our ice storm, those areas are still, where they're covered, are still ice covered and you try to stop and there happens to be an oncoming traffic or train, it proposes a very much of a safety issue. So that's my take on it. I know some other people have some other issues but I am greatly in favor of getting that up to where, you know 15 foot is, you know, an area where it needs to be. And we talked about the mowing of the roadsides. In our area down in southeast Nebraska, there's so many areas where you cannot mow the roadsides because of the steepness of our ditches and our banks that these trees are there and without any kind of a law, you know, you can't mow it so the trees are there. And so without any kind of a handle on going up 15 foot, we really don't have as county commissioners any kind of a way of getting this accomplished. [LB1051]

SENATOR FISCHER: Thank you very much. Any questions? Senator Stuthman. [LB1051]

SENATOR STUTHMAN: Thank you, Senator Fischer. Bill, do you think that people are mowing the roads or keeping it more sightly now than they have been in the past or do you see the thing getting worse as time goes on? [LB1051]

WILLIAM ELY: I think, you know, this high price of land that we've got, I think, farmers and landowners are being more and more aware of what some of these issues cause. You know, if you're farming along a piece of ground and you've got this vegetation, it saps the ground out 15 foot at least and some of that is helping. But one of our biggest problems is absentee landlords. People that own land and are away and, you know, it's hard to get those issues accomplished when they're away and so this law would help that, that maybe they could understand our problem. [LB1051]

SENATOR STUTHMAN: Bill, do you feel there's more custom farmers in the area that just farm the cropland part and could care less about the road ditch? [LB1051]

WILLIAM ELY: I think you, it has, you hit a point there, yes. When people cash rent land or custom farm it, people aren't aware and some of the landowners that they have responsibilities and of course the guy that's paying this cash rent, you know, he just wants the land. He's paying enough money for that land and if it's not spelled out that he has to take care of the roadside, he's not going to do it. So that is a very good point. That it is the landowner and right now the farming is better than I've seen it for a number

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of years and there is some, you know, concerns that with the cash rents, that these people can, and I don't think it's a burden on them to follow through with taking care of their responsibilities of the roadways. [LB1051]

SENATOR STUTHMAN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Ely, for being here today. [LB1051]

WILLIAM ELY: Thank you. [LB1051]

SENATOR FISCHER: Next proponent, please. I would like to note for the record that we have been joined by Senator DiAnna Schimek from Lincoln. Good afternoon. [LB1051]

DOUG WORKMAN: (Exhibit 1) Hi, Senator Fischer and committee members. My name is Doug Workman, D-o-u-g W-o-r-k-m-a-n. I'm the county road foreman for Richardson County Road Department. I'd like to say that I'm very much in favor of this LB1051. In Richardson County we have a lot of problems showed by some of these pictures I've just submitted that show a lot of trees overhanging the roads and intersections. We had a severe ice storm in December 10 and 11 that caused many of the trees to come down and actually block county roads for a number of days, sometimes weeks, the minimum maintenance ones. And we had a lot of equipment and manpower have to go out and remove these trees off county roads and it causes a lot of expense to the roads and damage sometimes to power lines because they're hanging over the roads and hitting power lines and drop lines to houses. I'd like to see, you know, the actual right-of-way, something in maybe the law that would say that the farmer or landowner has to keep the trees back off the right-of-way. Because I think the wording in the old statute where it just says bordering the public roads is sometimes not clear whether there's a tree right up next to the edge of the road and that farmer only has to cut it to that 15 foot height or is it clear back to the existing right-of-way or fence line. Maybe that would be something that might be considered to add to that. We have a lot of expensive equipment in county departments that are damaged each year by the trees hanging over the roads, busting mirrors, scratching up \$200,000 equipment and it knocks off the antennas off the trucks. It causes a lot of damage to our rock trucks. Our rock trucks are unable, a lot of times, to put rock on a road because there's trees hanging over it and they can't get their beds up high enough to dump there, if you have end dump trucks. I have one question, can I ask to the legal counsel? [LB1051]

SENATOR FISCHER: We don't allow you to ask us questions. [LB1051]

DOUG WORKMAN: Okay. That's fine. [LB1051]

SENATOR FISCHER: But you're certainly willing to write a letter to me as committee

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chair and we'll be happy to look into it for you. [LB1051]

DOUG WORKMAN: Okay. Thank you very much. And as one, a lot of the problems even for our motor graders, when you come up to an intersection that grader has to stick out into that intersection before he can see traffic coming. A lot of times if there are trees growing right up to that intersection, it causes a dangerous situation for any oncoming vehicles or for that operator. The same way a lot of times on railroad right-of-way. If there's trees coming right up to the railroad right-of-way, you cannot see that train coming so it's a constant problem in the county. And I'm very happy to see the height distance being increased if it's passed and that would be a good start, and that's about all I have to say. [LB1051]

SENATOR FISCHER: Thank you, Mr. Workman. [LB1051]

DOUG WORKMAN: Thank you. [LB1051]

SENATOR FISCHER: Are there questions? Senator Stuthman. [LB1051]

SENATOR STUTHMAN: Thank you, Senator Fischer. Doug, does your county have any policy in place that, say a property owner wants to clean out the road ditch himself, do you allow that? [LB1051]

DOUG WORKMAN: Yes, we do. [LB1051]

SENATOR STUTHMAN: You allow them to do that. [LB1051]

DOUG WORKMAN: Yes, we even furnish barricades for them. [LB1051]

SENATOR STUTHMAN: I don't know the lay of your land but in our community we have landowners that cleaned the road ditch out because of, you know, \$3, \$4, or \$5 corn now and they just happen to get their planter overhanging a little bit and pick up another couple rows of corn so that can justify it. Do you penalize anybody for planting a couple of rows in your right-of-way? [LB1051]

DOUG WORKMAN: Not really, as much as penalizing but we might take our grader out there and clean that ditch out if they do farm it to our 33 feet off of center road right-of-way the next crop year or after harvest to reestablish that ditch. Because if they're going to farm it, the ditch is probably needing, in need of cleaning out and shaping back up. [LB1051]

SENATOR STUTHMAN: But I think your county would work together with the property owner, you know, to clean out the ditch when the crop has been harvested or something like that. [LB1051]

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DOUG WORKMAN: Yes, if they come to us and say, I want to clean this ditch out and cut trees, we'll even furnish barricades for them for safety reasons so they don't have any problems with traffic at the time and even maybe possibly closing the stretch of that road if it's not heavily traveled for them, if they've got a dozer in there to clean it up. [LB1051]

SENATOR STUTHMAN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Workman, for being here today. [LB1051]

DOUG WORKMAN: Thank you. Thank you very much. [LB1051]

SENATOR FISCHER: Next proponent please. Good afternoon. [LB1051]

TERRY KEEBLER: Good afternoon, my name is Terry Keebler, K-e-e-b-l-e-r, T-e-r-r-y. I'm county commissioner and farmer from Johnson County, southeast part of the state. As commissioner Ely stated, this is, you know, needing to raise the tree limit. Machinery is getting bigger. County machinery, our graders are more than eight foot tall. If we can't get to the edge of the road, we can't maintain to the edge of the road. Also the farm machinery, that we hear from our constituents, they buy new machinery and all of a sudden they can't get where they need to go. I think we've also got some school buses that have trouble scraping even at eight foot so there are a lot of, a lot of machinery going down these roads that eight foot just isn't high enough any more. There aren't too many sheds being built that take eight foot machinery. Everything is getting taller. Taller doors on everything and I think we need to keep up with our road maintenance. [LB1051]

SENATOR FISCHER: Thank you, Mr. Keebler. Are there any questions? I see none. Thank you very much for coming today. [LB1051]

TERRY KEEBLER: Thank you. [LB1051]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB1051]

JOY SCHRODER: Yes, my name is Joy, J-o-y, Schroder, S-c-h-r-o-d-e-r, county commissioner in Otoe County. Also serve on the Greater Nebraska Elected Officials, just appointed to that and we are in the same district as Lavon Heidemann. And we're all in the same area in the southeast Nebraska so I do not know what it is in your area, but in our area, it is just got to be completely out of hand. And in Otoe County why, just this past year, we asked our weed superintendent to take a little closer look at these things because we're just scared to death of accidents. You can't see a stop sign

because they haven't cleaned up the trees and it's just a liability that's coming down to the county that we're just scared to death of and this thing that we have now, is really not as good as we'd like to have it. The county attorney says it's really, really wishy-washy and he's not too sure that he can win the way, the one we have now. Tree width, overhang, how much control do we have as a county attorney to let him go ahead and prosecute someone in which we don't like to do but we have to do something here to get back to safety on these farm to market roads. And what we've got now, is just not working at all and sooner or later somewhere in our area we're going to have, as you can see from these pictures here, we're going to have a very bad accident and we, in Otoe County, are just unbelievably nervous about having a school bus drive out to the middle of an intersection to see which way to go. They know which way they're going to go but when they get to the middle of the intersection and you have somebody a little later for work, because of the trees he hasn't seen it or she hasn't seen it, whose responsible here. So we're really worried about safety on these things and we just think that we should do something a little bit more strong than what we have in the present law. Twenty foot headers, which is very common in our area, probably larger as you get western part of Nebraska but you go over a, just a small hill, and he's hanging to the center of the road and the guy coming home from work coming up the hill, where do you go when these kind of things. Our problem also is, and you brought it up, Senator, cash rent. They rent it by the acre. They do not rent the roadside, they just, they're renting this by whatever the FSA croppings are and unless this is specified in that contract, they're not going to mow the right-of-way, they're not going to move the waterways. They're going to farm just the acres they're paying for so it's up to the landlord, and which some of them doesn't understand. But our weed superintendent in this past year has went to some of these landlords, especially the residence, and explained to them the safety thing and believe it or not, we have had some good cooperation. Now the absentee landowners, that's another story. If they understand it, and you give them plenty of time, they will come and have their tenant or hire somebody to do it. But we have a certain percentages, everyone does, that we just, really don't have good enough handle on it to make them do what they should be doing. So we need help to get it more safe for these country roads. [LB1051]

SENATOR FISCHER: Thank you, Mr. Schroder. Are there questions? Senator Stuthman. [LB1051]

SENATOR STUTHMAN: Thank you, Senator Fischer. Mr. Schroder, how effective is your noxious weed control person in your county? Does he spray the road ditches or anything like that? [LB1051]

JOY SCHRODER: Yes, sir. [LB1051]

SENATOR STUTHMAN: Well, if they're really doing their job, why don't they get a real brush killer and spray the soup out of those trees so they all die? [LB1051]

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JOY SCHRODER: And they do. They...that's just started here and does...but we've got to be very, very careful on this, Senator, because if you're spraying like plum thickets, brush, and so on to speak, and you have a soybean field there next to it, you know, you've got to be very, very cautious on this thing, because you can get yourself in a liability on it. But it seems like sometimes that these plum thickets die on their own. [LB1051]

SENATOR STUTHMAN: Yeah, but sometimes they die after we're gone, that's probably... [LB1051]

JOY SCHRODER: Well, I'm saying, you know, there's a, there may be some spraying go on it that's not noticeable see. [LB1051]

SENATOR STUTHMAN: Yeah. But I just, you know, it's a problem, in some of these pictures here, it's really drastic. [LB1051]

JOY SCHRODER: Yes, it is. [LB1051]

SENATOR STUTHMAN: It's really what it is. It's a safety factor and I think, you know, hopefully your county will do something. Maybe you need to raise some more money for a fund to clean out so many miles of ditch. [LB1051]

JOY SCHRODER: We are in a very same boat though you all are. You know, it's just where is this money going to come from and how are you going to do it and we do our best trying to work with the people that's paying the taxes. They pay my wages, they pay their landlords, you know they pay the thing. And you to got to look out for them but by the same token we just can't afford to have an accidents. [LB1051]

SENATOR STUTHMAN: Has the county board, do you serve on the county board? [LB1051]

JOY SCHRODER: Yes, sir, I do. [LB1051]

SENATOR STUTHMAN: Has your county board ever thought of assessing property owners so many dollars per quarter mile to clean out the road ditch because, you know, it's really the responsibility of the landowner to have them cleaned out for safety reasons. [LB1051]

JOY SCHRODER: It's the responsibility of what? [LB1051]

SENATOR STUTHMAN: Of the landowner. [LB1051]

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JOY SCHRODER: Yes, sir, it is. [LB1051]

SENATOR STUTHMAN: You know to have them cleaned out, and if they're not going to be accountable for it, maybe you should have a resolution or something of your county that says, we're going to charge a thousand dollars a half a mile to clean out the road ditch and assess it to their taxes. And I think you can do it. It's probably political suicide, but it's possible. [LB1051]

JOY SCHRODER: I think you're absolutely right. But the thing about it for us to raise taxes like on your farm where you've taken care of your roadside to go over to Larry Hudkins and say, hey, he hasn't taken care of his and take that over to the county, and I'm not saying Larry doesn't do it. [LB1051]

SENATOR HUDKINS: I do it. [LB1051]

JOY SCHRODER: You do it. Yeah, it's kind of like at home. She speaks, I jump. But the thing about it is, it's not fair for the person that's took care of his land and had respect for his neighbors, to pay for this guy over here that's just reaping and not... [LB1051]

SENATOR STUTHMAN: That's why I made the statement, you, what assessed that property that is being cleaned, that dollar, and you could just set up a fee, a thousand dollars for a half mile, we're going to clean your road ditch out and designate which ones. [LB1051]

JOY SCHRODER: Now we ran that by the county attorney and he says, you're not on very solid ground with the present law. I'm like you, I don't understand why but we have to take his advice. [LB1051]

SENATOR STUTHMAN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Schroder, for being here. [LB1051]

JOY SCHRODER: Thank you for letting us...I just wanted to notice here that did you notice that Mr. Ely came up here with one foot, kind of bandaged up. [LB1051]

SENATOR FISCHER: Yes, I did. [LB1051]

JOY SCHRODER: Well, he went to a Democratic caucus as a Republican now.
(Laughter) [LB1051]

SENATOR FISCHER: Thank you, Mr. Schroder. Next proponent please. [LB1051]

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LARRY DIX: Senator Fischer, members of the committee, for the record my name is Larry Dix, D-i-x. I'm executive director of the Nebraska Association of County Officials and for the most part, just about everything has been said here. The safety and liability issues are two things that were coming out loud and clear. It is a concern from NACO's point of view and from the counties. The other thing we continually talk about, the height of the equipment and we're talking about the 15 foot and NACO had this bill introduced in 2005 and we don't know that 15 foot is a magical number but I can tell you, and I don't think anyone has mentioned this before, the standard height of a semi, for the most part, is about 12 foot. A school bus is about 12 foot high. Class A mobile homes, the mobile homes you see running down the interstate, are 11 feet for the most part. Now I do not know the height of the combines, but in this day and age, when we're seeing farm to market, when we're seeing agricultural products being hauled out of the fields, for the most part they're coming out there on semi, in a majority of the places anymore. Back when this bill originally, I think the last time we looked at that height, where the height was actually changed, I think was sometime in the '50s and certainly the equipment has changed over the years. In previous years there had always been a question about, well, what about the steep banks. You know, how can we possibly mow those and in the bill and in current statute it states, and you'll even see it here in the bill on page 2, lines 4 and 5, it says wherever you can use a farm mower to mow, so certainly if some people come forward and say, well, gosh I've got this steep bank and I'm not going to take a lawn mower down there, I think the provisions are already currently in law to take care of that situation that you see out there. So we just want to, and I hear this all across the state, if a landowner is interested in cleaning up those roadside ditches, for the most part, every county highway department that I visited with, every meeting I've gone to have said, we're willing to work with the landowners on this because once you get it cleaned out and then once you continue to mow it, the tree problem of growing up in the ditches and the thickets and things like that really take care of themselves. So if we can just get some additional height on those trees, that would help us out greatly. So with that I'd be happy to answer any questions anyone may have. [LB1051]

SENATOR FISCHER: Thank you, Mr. Dix. Are there questions? Senator Louden. [LB1051]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Well, I think before the gentleman testified that they didn't know how to charge but it's in statute if they don't do this, why the county does charge against the property don't they? [LB1051]

LARRY DIX: Currently in statute the counties have the authority to go in and do just that and actually charge the landowner. That is currently in law. [LB1051]

SENATOR LOUDEN: Now is that a mechanics lien or is that a regular tax levy lien? [LB1051]

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LARRY DIX: I don't know what, for sure, what type of a lien against the property...it doesn't say. [LB1051]

SENATOR LOUDEN: It doesn't say it here. It just says a tax levy made upon the land so I presume that means that has to be paid when your next tax... [LB1051]

LARRY DIX: So if it would be applied like a special assessment would be applied to the land, it would be similar to a real estate tax. [LB1051]

SENATOR LOUDEN: Okay, because, I mean, there is ways they can be mowed if they don't... [LB1051]

LARRY DIX: There are provisions to do that and some counties I know do an excellent job of advertising and they've got a process in place where they notify the landowners of the dates when it has to be and notify them individually that if they have to come out and do something, then there will be a tax lien against that property. [LB1051]

SENATOR LOUDEN: Then all we would be talking about is changing the date to September 30 and the height to 15 feet? [LB1051]

LARRY DIX: That's the two things that, that's in this bill. [LB1051]

SENATOR LOUDEN: And the rest of it should take care of itself. [LB1051]

LARRY DIX: The rest of it should take care of itself. [LB1051]

SENATOR LOUDEN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Any other questions? Thank you, Mr. Dix. [LB1051]

LARRY DIX: Thanks. [LB1051]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB1051]

JAY REMPE: Good afternoon, Senator Fischer, members of the committee. My name is Jay Rempe, that's R-e-m-p-e. I'm state director of governmental relations for Nebraska Farm Bureau, here today on behalf of the Nebraska Farm Bureau in support of this bill. I think everything I was going to say has already been said and when this issue comes up with our members, it's always been more a matter of convenience because of the larger equipment and things and being able to travel down the roads without tearing up equipment. So with that, I'll just offer our support for the bill and be happy to answer any questions you might have. [LB1051]

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SENATOR FISCHER: Thank you, Mr. Rempe. Are there questions? Senator Stuthman. [LB1051]

SENATOR STUTHMAN: Thank you, Senator Fischer. Mr. Rempe, in listening to the testimony here before and stuff like that about charging landowners, would the Farm Bureau ever be receptive in the fact that they could get a real estate tax credit if they kept their road ditches clean? [LB1051]

JAY REMPE: That's an interesting... [LB1051]

SENATOR STUTHMAN: That would be, that would be kind of like the carrot for them so. [LB1051]

JAY REMPE: Yeah, I guess as philosophy, Farm Bureau's also supported the carrot type of approach as far as the hard hand coming down, so I think we'd be very interested in something like that if the committee were interested in that, sure. [LB1051]

SENATOR STUTHMAN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Other questions? Senator Schimek. [LB1051]

SENATOR SCHIMEK: Yes, thank you, madam chair. To follow up on his question, I can see where that might be an incentive for other landowners to let their roadsides go bad so they could get a tax exemption if they cleaned it up. I mean, I'm not sure that would work very well. [LB1051]

JAY REMPE: Yeah, I suppose it could be. I..if you have a duty to keep your, the roadsides clean and stuff, I mean. Obviously, you want people to do the right thing. How you go about trying to do it, you know, I guess that's a question. You do raise a good issue. (Laugh) [LB1051]

SENATOR SCHIMEK: It just occurred to me that that could happen. [LB1051]

SENATOR FISCHER: Other questions? Senator Stuthman just got us going on all sorts of things now. If you give a tax credit to keep your ditches clean, can you do that on the county level right now? Can the three counties that came today and spoke in favor of this bill, could they institute a tax credit, a property tax credit on the county level? Do you know? That might be something to look into maybe. [LB1051]

JAY REMPE: Yeah, it would be something to look into. On its face I don't know if there would be any constitutional questions about because the local governmental subdivision is supposed to levy the same tax for all properties in their subdivision. For example, a

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school district can't go out and offer a different tax levy... [LB1051]

SENATOR FISCHER: You could levy the same but then provide a credit. [LB1051]

JAY REMPE: But then return...yeah. You might be able to structure it in a way that... [LB1051]

SENATOR FISCHER: Like an excise tax on ethanol. [LB1051]

JAY REMPE: You might be able to structure it in a way that you could get around that constitutional provision, yeah. [LB1051]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much. Other proponents? Are there other proponents for the bill? Are there opponents to the bill? Anyone wishing to testify in the neutral capacity? Good afternoon. [LB1051]

KRISTEN GOTTSCHALK: Good afternoon. Thank you, chairman Fischer, members of the Transportation and Telecommunications Committee. My name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association. I represent 35 member systems, rural electric distribution systems across the state of Nebraska and we're here to testify in neutral on LB1051 but my members did want to identify a safety concern that they did have. They do understand and support the safety issues related to trimming trees and mowing adjacent to the roadways but they did want to draw your attention to the fact that many of the rural distribution lines run no lower than 18 foot and these may be directly adjacent to some of the trees and when you put a requirement in there that trees must be trimmed to at least 15 foot, you put them in very close proximity to the distribution lines and the possibility of injury or death if there is a contact made with those wires. Having said that, you know, I heard several things brought up today that there may be different ways to structure the language of this bill or the section of statute to more properly address keeping the area adjacent to the roadway clean. But we did want to just, at least identify that problem, potential problem. [LB1051]

SENATOR FISCHER: Thank you very much. Any questions? Senator Stuthman. [LB1051]

SENATOR STUTHMAN Thank you, Senator Fischer. Kristen, when the power companies go out and trim the trees, like I say, they cut them down to about 15 feet. [LB1051]

KRISTEN GOTTSCHALK: That's about right. [LB1051]

SENATOR STUTHMAN: Why don't they just cut them off at the ground and treat them

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and be done so they don't have to come back in five years? [LB1051]

KRISTEN GOTTSCHALK: I think in some situations that would be the preferred way to handle that situation but it also is a situation where we don't have the authority and we would have a lot of landowner complain if we came and removed trees entirely. [LB1051]

SENATOR STUTHMAN: The only thing would be windbreaks for homes and stuff like that. That would be the situation but I think other than that, I think they ought to trim them down and be done with them. [LB1051]

KRISTEN GOTTSCHALK: And there are oftentimes when they go in because there is a benefit to the landowner to keeping those power line areas clear. Oftentimes there are agreements made where we do just that, where we do go further down. But in the typical means of trimming trees, it's only trimmed within the safety. [LB1051]

SENATOR STUTHMAN: Thank you. [LB1051]

SENATOR FISCHER: Other questions? Senator Louden. [LB1051]

SENATOR LOUDEN: Yes, thank you, Senator Fischer and thanks for being... [LB1051]

SENATOR FISCHER: If I could, Senator Louden, we're having some problems with the recording so we need to stand down for a few moments. [LB1051]

SENATOR FISCHER: We are back on line here. Senator Louden, do you remember your question? [LB1051]

SENATOR LOUDEN: Yes, I certainly do. (Laughter) Lines in rural areas have to be 19 feet off the ground, is that correct? [LB1051]

KRISTEN GOTTSCHALK: I believe it's 18. [LB1051]

SENATOR LOUDEN: Eighteen. In other words if you're going to trim it up to 15 you could be up there where the edge of your trees is getting up in your lines and that would be a, something consideration. Should there be something in there about not trimming around power lines or do you have to advertise that or I mean, we can't put a law in there that you got to trim it so high when they shouldn't be out there doing it. How are we going to address that for trimming it a little bit more than eight feet? [LB1051]

KRISTEN GOTTSCHALK: Yeah, I wish my committee had addressed that a little further when they asked me to testify and their initial reaction, their gut reaction to the legislation was that if you put somebody within that proximity, you've opened up a level

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of danger. But they didn't come up with a solution simply because they still understand the need for the trimming and the mowing and the management there. In those situations if the trees are in the power lines, actually in the power lines at that height, the distribution utilities are going to be more than willing to come out and eliminate the hazard. [LB1051]

SENATOR LOUDEN: I was going to say, the line companies should trim them. Should there be some kind of a, something in this thing then to exclude the near power lines or something like that, some kind of language in there? [LB1051]

KRISTEN GOTTSCHALK: You know... [LB1051]

SENATOR LOUDEN: Would it make the electric people feel better if they were excluded out of it with their 15 feet or something? [LB1051]

KRISTEN GOTTSCHALK: We would feel better if we didn't have constituents in the power line area. You know, we also don't want to have the responsibility transferred to the electric utility where you would just allow the trees to grow to the point where it would be a utility need to come out and trim those wires, and I don't think most landowners are going to want that to happen either because it's generally going to be the wires that serve them. But there does need to be some way that or at least some cautionary within proximity to power lines. At least a consultation should take place. [LB1051]

SENATOR LOUDEN: What do these line companies do when you have them big trees and then the branches come out over the top of their power line, do they go up there and cut them off or do they just hope and pray that they don't get a lot of ice? [LB1051]

KRISTEN GOTTSCHALK: (Laugh) Hoping and praying doesn't help you in an ice storm. If there's a potential for conflict with the power line they do try to get those trimmed. [LB1051]

SENATOR LOUDEN: Because I've seen some of them where it looked like a tunnel they cut down through a grove of trees and they go over the top. I just wondered what... [LB1051]

KRISTEN GOTTSCHALK: And in a lot of situations, sometimes that is done to appease a landowner who doesn't want to lose a tree by topping out the tree completely. It's done what is deemed to be in the need of the facility, you know, the power line structure. Sometimes what the constituent wants or the consumer wants and what the power company would like to do, are two different things. You know, Senator Stuthman's question, wouldn't it be easier just to cut them down at the base of the ground. Yeah, it would be a lot easier if they just weren't there but that's a conflict that

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some of those trees are in rows that were conservation plannings from the '30s or even more recent conservation planning. So we do have to try to work with the landowners as well. [LB1051]

SENATOR LOUDEN: Okay. Thank you. [LB1051]

SENATOR FISCHER: Any other questions? I see none. Thank you, Mrs. Gottschalk. Any other people willing to, or would like to testify in a neutral capacity? I see none. With that, Senator Heidemann did waive closing and I will close the hearing on LB1051 and open the hearing on LB874 and Senator Adams has been waiting patiently. Welcome. [LB1051]

SENATOR ADAMS: Thank you, Senator Fischer, members of the committee. Greg Adams, A-d-a-m-s, representing the 24th Legislative District, here to introduce LB874. You know, in the last bill, part of the testimony had to do with the large equipment that goes up and down the roads. That's really what this is about also. Presently under statute, if you can envision this, if I own one of these large cranes that is used in construction, rubber tire cranes that go up and down the roads, I buy one permit, one permit annually and I can go just about anyplace in the state of Nebraska, just about. However, excluded from the statute are these trucks, and you've seen them right outside the Capitol here recently, are the concrete pumper trucks, not the concrete truck, but the pumper trucks. Presently, those trucks can get an annual permit to go up and down the interstate, but if they leave the interstate they have to get a permit for their destination point every time they go there. Every time they go there. But for the interstate, it's one permit for the year. So as an example, if a pumper truck was coming from Seward and they were headed to Merrick County, they would have to buy a permit to get to Merrick County. If a month later they went back to Merrick County to pour a bridge or do a basement, they would buy another permit for Merrick County, and on and on it goes. Now, I've brought a testifier here, a gentleman that owns such a company and he can talk more specifically as to the permitting process and what it costs him. But aside from costs, we do a lot, and should, to encourage economic development. This is an example of something we can do for companies that already exist in Nebraska to just simply ease their ability to do business so that the state is not an encumbrance. When we have an opportunity to shed some bureaucracy, to simplify things if we're doing it for the right reasons, and I think this is, I believe we ought to do that. Now, I did bring someone to testify who can testify on the specifics if you have them, but of course I'll try to answer questions right now. [LB874]

SENATOR FISCHER: Thank you, Senator Adams. Are there questions? Senator Aguilar. [LB874]

SENATOR AGUILAR: Thank you, Chair Fischer. Greg, did I understand you correctly to say that the concrete trucks themselves don't have to get the 'multipermits,' but the

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pumper trucks do? [LB874]

SENATOR ADAMS: Well, I'm speaking of the pumper trucks. I, you know, the concrete trucks themselves, I don't know about that. [LB874]

SENATOR AGUILAR: Okay. [LB874]

SENATOR ADAMS: But what this would do is just change the language so that it would broaden the language so that the same category we're using for a crane going down the road, one of these concrete pumper trucks with the long arms that reaches out could fit into that category and be treated like a crane. [LB874]

SENATOR AGUILAR: I see. Thank you. [LB874]

SENATOR ADAMS: If that helps. [LB874]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB874]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Adams, since these trucks can already travel if you get a permit from county to county, so they must be legal on the road. I totally agree with you that if we could have something consistent, that if they get just an annual permit that they could go, it would really simplify things. [LB874]

SENATOR ADAMS: And to me, that is the essence of this. [LB874]

SENATOR STUTHMAN: Because they're not an illegal piece of equipment traveling down the road. [LB874]

SENATOR ADAMS: No. As a matter of fact, and I'm sure the gentleman that will follow me can testify to this, but some of these pumper trucks weigh less than many that...a loaded semi going down the road. That's right. [LB874]

SENATOR STUTHMAN: Okay. Thank you. [LB874]

SENATOR FISCHER: Other questions? Thank you very much. [LB874]

SENATOR ADAMS: Senator, I think I will waive closing in order to get back to hearings. Thank you. [LB874]

SENATOR FISCHER: Thank you very much. Could I ask how many people are here to testify on this bill today? I see one. Thank you very much. Would the first proponent step forward, then? Good afternoon. [LB874]

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JOHN O'DELL: (Exhibit 1) Good afternoon, Senators. My name is John O'Dell, J-o-h-n O-D-e-l-l. I'm here to testify on behalf of my company and all the concrete pumping companies in Nebraska. There are approximately 75 concrete pump trucks in Nebraska. The majority of these pumps exceed the standard weight limit, some of them as little as 1,000 pounds up to about 20,000, the maximum per axle. And as Senator Adams stated, as of May 3, we were able to buy interstate permits, which allow us to run the interstate, which has been very helpful for us, especially traveling around Lincoln. We are able to buy a continuous permit in our county and the counties that touch our county for three to six months, but that's only good for the counties surrounding us. My company typically has four or five pumps out my jurisdiction every working day since we cover the whole state. Thus, like Senator Adams says, if I go to North Platte and I'm going down to McCook, I have to buy a permit that will travel me from North Platte to McCook, and that's a 10-day permit. We were paying \$10 for that permit, but for 2007 now that was raised to \$25, a 150 percent increase, so it has been a burden. My revenue was down about 14 percent last year due to the construction cycle, yet my permit costs were up 18 percent. I spent \$3,645 in permits with the state last year. An annual permit would certainly make my life a lot easier. Currently Colorado, Kansas, Missouri, and Iowa provide these permits to pump companies. In fact, my company, currently we buy 3-year permits in Iowa for \$75 a truck, and that permit lasts for 3 years for the state and federal highway. Our interstate permit right now costs \$100 a year is what we're paying for that. I also am submitting a letter of support from the, some of the pump company operators. We have been working on this for some time. I originally presented this letter to the state in 2003 and I updated it with all the new companies since then with signatures of support. I am a lifelong Nebraskan. Karen and I have been in business for 45 years and we really, really would appreciate your support on this bill. I would be glad to answer any questions. The one question, cement trucks are legal. [LB874]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Hudkins. [LB874]

SENATOR HUDKINS: Thank you. Mr. O'Dell, how much do you think, then, that your annual permits would be for these types of trucks? [LB874]

JOHN O'DELL: I think the state would probably set that. I'm guessing it would be in the \$200 range. [LB874]

SENATOR HUDKINS: And that would be per truck? [LB874]

JOHN O'DELL: Per truck. [LB874]

SENATOR HUDKINS: Okay, thank you. [LB874]

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SENATOR FISCHER: Other questions? Senator Louden. [LB874]

SENATOR LOUDEN: What's the difference between a pumper truck and a crane or something like that? They still...how many axles do they have? Do they have... [LB874]

JOHN O'DELL: They vary, every truck varies, but, you know, most cranes actually weigh more than my pump trucks. My pump trucks will all meet federal legal limits. I mean, I have enough axles under them that I never exceed 20,000 pounds per axle. [LB874]

SENATOR LOUDEN: Now... [LB874]

JOHN O'DELL: The state does allow like 25,000 per axle if you're on a state highway. [LB874]

SENATOR LOUDEN: Okay. Are you hauling concrete at the time? [LB874]

JOHN O'DELL: No. [LB874]

SENATOR LOUDEN: They're empty. [LB874]

JOHN O'DELL: No, we...yeah. We just... [LB874]

SENATOR LOUDEN: It's just the equipment on there? [LB874]

JOHN O'DELL: Yeah. [LB874]

SENATOR LOUDEN: And...I guess I really don't know what a pumper truck is. What is it? Do you pump concrete up into high places or something like that? [LB874]

JOHN O'DELL: Yes. Well, my company did the Dodge Street overpass and we just last year completed the Platte River bridges. Probably currently we'll do the, we've got the contract for the Harris Street overpass. We do a lot of bridges, a lot of state work. And we'll do bridges, we've done bridges, I think as far out as Blue...I'm trying to think of the last town in Nebraska west on the interstate. We've done bridges out that far. [LB874]

SENATOR LOUDEN: Okay, thank you. [LB874]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. O'Dell, for being here today. [LB874]

JOHN O'DELL: Yep. [LB874]

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SENATOR FISCHER: And thank you for your patience in waiting. I appreciate it.
[LB874]

JOHN O'DELL: Thank you. [LB874]

SENATOR FISCHER: Anyone else wishing to come forward in support of the bill? Anyone in opposition? Anyone in a neutral capacity? Senator Adams did waive closing, so with that I will close the hearing on LB874. I see Senator Pahls is here, so I will open the hearing on LB712. Good afternoon, Senator Pahls. [LB874]

SENATOR PAHLS: Good afternoon. Thank you. My name is Rich Pahls, P-a-h-l-s, and I represent District 31 in the Millard of Omaha. I just left a hearing dealing with cochlear ear implants so if I sound a little confused, it is that I am. LB712 deals with daytime running lights. Some of you will remember the days when cars had no turn signals and we had laws that required certain hand signals that you used to indicate if you were going to turn left, right or stop. Now I'm looking around this table, most of you can remember those days. (Laughter) Okay. Some of you can, okay. That look of dismay. Okay. Except in rare circumstances, today we require all vehicles to be equipped with turn signals. Hand signals, as we know, are not safe enough. I think we have uncovered a law that has outlasted it's usefulness. My bill amends the statutes to clarify that manufactured, installed amber colored daytime running lights are not to be considered a violation of the rule prohibiting driving with parking lights on. And here's an example why. In October, a constituent of mine was driving through Cass County at about 4:30 in the afternoon when he was stopped and issued a warning by Cass County Deputy Sheriff for operating his vehicle with parking lights on. I'm not here to criticize the deputy. He was doing his job as the Legislature told him to do. We have a law that prohibits using parking lights when operating a vehicle. It is not right for us to say, well, the law enforcement officer ought to know better and he shouldn't stop someone for a violation like this. The law enforcement officers are making these stops because we say they should. This section of law has nothing to do with other section of law that deals with headlights or fog lights or auxiliary lights. In my research on this, and the history of this section, it was first enacted in 1963 and has never been amended, except with technical amendments a couple of times since then. We should ask, should we repeal the entire section? Has it outlived it's usefulness? Manufacturers are making vehicles with these lights operating as they do because they are very effective safety features. Who uses their parking lights when stopped along the road? If you have to make an emergency stop and can't get safety off the road, we use our emergency flashers. And we should do that, I would believe. If someone uses their parking lights in place of headlights at night, we already know laws that cover that. My guess is that most of us, if not at all, the vehicles with automatic amber colored daytime running lights have automatic headlights that come on at dusk. The old worry about people driving with parking lights and then forgetting to turn on their headlights are mute. Many cars don't work that way any more. But even if you have to use the switch to turn on your light,

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headlights, it is relevant whether or not you have daytime running lights. If we don't outright repeal the law, we ought to amend it so our citizens who are not stopped for a technical violation that has no potential risk of safety. In fact, it is actually safer to operate the vehicle with daytime running lights which is why the manufacturer made it that way. My constituent, Mr. Kelly, has done some research on this issue and he's here today to explain what happened to him. And I think by listening to his testimony you will find out, it's just sort of interesting and after my discussion with him, I looked in my daughter's car and it has the same issue that his car does. It's automatic. The lights come on automatically but I think he could do a very good job of explaining that and if you have any questions, I'm willing to... [LB712]

SENATOR FISCHER: Thank you, Senator Pahls. Are there questions? Senator Louden. [LB712]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Senator Pahls, I was wondering what, when I read this bill, what you're trying to do because it just says the section does not prohibit vehicles with daytime running lights. In other words, you can have a vehicle that's got daytime running lights but you can drive it down the highway with parking lights on? [LB712]

SENATOR PAHLS: Well, those daylighters are automatic. The ones that I'm referring to are, they come on automatically. You have no choice. [LB712]

SENATOR LOUDEN: That's your running lights? [LB712]

SENATOR PAHLS: Yes. Those amber lights. [LB712]

SENATOR LOUDEN: Yeah, that's your running lights that come on automatically but what does this bill do then just... [LB712]

SENATOR PAHLS: That allows that. [LB712]

SENATOR LOUDEN: To use amber lights? [LB712]

SENATOR PAHLS: Yeah. To allow that to occur because you can't do anything about it. I think if you listen to a... [LB712]

SENATOR LOUDEN: Well, there's a difference between parking lights and running lights on a car and... [LB712]

SENATOR PAHLS: Right. Yes, I agree. And it's my understanding that your parking lights when they're on, your rear lights are on, if I'm not mistaken. This, you'd be driving down the road and they automatically come on and your rear lights do not come on.

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[LB712]

SENATOR LOUDEN: Yeah, when your running lights are on, you just have lights up front. You don't have tail lights. You can push your brake down just a little bit and your running lights will go off but your park lights you turn them on, and that's your tail lights and the whole works. Or if you push the button, your flashers come on. That works off your... [LB712]

SENATOR PAHLS: Yeah. Well, I don't think I'm trying to change that part of it but after you listen to the testimony if I've confused that, please let me know. Right now you turn a car on, these lights come on. You're driving down the highway, this individual received a warning ticket because of that and I think, after you listen to him, you'll going to understand the things he did to find out you can't do anything about it because it comes on automatically. [LB712]

SENATOR LOUDEN: And he got a ticket for that? [LB712]

SENATOR PAHLS: He has a warning. [LB712]

SENATOR LOUDEN: Warning. Okay. Thank you . [LB712]

SENATOR FISCHER: Are there other questions? I see none. Thank you, Senator Pahls. [LB712]

SENATOR PAHLS: Okay. And since I have a pretty heavy hearing going on, but my...Ron Schroder is here if you do happen to have a question on the closing. [LB712]

SENATOR FISCHER: Okay. Thank you. But you are waiving closing then? [LB712]

SENATOR PAHLS: I need to waive, yeah. Thank you. [LB712]

SENATOR FISCHER: Okay. Thank you. Could I ask how many people are here to testify on this bill today, if you'd raise your hands. We have one. Thank you. And would you like to step forward if you are a proponent for the bill. Good afternoon and welcome. [LB712]

JOHN KELLY: (Exhibit 1) Thank you. My name is John Kelly, and I'd like to say good afternoon to the committee and I'd appreciate you... [LB712]

SENATOR FISCHER: Could you spell your name, please? [LB712]

JOHN KELLY: John Kelly, K-e-l-l-y. [LB712]

SENATOR FISCHER: Thank you. [LB712]

JOHN KELLY: And I thank you for taking the time to listen to me and I work in Nebraska City. I'm a project engineer and work on gas meters and I've been working there for eight years. I'm now on my third vehicle. I've had, this makes my third Intrigue and they've all been pretty much the same. I had a '98 Intrigue and then a 2001 Intrigue and then the second, the third car is also a 2001 Intrigue and all these cars operated exactly the same. I've been driving for the...you know, back and forth every day for the past eight years and on October 10, I was stopped by a deputy sheriff for, you know, he pulled me over, and he said, well, the reason I pulled you over is because we have a law in the state of Nebraska that states you can't drive with your parking lights on and I kind of got upset. I said my parking lights, this is my daytime running lights, I have no control over this. My...these lights come on and are activated as soon as I turn the switch on and whether the engine is running or not, when I turn the key switch on, my daytime running lights come on. And he said, well, you'll have to disarm that system and I said, well, tell me how to do that. And he said, well, you'll have to read your manual. I said, it's not in my manual. And he said, well, then you'll have to go to your manufacturer and find out how to disarm the system. And he did write me a warning ticket that day and a week later I did go to the Oldsmobile manufacturer, talked with Brian Kay, (phonetic) he's the service consultant there and he checked my system and found that it was operating correctly. When the key comes on, when a key turns on, the amber lights in the front come on and the rear lights, which would be like the parking lights, would not come on in my vehicle. And he said there was no way to disarm this system. The only way to disarm it is to remove a fuse that operates the daytime running lights but if I remove the fuse, then my parking lights won't work, so there's no way for me to disarm the system. That's when I went to the library as suggested by the deputy sheriff that pulled me over. I checked out this particular statute to read what it actually said and it did say that daytime parking lights, or I mean, parking lights are not permitted in the state of Nebraska in the daytime. And in other words, I would have...the only way that I could drive home that day without violating this law was supposedly turn my headlights on because even though it was broad daylight, it was 4:30 in the afternoon, there's nothing I could do but drive home with my headlights on. After I did some research on the internet on daytime running lights, I found that in foreign countries they've been, they've been a law in foreign countries for many years and they have a lot of background now in studies that show that they save a lot of head on collisions and also left turns. It's mainly head on collisions and left turns on major highways in the daytime and that's...so it really is a safety issue. The United States has been kind of slow to get on board with this because of the transportation committee and they wouldn't approve this. They weren't really sure it was a safety committee but in 1993 they did approve it and is now approved in all 50 states in the United States to have daytime running lights. And one other thing that my research showed, is that when they first put this system into effect, you know, just having a lot of the manufacturers would use the headlights as a daytime running light system but there was some complaint

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about the glare. Because when headlights are on in broad daylight, it can produce a glare. And so in a lot of states, or a lot of countries they've cut those voltages down to where those, you know, those lights aren't quite so bright and those are considered daytime running lights. Now my vehicle is one of the GM products and all the GM products now since 1996 do have these daytime running lights and many other vehicles as well. And so there's really no way to, I don't really think there's a way for an officer on the highway to distinguish between daytime running lights and parking lights. Also there are some vehicles that have hidden headlights that their tail light system also comes on as part of their daytime running lights and in that case, there would not be any way to distinguish between daytime running lights and park lights in the daytime. When the...when it gets dark enough, just at dusk and dawn, these lights flip from, you know, the amber lights go off and the headlights come on and when they're operating correctly so it's just a, you know, the way I see it and I've taken pictures of my car and some of the letters I've written here and they're in this report and you can see that, you know, when the key switch is in the on position, my front amber lights are on. When it's in the...and my rear tail lights are not on. If I do put my parking lights on, if I put the key...or the turn signal switch in the park position, you know, the rear lights come on as well as the front amber lights and that is my parking light system. And I had to explain that to the officer but, you know, he didn't make any distinction in this law. He just said I was in violation of the law and so that's where I...and I even told him, I said, well, I don't see how I could, you know, I just had bought this vehicle. I don't see how the state of Nebraska could sell me a vehicle that's in violation of the law, you know. But that's what...that was my case so if there's any questions, I'd be happy to answer the questions. [LB712]

SENATOR FISCHER: Thank you, Mr. Kelly. Are there questions? Senator Louden. [LB712]

SENATOR LOUDEN: That was a deputy sheriff in Cass County? [LB712]

JOHN KELLY: Yes, sir. [LB712]

SENATOR LOUDEN: Where's Cass County? [LB712]

JOHN KELLY: It's in Plattsmouth. [LB712]

SENATOR LOUDEN: I know, but I mean is it south of Omaha, north of Omaha, south of Omaha? [LB712]

JOHN KELLY: It's south of Omaha. [LB712]

SENATOR LOUDEN: Okay. Do them people talk slow in that county or what? [LB712]

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JOHN KELLY: I don't know. (Laughter) [LB712]

SENATOR LOUDEN: Well, I was going to say, did you take this up with the sheriff or anybody? [LB712]

JOHN KELLY: You know, I did go to the sheriff's department in Nebraska City which is where I work and I tried to talk to them. I tried to find out what...I wanted to see what this particular law was in writing. I wanted to see the wording of it and he just kind of threw his hands up, oh, you'll have to go to Cass County with that one and I... [LB712]

SENATOR LOUDEN: Evidently he must think they talk slow over there too. [LB712]

JOHN KELLY: And I thought, well, I thought to myself at that point this is not going to get the problem resolved. [LB712]

SENATOR LOUDEN: But you never took it up with anybody in Cass County. [LB712]

JOHN KELLY: No, no, sir. I wrote Governor Dave Heineman and he wrote the letter back to me and the sheriff in Cass County saying that he would wish that they would show a little more discretion in this particular law that, but he did not have the ability to change this law and he recommended that I would write a letter to Senator Pahls and that's what I did. That was the next action I took and then Senator Pahls told me that he was going to submit a bill. [LB712]

SENATOR LOUDEN: Evidently some place it must be legal to run with running lights on because every car made now has them and they have been since what you say, what, '92 or '93. I have a '97 pickup that's got them on so I know it's been a long time. I'm wondering if this is a case of just information not getting out or somebody didn't want to do their homework and read the rules, because I question why you got the ticket and why they bothered to do this and what this is all about. It looks like to me we're already covered and that's the reason I'm wondering why they did that. That's the reason I wondered what kind of people there were in Cass County. [LB712]

JOHN KELLY: Well, he said that he saw my lights, my park lights was on. He was parked on the right-hand side of the road and I was coming from his rear and he turned his lights on and motioned for me to pull over. And in which case I pulled over right in front of him. He could see that my tail lights were not on. He could see that my front light, amber lights were on and he thought that my parking lights were on. [LB712]

SENATOR LOUDEN: What year or model of a car was he driving? [LB712]

JOHN KELLY: It was a RV type thing, type thing. [LB712]

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SENATOR LOUDEN: Was it newer than '93 or so? [LB712]

JOHN KELLY: I'm not sure what... [LB712]

SENATOR LOUDEN: Oh, because I was going to say was his running lights on?
[LB712]

JOHN KELLY: I don't know. I didn't notice. I was too upset to notice. (Laughter) [LB712]

SENATOR LOUDEN: Thank you. [LB712]

JOHN KELLY: Yes, sir. I did notice, I did notice in the next five miles after he pulled me over 37 vehicles with the same problem I had. [LB712]

SENATOR FISCHER: However, I'm sure they're absolutely wonderful people in Cass County and they're great Nebraskans. [LB712]

JOHN KELLY: I'm sure they are. (Laughter) [LB712]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB712]

SENATOR AGUILAR: Thank you, madam chair. I guess I have to ask the obvious question. Have you ever had any run-ins with that deputy before or any...(Laughter) [LB712]

JOHN KELLY: No, sir. In fact I think that particular deputy is probably new. I travel that road so much most of the state troopers that I see wave to me every time I go by and when this guy pulled me over, I just thought, wow, you know. And just as a little side note, when I talked to a friend of mine at work the next day who I knew left about 10 minutes before I did, I happened to ask him the next day if he had gotten pulled over for any...he said, yes, as a matter of fact he did get pulled over and I said, for daytime running lights, he said, no, because I had one bolt missing out of my license plate. (Laughter) And so, you know, so...I thought well... [LB712]

SENATOR FISCHER: No more comments about Cass County. Other questions? (Laughter) Senator Hudkins. [LB712]

SENATOR HUDKINS: I represent (sic) that remark because I was raised in Cass County. You said you did not talk to anyone else in law enforcement in Cass County? [LB712]

JOHN KELLY: Not after this happened. [LB712]

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SENATOR HUDKINS: Okay. Probably you should have because it could have been a case of this was, like you said, a new deputy didn't know all the rules. It helps. We were stopped one time by a state trooper who was very unprofessional and accused us of all kinds of things that we hadn't done and he gave us a warning. Well, months later...I talked to his supervisor and I said, who trained trooper so and so and he said, well, I did. And I said, well, you better give him a refresher course then and several months later this same trooper stopped us rightfully so for speeding and he only gave us a warning so he was trying to apologize for what he had done earlier that was incorrect. [LB712]

JOHN KELLY: Okay. You know, I did as another side note, I did...this letter that I sent to the Governor I also sent to this deputy sheriff and his boss... [LB712]

SENATOR HUDKINS: Good. [LB712]

JOHN KELLY: ...the sheriff. I sent him a copy of the same letter with all the research that I had done and I just figured, well, I just wanted to let them know that I was... [LB712]

SENATOR HUDKINS: Did you hear anything from them? [LB712]

JOHN KELLY: No, I never heard anything from them. [LB712]

SENATOR HUDKINS: All right. Now your running lights are amber? [LB712]

JOHN KELLY: Amber. [LB712]

SENATOR HUDKINS: Aren't there also white running lights? [LB712]

JOHN KELLY: Yes, there are. On some vehicles. And earlier vehicles did have a switch that you could switch to turn them on and off but not most of the vehicles since they passed that law when they're okay in all 50 states now, do not do that. They're just built in. [LB712]

SENATOR HUDKINS: Well, I drive an '02 Pontiac and it has running lights but you can shut them off. [LB712]

JOHN KELLY: Yes. I understand that some you can and some you can't. [LB712]

SENATOR HUDKINS: Okay. Some you can, some you can't. Thank you. [LB712]

JOHN KELLY: Mine you can't. [LB712]

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SENATOR FISCHER: Other questions? You know, I would like to clarify in current law, which you have said, Mr. Kelly, the law enforcement officer was following the law... [LB712]

JOHN KELLY: Yes. [LB712]

SENATOR FISCHER: ...and that in your opinion, that's the problem and that's why Senator Pahls introduced this bill was to remedy that situation, correct? [LB712]

JOHN KELLY: Yes, ma'am. Right. He was following the law as he read it and as I read it, I would say, yes, how would you know the difference between daytime running lights and parking lights. And in some vehicle cases, there is no way to tell the difference. That's why I think that the exception should be made or that the law should be dropped totally. [LB712]

SENATOR FISCHER: Okay. Thank you very much. I appreciate you coming in today. Thank you. [LB712]

JOHN KELLY: You're welcome. Thank you. [LB712]

SENATOR FISCHER: Other proponents? Good afternoon. [LB712]

LOY TODD: Good afternoon, Senator Fischer, members of the committee, my name is Loy Todd, L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. I had absolutely no intention of testifying here this afternoon, just would come and watch but I felt it might be helpful for the committee to know a couple of things. This bill has been introduced several years ago and more than once, but has never gotten any legs. It's been our opinion in the past that the remedy of this is simply repeal of this section of the law. We don't see that it serves any useful purpose whatsoever. Very difficult for us to determine in the past why anyone ever made it illegal to run a vehicle with the parking lights on. It certainly just makes you more visible. I can't imagine that these lights are somehow causing a problem. I did hear one theory years ago that, well, then people would forget if they just drove with their parking lights on early in the morning they or early in the evening, they would forget to turn their lights on. Well, it doesn't seem to be very sensible as a reason to keep this rather bizarre statute. And this gentleman's experience is not unique. We get this call quite a bit and especially when daytime running lights first came out. I will mention that, and I'm certainly not an expert on all the different types of vehicles, but there are a very large number of motor vehicles now manufactured according to the federal standard that do incorporate the entire parking light system as part of the daytime running light system and there is not a way to, in many of those vehicles, to shut them off. And there is federal preemption in this whole area. If the manufacturer builds the car according to NHTSA's standards and it does incorporate the entire

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parking light system on a motor vehicle, then that preempts Nebraska law as far as being able to say a different standard and you can imagine if we had 50 standards to live with in the nation, everybody, every single state get to set configuration of lights would be impossible. So I would strongly urge this committee to consider, just repeal. Not try to make this somehow minced into something that's acceptable. Just...I see no reason to keep this statute on the books and would strongly urge you to repeal it. [LB712]

SENATOR FISCHER: Thank you, Mr. Todd. Are there questions? Senator Pedersen. [LB712]

SENATOR PEDERSEN: Thank you, Senator Fischer. Correct me if I'm wrong, Mr. Todd. Wasn't this the law that was brought to us by one of Senator Hudkins and myself's classmates, Jerry Schmitt, about 14 years ago, retired trooper who didn't like running lights? [LB712]

LOY TODD: Senator Schmitt was usually the very vocal opponent of the repeal of this legislation, that's correct. [LB712]

SENATOR PEDERSEN: And I was sitting here and voted for that at that time so it's not that old but it's not that new either, and we've been trying to repeal it ever since. I'm not so sure Senator Hudkins wasn't sitting right there at that same place when we passed this bill some years ago but so, thank you. [LB712]

LOY TODD: Thank you. [LB712]

SENATOR FISCHER: Senator Aguilar. [LB712]

SENATOR AGUILAR: I guess I would ask the question, do we have any kind of committee bill we could slip this into because it's not going to go anywhere and this is just going to come up again unless we can fast track it some how. [LB712]

SENATOR FISCHER: Legal counsel and I've been working on a, the mother ship, so we'll see if we can get something in. Senator Lautenbaugh. [LB712]

SENATOR LAUTENBAUGH: Can we do something about the number of bolts on the license plate too, (Laughter) or are we going to leave that for another day? [LB712]

SENATOR FISCHER: We will leave that for another day. You can bring that next year then. [LB712]

SENATOR LAUTENBAUGH: So that what you're saying is, there's no real reason for this. And this seems like just an archaic provision which we should probably do away

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with. [LB712]

LOY TODD: Totally. [LB712]

SENATOR LAUTENBAUGH: And this poor gentleman's other choice would have been to go hire a lawyer and make some federal preemption argument to fight the ticket down in Cass County. [LB712]

LOY TODD: Correct. Correct. [LB712]

SENATOR LAUTENBAUGH: Where they've already been questioned by some of the members here, as far as the...oh, well, that's neither here nor there. My sister and brother-in-law escaped about five years ago though, so in any event, thank you for your testimony. [LB712]

SENATOR FISCHER: Senator Hudkins. [LB712]

SENATOR HUDKINS: Thank you. I appreciate Mr. Kelly's frustration but it was a warning ticket. He didn't have to do anything. [LB712]

LOY TODD: Yeah, like I say, his situation is not unique. We have seen people get actual tickets in, historically. I haven't had any this year. I don't think I had any last year either but we've seen it go to...and some people just simply go pay the ticket. I mean, the frustration is there. You could also get a, I suppose, you could get a, maybe, I don't know if they could give a defect ticket or something because it's a decision you could make, I suppose. You can shut off...you could turn on your headlights. One way to beat this whole thing is run with your headlights on at all times, which makes no sense either. But it shouldn't have...you shouldn't have to have the discussion. [LB712]

SENATOR HUDKINS: Thank you. [LB712]

SENATOR FISCHER: Other questions? Senator Louden. [LB712]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. When you say repeal this, Loy, do you mean the whole thing? [LB712]

LOY TODD: Yes. [LB712]

SENATOR LOUDEN: That you can't drive any of the highways with only parking lights on? [LB712]

LOY TODD: Correct. That would be my suggestion. [LB712]

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SENATOR LOUDEN: Well, that was put in so somebody isn't zipping down the highway about 7:30 at night with just the park lights on, isn't it? [LB712]

LOY TODD: No, I think other statutes require you to have your headlights on a half hour after sunset or before. I get that all mixed up all the time. But there's other statutes that address your headlights. [LB712]

SENATOR LOUDEN: That would take care of somebody driving with just the parking lights? [LB712]

LOY TODD: Correct. [LB712]

SENATOR LOUDEN: I see. Then is there a federal regulation or something these cars are made with daytime running lights now? [LB712]

LOY TODD: I don't know that they are all required to have them but I don't know of any that...I just don't know, Senator. It seems that so many of them have them now, it may be a requirement that they all have them. [LB712]

SENATOR LOUDEN: I thought that was a safety factor because several years ago we were all supposed to turn out headlights on, on Memorial days and whenever there was heavy traffic. And the next thing you know, they came out with running lights and that's what I was wondering. [LB712]

LOY TODD: I don't know if they're totally mandatory. I do know that there's a federal standard for daytime running lights and it's a safety feature that most manufacturers have gone to. I don't know if it's required. [LB712]

SENATOR LOUDEN: Okay. Thank you. [LB712]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Todd. [LB712]

LOY TODD: Thank you. [LB712]

SENATOR FISCHER: Are there other proponents to the bill? Are there opponents to the bill? Anyone wishing to testify in the neutral capacity? I see none. Senator Pahls waived his closing. With that, I will close the hearing on LB712 and open the hearing on LB780 and I see Senator Pirsch is here. Good afternoon. [LB712]

SENATOR PIRSCH: Thank you, chairman Fischer, members of the committee, I am State Senator Pete Pirsch representing Legislative District 4, the sponsor of LB780. This shouldn't be too long. LB780... [LB780]

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SENATOR FISCHER: You haven't been before this committee today yet, have you Senator Pirsch? (Laughter) [LB780]

SENATOR PIRSCH: Oh well, that's well...actually now I think about it, I guess, I have but LB780 just corrects a small technical loophole in the statute that pertains to leaving the scene of a property damage accident, 60-696, and the current language purports to allow a judge to take away a person's privilege to drive for a year. That's what it currently says but the language in the current statute really wasn't well written to accomplish the purported goal. To make it do what it wants to do, sixteen extra words should be inserted and that's what LB780 does. These magic sixteen words are used in other criminal statutes to achieve the goal. Probably an inadvertent oversight at the time that the statute was originally drafted but right now under the statute, with the current language, if a judge orders someone not to drive for a year as a penalty, there's no way to enforce it practically because police and the department of motor vehicles won't learn about the judge's desire for him not to drive for a year. And so what would happens now by just the language that exists now, the judge will write, should not drive, shall not drive for year but that language is written with a pen on a piece of paper. It goes into a manila court file and sits on a shelf in the court's office, the clerk of the court's office, and so as a practical matter, if you're a police officer and you stop somebody for some other violation, speeding and what not, you'll never know that, you know, two miles away at the court house the judge had written down on a piece of paper, this guy shouldn't be driving for the next year. Because the magic language is missing, the magic language helps to make sure that the officers and department of motor vehicle are electronically notified that this person was ordered by a judge not to drive for a year and it does that by saying, the judge found additional ordering the person on the piece of paper not to drive, shall revoke, shall order the department of motor vehicles to revoke that license for a year. Now that order would then result in the clerk having to take the piece of paper and inform the department of motor vehicles this guy is suspended and therefore the police officer, if and when he ever does stop the guy during the period of time where the judge didn't want him driving, he would become aware of that revocation. And so, so simply it's just a small technical loophole that, and I'm not sure why they didn't insert the common language that they use in other statutes to prevent against this harm, but they didn't so. That's...it's not monumental in scope and I'm going to waive closing here. If you have any questions? [LB780]

SENATOR FISCHER: Thank you, Senator Pirsch. I have a question. You're saying that adding these words that's the typical language in other statutes and it's ordering in effect DMV then to go about their procedures in obtaining the license? [LB780]

SENATOR PIRSCH: Yeah, what it does is... [LB780]

SENATOR FISCHER: I mean it doesn't say in here how, you know, the order it's revoked but what's the procedure then. But you're saying this is, this is, just how that

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happens. [LB780]

SENATOR PIRSCH: Yeah, by when, and it's a common procedure that when somebody and it's from the magic words, shall order that the operators license of such person be revoked. That procedure necessarily entails telling the court, the clerk of the court telling then the department of motor vehicles, here's a list of people who shouldn't be driving. There are, I guess, there's a slight substantive difference insofar as that the, it would form an independent basis. If the guy was driving during the year, in addition the, it would form a basis of driving during revocation, so. But as a practical matter that's what the judge was ordering so substantively not much of a difference. [LB780]

SENATOR FISCHER: Okay. Thank you. Other questions? Senator Louden. [LB780]

SENATOR LOUDEN: Yes, thanks, Senator Fischer. Senator Pirsch, is there some, this would be a hit-and-run type deal. [LB780]

SENATOR PIRSCH: That's correct. [LB780]

SENATOR LOUDEN: Is there some place in statute that takes, that covers hit-and-run driver? [LB780]

SENATOR PIRSCH: That's what this statute...there's actually quite a, a couple of leaving the scene or hit-and-run drivers statutes that exist currently. 66-96 which deals with just, and that's what this is concerned with, just property damage accidents. It imposes upon somebody whose involved in a property damage accident the duty to not just drive off but to stop and provide certain types of information, you know, the harm here is obviously sometimes you have drunk drivers who get into, you know collisions and rather than stay on the scene where the police can discern that they're intoxicated or whether they can see if, you know, pass their insurance information so the victim knows that they are going to, that there is insurance standing behind the vehicle that just caused thousands of dollars with them. So that's what this bill deals with, is property damage accident. There are other statutes, 66-97 that involves leaving the scene of a personal injury or death accident. And those call for tougher penalties and I don't propose increasing the penalties here. I say, just leave the statute the way it is as far as what the intended penalties are underlying this. It's just, it's just an enforcement issue that right now the officers can't, won't be aware, say the guy was ordered by the judge not to drive for a year as a result of this and, you know, two weeks into it he's driving down, stopped for speeding by the officers. Officers would have, would not, there would be no way to hold them accountable because officers would never know currently under the language that this guy shouldn't have been out there driving, so. [LB780]

SENATOR LOUDEN: Okay. Thank you. [LB780]

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SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB780]

SENATOR LAUTENBAUGH: Thank you, madam chair. So the real key here is we're just adding the language about the revocation which sets in motion the revocation procedure which creates the offense of driving with a revoked license and all those things that you would hope happen. [LB780]

SENATOR PIRSCH: Right. See the defendant would have to, would be held responsible by the judge if the judge were aware...if he orders, if just under the current language which says that, the court shall order the defendant not to drive any motor vehicle for any purpose in the state of Nebraska for a period of one year from the date ordered by the court. So under this current language that exists now, I'm the judge, I can resentence you if I ever learn that you were driving. If for some reason you had the, became an honest person and came into court and for some reasons said, judge, I've got to unburden myself. I've been driving up and down and I took photographs of it, here, can you hold me accountable. But that doesn't happen in the real world. So in the real world you need an enforcement mechanism to enforce the judge's intent. So that's what this bill does is, in addition to the judge saying if I find out about it, he also orders the department of motor vehicle essentially to become aware of it and revoke that license. So that now there is, as the officer is behind the license plates, says wait a minute and gets the idea and says, wait a minute, I can type in my computer and you are in fact not supposed to be driving so I'm going to give you this citation, so. [LB780]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB780]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB780]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Pirsch, this adding this to it, that looks to me like it could be another issue that we would, that the judge or county attorney or someone could use as a plea bargain agreement. Now if you admit to running over that vehicle on the road, then we will let you have your license for another year. [LB780]

SENATOR PIRSCH: Oh, well, I mean, we do it all the time. This is the common language and I think the testifier will come behind me, city prosecutor. We use this day in and day out and he will, I think he can point out the other statutes where this is. Like I said, the standard way of, I think, addressing the penalty in other statutes, I don't know why it was, I suspect it was inadvertently drafted this way by accident. Perhaps somebody who doesn't use or isn't, wasn't particularly familiar with the traffic statutes and the common terminology in language that we use in them. [LB780]

SENATOR STUTHMAN: Thank you. [LB780]

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SENATOR FISCHER: Other questions? I see none. Thank you, Senator Pirsch. [LB780]

SENATOR PIRSCH: Thanks. [LB780]

SENATOR FISCHER: Could I ask how many people are here to testify on this bill, please? Two. Would the first proponent come forward. Good afternoon. [LB780]

MARTY CONBOY: Good afternoon. My name is Marty Conboy, M-a-r-t-y C-o-n-b-o-y. I'm the city prosecutor in Omaha. Our office handles literally thousands of leaving the scene cases over the years. We've used this statute repeatedly. To back up a little bit from what Senator Pirsch was talking about, Senator Hudkins, I'm sure this bill looks familiar to you. This came from you, probably sitting in, very similar, maybe you're over a chair but that was many years ago, and it corrected a really unworkable problem we have with our leaving the scene law and it's been very successful. Since that time, there's been a change in the way our suspension laws read. We had an offense called, driving while impounded. And the language of impoundment was what this was mirrored after, was in the DUI law. That's changed and those other statutes changed. This just has not been updated. If you look at any other law, wilful reckless or serious bodily injury, it all says, the court shall order not to drive and shall order the department of motor vehicles to revoke. And that extra language allows two things to happen. First of all, the DMV does get the record from the court that there is a order to revoke. That way if a police officer pulls somebody over and they run the record, it shows up immediately on their history and it also becomes a part of the record of the state so that insurance companies and others can see that the person is suspended. The second thing it does is, right now the majority of people convicted, and there are hundreds each year in Omaha for instance, of this offense are not put on probation. If the court orders you not to drive and puts you on probation and you drive, and the judge finds out about it, they can violate your probation, even if you don't get arrested. However, the odds of them finding out about it, if you don't get arrested, aren't great. The problem is though, if they don't put you on probation, then there is literally no consequence whatsoever for driving because you've just been, it's sort of like advice. And I order you not to drive and I order you to behave yourself. I mean, it has the same kind of impact. It doesn't really carry any legal significance that you can enforce. And so when this was originally passed, it was very functional. As the laws have changed, particularly as regarding suspended drivers, we found that there are more and more drivers are figuring out that this order not to drive really has no substance and are ignoring it. And therefore, we have victims calling us and saying, I sat in the courtroom and listened to this person told, ordered not to drive, and I see them driving every day and there's really not much we can do about it. So I guess, this is a corrective bill. It is not really an error as much as just to update so it's consistent with other statutes and certainly consistent with the way our laws work now. So it is significant in the number and certainly the gravity of the offense and I'd point, I guess, Senator Stuthman, you're concern is correct. As a result when this bill was drafted, it says, any suspension. So it really is required. It takes that out of that plea

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bargain range. If you're a victim, you don't have to worry about, you know, some horse trading going on. If you're convicted of hitting somebody and taking off, you're going to lose your license. [LB780]

SENATOR FISCHER: Thank you, Mr. Conboy. When you opened, you were quoting the sixteen words or whatever it was that Senator Pirsch has adding to this law and, but you included the words department of motor vehicles in there. Does that need to be included in here? [LB780]

MARTY CONBOY: No, I'm sorry. I was sort of paraphrasing, I guess, in both sections and that is automatic. There's another statute that requires that abstracts be sent and... [LB780]

SENATOR FISCHER: Okay. Thank you. I was just confused with Senator Pirsch's previous answer, so thank you. Senator Pedersen. [LB780]

SENATOR PEDERSEN: Thank you, Senator Fischer. Mr. Conboy, this particular bill has no fiscal note. However, it would probably put a few more people in jail, would it not? [LB780]

MARTY CONBOY: No, actually directly it would not. I guess, theoretically, I hadn't thought of it but if you are revoked, then to start driving at the end of the year you'd have to pay the \$125 reinstatement fee. Right now these people don't pay that so there probably would be a positive fiscal note if you look at it just as the effect of this. Now I understand what you're saying. If people are prosecuted for driving during that year, some of those might go to jail and that might have that kind of ripple effect. If those people do violate that new crime, some of those would go to jail. [LB780]

SENATOR PEDERSEN: Do we not have some kind of numbers on the percentage wise of people who drive anyway when they're license is revoked? [LB780]

MARTY CONBOY: It's disappointingly high. I've seen estimates as high as 40 to 50 percent. It's just...I guess the numbers of suspended drivers that we prosecute would indicate...we prosecute about 10,000 a year in Omaha alone, so a lot of suspended drivers ignore court orders, that's true. And unfortunately something like this, I guess, our view is, it promotes that lack of respect for the courts orders and there's no way to enforce it. But you're correct, I think this would probably add to that. [LB780]

SENATOR PEDERSEN: Thank you, Marty. [LB780]

SENATOR FISCHER: Other questions? [LB780]

MARTY CONBOY: (Exhibit 1) I should point out. I apologize. I'll publish this. The city

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council of the city of Omaha has signed off and so has the Mayor in support of this law and if I could, I'd ask their support. And the County Attorneys Association, who I represent as well, have agreed to support this. [LB780]

SENATOR FISCHER: Okay. We will have that entered in the record. Thank you, Mr. Conboy. Other questions? I see none. Thank you, very much. [LB780]

MARTY CONBOY: Thank you. [LB780]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB780]

ROBERT SCHMILL: (Exhibit 2) Good afternoon. My name is Bob Schmill, S-c-h-m-i-l-l. I'm with the Matt's Dream Foundation of Omaha and chairman Fischer and members of the committee, I'm the father of Matt Schmill who was killed by a drunk driver, hit-and-run drunk driver here on April 12, 2004. To keep Matt's memory alive, we have founded the Matt's Dream Foundation to educate adults in the dangers of alcohol and the impact of drinking and driving has on the family and friends of the victims. We speak to six to eight groups per month in a two-state area and we focus on the 19 and older drivers. The reason why I support this bill is, one, I was the only one that went in front of the city council and thanked them for it but the other reason is more. It starts with Matt but it also extends to include the citizens of the state. After years of decline, the numbers of hit-and-run offenses, and that's going to be all of them, but all the numbers of hit-and-run offenses have now grown to an ever increasing numbers and regularity. Although leaving the scene of a property accident doesn't leave behind the death, the permanent injury, and the psychological trauma and the grief that a personal injury accident does, it does rob the victim of their time, their money for repairs, as well as an increase in their insurance premium. Our society is becoming one that doesn't stay and accept the responsibilities but runs away and hides their head in the sand. Why hit-and-run? Studies that have been done or information that has been collected, and there's one web site that's deadlyroads.com. I didn't list that but to where a lot of these on why they're hit-and-runs. One is driving impaired, drinking, drugs, drowsy, distracted. Unlicensed driver or car. Illegal immigrant, suspended or revoked license, repeat offenders, uninsured. 3. Self preservation. Keep it a secret, let's don't tell anybody. They have something to protect, their reputation and status. It could be a stolen vehicle. It could be start of street racing and one of the biggest ones is people will say, well, I was scared. That's why I ran away. Aggressive drivers. Road rage, amorality and age, youthful immaturity. They just weren't old enough and I got scared and ran home. Unfortunately, because hit-and-run crashes are punished less severely than alcohol related crashes, we have given drunk drivers an incentive to flee the crime to try to escape having a BAC test done. If captured shortly after the accident, it's difficult for the prosecuting attorneys to provide, to prove impairment at the time of the accident. We can assure you this is well-known in the drinking circles. We need a strong message to those that are offended. Put in those sixteen words. Vote and send this bill back to the

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full session to become law. Thank you for your time. And I'm open for questions.
[LB780]

SENATOR FISCHER: Thank you, Mr. Schmill. Are there questions? I appreciate you being here today and our condolences on your son. [LB780]

ROBERT SCHMILL: Thank you. [LB780]

SENATOR FISCHER: Thank you very much. Are there other supporters for the bill first? Are there opponents? Anyone in a neutral capacity? With that, Senator Pirsch has waived closing and we will close the hearing on LB780 and adjourn the hearing for today. Thank you. [LB780]

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Disposition of Bills:

LB1051 - Advanced to General File, as amended.

LB874 - Indefinitely postponed.

LB712 - Indefinitely postponed.

LB780 - Held in committee.

Chairperson

Committee Clerk