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Transportation and Telecommunications Committee
January 31, 2011

[LB164 LB183 LB206 LB215 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, January 31, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Gubernatorial Appointments of Timothy Weander to Board of Public Roads Classifications and Standards, and E.J. Militti, Jr. to State Highway Commission, LB183, LB206, LB164, and LB215. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Loudon; and Scott Price. Senators absent: None.

SENATOR HADLEY: Welcome to the Transportation and Telecommunications Committee hearing. My name is Galen Hadley and I'm the Vice Chair of the committee and I'm from Kearney. Senator Fischer is introducing a bill, which many of us do during this time of year, and so I will be on my toes because she may walk in and be checking on me at any time in the near future. The other members of the committee, on my far right is Senator Scott Price from Bellevue. To my immediate right is Senator Kathy Campbell of Lincoln. On my left is Senator Scott Lautenbaugh of Omaha. And to his left is Senator Annette Dubas from Fullerton. The staff is committee counsel, Dusty Vaughan to my left, and committee clerk Laurie Vollertsen. The pages are Crystal Scholl from Lincoln and Kyle Johnson from Sutton. We've been joined by Senator Janssen from Fremont and Senator Loudon from Ellsworth. We'll be hearing bills in the order 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 testify in order to keep the hearing moving. Please complete the yellow sign-in sheet at the on-deck table so it will be 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'll need to hand the sign-in sheet to the clerk before you testify. For the record at the beginning of your testimony please spell your name and also your first name if it can be spelled several different ways. Please keep your testimony concise and try not to repeat what someone else has covered. If there are a large number of people to testify, it may be necessary to place time limits on testimony. If you do not want to testify, but want to voice your support or opposition to a bill, you can indicate so at the on-deck table on the sheet provided. This will be part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a yellow sign-in sheet and actually testify, even if you just state your name and 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. Please relax and try not to be nervous. If you need to take a drink of water, please ask the page. Cell phones, please turn off all cell phones. We will start with the gubernatorial appointments. We will start with Mr. Weander for the Board of Public Roads Classifications and Standards. Mr. Weander.

TIMOTHY WEANDER: Thank you. Good afternoon, Senators. I don't know what I'm

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supposed to do. Do you want a statement from me? [CONFIRMATION]

SENATOR HADLEY: Basically tell us a little bit about yourself and why you would like this appointment and you can keep it as brief as you'd like. [CONFIRMATION]

TIMOTHY WEANDER: (Exhibit 1) Okay. My name is Tim Weander, I'm with the Nebraska Department of Roads. I'm the District 2 engineer in Omaha; a 28-year employee with the Department of Roads this coming May 18. Started in Omaha when I got out of college in 1983 with a bachelor's degree in construction management. I spent six years in Omaha and then transferred into roadway design and worked in an expressway unit and in our interstate design unit and headed up one of our interstate design units and completing the interstate system in Omaha, I-80, I-480. And then transferred from there out to Grand Island as district construction engineer for three months and at that time the District 5 engineer position came open with the retirement of the district engineer out there and was able to get that position and was District 5 engineer for seven years. And then District 2 engineer came open and moved back into the Omaha area and I've been in District 2 for eight years this February. [CONFIRMATION]

SENATOR HADLEY: Thank you. [CONFIRMATION]

TIMOTHY WEANDER: Okay. [CONFIRMATION]

SENATOR HADLEY: Is there anything else you'd like? [CONFIRMATION]

TIMOTHY WEANDER: No, that would...that gives my background, so if you have any questions, I guess. [CONFIRMATION]

SENATOR HADLEY: Is there questions? Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: Thank you, Vice Chair. Mr. Weander, I'm from Fremont and is that part of your district that you cover? [CONFIRMATION]

TIMOTHY WEANDER: It is. District 2 encompasses the five counties in eastern Nebraska; Dodge, Washington, Douglas, Sarpy, the north half of Cass County. [CONFIRMATION]

SENATOR JANSSEN: I know we contacted you and your office before and you've always been very helpful in getting back to us, maybe sometimes not with the answers that people want to have, but definitely appreciate that information. [CONFIRMATION]

SENATOR HADLEY: Other questions? Senator Lautenbaugh. [CONFIRMATION]

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SENATOR LAUTENBAUGH: So you must have been very happy to get back to District 2 after being in all those other places, right? Don't answer that question, you'll irritate part of the committee. [CONFIRMATION]

TIMOTHY WEANDER: I will give you...I want to answer that, because actually I'm a second generation Department of Roads employee. My dad worked for the department for 45 years; was an engineer that we lived in a trailer house and moved all over the state. I was born in Ainsworth; Sandhiller at heart; moved all over the state as a kid. So I lived in five different districts as I was growing up and I've worked in three. So I've seen a lot of the state so I think I can be a benefit to the Board of Public Roads and Classifications. [CONFIRMATION]

SENATOR LAUTENBAUGH: And I'll echo Senator Janssen's comments as Mr. Weander has my area as well, if you will, as part of his area and he has always been very helpful and forthcoming and getting us the information we needed and helping explain to the media in Blair why 133 isn't widened yet despite the desire. But I appreciate your help and thank you for being willing to do this. [CONFIRMATION]

TIMOTHY WEANDER: Thank you. [CONFIRMATION]

SENATOR HADLEY: Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Hadley. Thank you, Mr. Weander, for coming today. As a new member of the Transportation Committee, could you explain to me what the Board of Public Roads Classification and Standards does? [CONFIRMATION]

TIMOTHY WEANDER: Yes, it is a body that was established by the Legislature, I think in 1969, or something like that, but at the time, the way I understand it, there were no set standards on the classification of roads throughout the state whether they be municipal, county, or state highways. The board was established to set up standards for each one of those functional classifications...to establish functional classification and then to set standards, minimum standards that those roadways would be designed to and upheld for maintenance also. The board also reviews the one- and six-year programs for each one of the entities, the municipalities along with the counties and the Department of Roads. And then they make sure that the required paperwork or accounting system is done to show that the funding is spent wisely in their entity. [CONFIRMATION]

SENATOR DUBAS: Thank you. Who makes up the membership of this board? [CONFIRMATION]

TIMOTHY WEANDER: I've been to one meeting, but I think there's 11 members; there's 2 from the Department of Roads; myself and then our deputy director as another

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position; I think there's 3 from cities; 3 from counties; and 3 at-large, I think.
[CONFIRMATION]

SENATOR DUBAS: Thank you. Even though I've not been on the Transportation Committee in the past, I've gotten to know my district engineer, Mr. Wes Wahlgren, very well and he has been extremely helpful. He even took me on a tour of the district one day. We spent a whole day walking underneath bridges and he really helped me understand the issues that you work with on a day-to-day basis. So thanks for what you do. [CONFIRMATION]

TIMOTHY WEANDER: Thank you. [CONFIRMATION]

SENATOR HADLEY: Thank you. Any other questions? Senator Louden.
[CONFIRMATION]

SENATOR LOUDEN: Yeah, thank you, Senator Hadley. Well Tim, you were out at Bridgeport when, about 2002-2003, somewhere along in there? [CONFIRMATION]

TIMOTHY WEANDER: I went out in '96, spring of '96 and left in the spring of...February of 2003. [CONFIRMATION]

SENATOR LOUDEN: That's what I thought, you were out there. I don't know if you noticed or not, but we haven't got much more built on that Heartland Expressway south of Alliance than when you left. [CONFIRMATION]

TIMOTHY WEANDER: I've noticed. I do antelope hunting out there. [CONFIRMATION]

SENATOR LOUDEN: Okay. And that's the only time you noticed those when you went out there antelope hunting. Here a year or two ago we passed this bill for these rural roads, I forget what the names of them was, but anyway, they changed the classification on some of them rural roads so that they didn't have to have that 24 foot of gravel and a few things like that. Now right now, the Governor is wanting us to do away with any county aid or anything like that, do you feel, as being a member of that committee, that you should relax some of those specifications on some of them rural roads so the counties can afford to build some of them? [CONFIRMATION]

TIMOTHY WEANDER: Well I think each case should be looked at individually. The...when I was out there we had several county roads going north from Oshkosh up through the...now I can't think of the...wildlife refuge up to Highway 2 that was a minimum maintenance road...it wasn't minimum maintenance, but it was a 24...it was a 12-foot paved roadway segment in the Sandhills and it was falling apart because the problems with the...they tried to do a hot mix in there instead of keeping it as cold mix. Cold mix likes to move with the sand pretty good instead of the hot mix. Each...I think

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each segment is going to have to be looked at. Funding is an issue for all of us and you can only build and maintain what you're able to do. I don't know if I answered your question. [CONFIRMATION]

SENATOR LOUDEN: Well, those oil strips we had, they were deteriorating; can't afford asphalt now days and they were going in with rock and then the specifications at that time for...was in order to go in with gravel rock you had to have a 24-foot surface, I think. And it was...wasn't feasible out in those sand hills to build roads like that and we passed some legislation here and finally got it worked around to where they're starting to be able to put it in their one- and six-year plans now. But I'm wondering now that we're short on funds if they shouldn't...if that shouldn't be addressed again on what those specifications should be because some of this...counties, I don't know if they can afford to build the roads at the specifications we relaxed it to. And I'm wondering as a member of that committee, you know, where you would come down if something like that was brought up again? [CONFIRMATION]

TIMOTHY WEANDER: Well, it all comes down to safety and they would have to show that they're not sacrificing safety for funding. Even with the lack of funding you want to maintain your sign systems, your sets that you have out there, you want to try and get as safe a roadway as you can get. So, again, it would have to be an individual situation; look at a segment and say, you know, this segment only has so much traffic and then you might look at how much is going to be head to head at any particular time. So I guess I don't want to commit because each situation is different. [CONFIRMATION]

SENATOR LOUDEN: Well, yeah I know, and with that...when you say safety, the question in the Sandhills is what's safe and what's passable, I guess, in order to get through. And with the trucks and stuff, why you about got to have a solid base there, but it doesn't necessarily have to be 24 feet wide or whatever because most people just drive off in the ditch while a truck goes by and that's why I'm wondering if there should be a...some other...if we're going to have to work on another classification since the counties aren't going to be entitled to that funding. [CONFIRMATION]

TIMOTHY WEANDER: Well if the bill covers that, and I'm sorry I don't...I knew there was a bill, but I don't know what the final wording was or how it was passed, but to do carte blanche on that, I think, is probably the wrong move. I think you still have to look at everything on an individual basis. [CONFIRMATION]

SENATOR LOUDEN: Okay, thank you. [CONFIRMATION]

SENATOR HADLEY: Further questions from the committee members? Hearing none, thank you. [CONFIRMATION]

TIMOTHY WEANDER: Thank you. [CONFIRMATION]

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SENATOR HADLEY: Are there any other proponents who would like to speak in favor of the appointment? Those opposed? Those in the neutral capacity? Hearing none, thank you. Next E.J. Militti, Jr. to the State Highway Commission. Mr. Militti.
[CONFIRMATION]

E.J. MILITTI, JR.: (Exhibit 2) Hello. Thank you for having me. A little bit about myself; grew up in Omaha, Nebraska, and, gosh, left around 1989 and found myself in New York City, Boston, and then worked very, very hard to get back to the state of Nebraska. And after several years of being away and a different career, I found a career back here, so I've been back in the state of Nebraska for about three years now. How I found out about the Department of Roads and transportation was sitting with...a meeting with Mr. Duane Acklie and he looked at me and asked the question if I wanted to be involved. And I said, sure. And then I had a meeting and a discussion with Mr. Dick Reiser and he asked, you know, my ideas and thoughts. And I said sure. And then sure as can be, I Googled the Department of Roads and I find out that funding is one of the biggest issues and I asked myself what did I get myself into. (Laugh) That's how I...the genesis of me being involved as a...me wanting to be involved, you know, coming back to the state of Nebraska, it gave me a chance to get involved with the community in the state. That's something that can't be done in the cities I was living in and I'm happy to be here and so I'm happy to be here in front of you. [CONFIRMATION]

SENATOR HADLEY: Are there questions for Mr. Militti? Senator Dubas.
[CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Hadley. As I'm looking through your resume, I see one of the points you make, you're personally responsible for generating annual revenue of \$2.5 million. Can you help us with that? (Laugh) I understand finance is your background so I think you bring some great qualifications. [CONFIRMATION]

E.J. MILITTI, JR.: Yeah. Sure, sure, are you talking about my days...earlier days at Dean Witter in New York? [CONFIRMATION]

SENATOR DUBAS: I believe that may have been it. Yes. [CONFIRMATION]

E.J. MILITTI, JR.: Sure. On a trading desk there could be inventories of hundreds of millions of dollars and it's the job of a person on a trading desk to move instruments back and forth at a price that's beneficial to the company that you're working with. So we would be working with retail and institutional banks, entities, insurance companies in placing products with them for their investments. So, yes. [CONFIRMATION]

SENATOR DUBAS: Well my question was partly in jest, but it also...I mean, your background, obviously, in the financial realm and understanding the challenges we face

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as far as present and future road spending, I think that's a great asset to the commission. [CONFIRMATION]

E.J. MILITTI, JR.: Yes, you know, University of Nebraska finance major, MBA and studied finance and actually, really, I kind of joked and in jest about the budget. It's really a strong issue and I think that was one of the reasons that Duane wanted me to work within the highway commission was to add some of the knowledge that I have and leverage that on the highway commission in terms how to budget. I know that bonding is an issue. I well understand bonding. Preferred? I don't know, I have to think about that. Rates are wonderful now. But I think right now I think that my job is due diligence to get up to speed with the highway commission, learn about what the needs are, we know budgeting is one of them and then move into the role, I think in a deeper role after that. [CONFIRMATION]

SENATOR DUBAS: Thank you for being willing to serve. [CONFIRMATION]

E.J. MILITTI, JR.: Thank you very much. [CONFIRMATION]

SENATOR HADLEY: Senator Louden. [CONFIRMATION]

SENATOR LOUDEN: Yes, thank you, Senator Hadley. As I see you're from Omaha and Lincoln and been points east, what do you know about the roads of Nebraska? Have you traveled...how extensively have you traveled the roads of Nebraska? [CONFIRMATION]

E.J. MILITTI, JR.: You know I guess that's...I don't know...how...in relative to most...many people in the room, I'm not sure. I travel west quite a bit; my job takes me to points in the state of Kearney, Grand Island, Minden, Holdrege, that area, Paxton, Nebraska, McCook, towards there. And then I also travel frequently north and north east portion near Verdel and Niobrara often and so I think I have an understanding of the roads. I know this, the roads in Nebraska are in very good shape as comparison in a relative basis. But the funding, necessarily, isn't there for the roads to stay in those conditions. And I think that's one of the issues moving forward is that while I've driven the roads, I find that most of the roads are easily passable and in good conditions. But I think the issue going forward is how do we fund not only the current roads and keep and maintain them, but how do we be able to fund future projects that are good for the commerce of the state? So yeah, I've driven the roads, I think, well, I would say probably the northwest portion of the state, which I understand is very, very beautiful is my least experienced amount of travel. [CONFIRMATION]

SENATOR LOUDEN: What's your philosophy on using transportation or construction of roads or expressways for economic development? What priorities should economic development have over traffic count and how much priority should be given to traffic

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count? [CONFIRMATION]

E.J. MILITTI, JR.: It's the chicken and egg. There's no doubt you can find study after study that when developing roads there were definitely oftentimes within communities commerce will, you know, would be revised upwards or adjustments or predictions could be revised upwards whether that happens or not. But in most often cases, development of roads whether it be beltways, whether it be highways, benefit the communities around. There's no doubt about that. [CONFIRMATION]

SENATOR LOUDEN: Are you familiar with the Ports-to-Plains, a transportation corridor going across western Nebraska and Colorado and that? [CONFIRMATION]

E.J. MILITTI, JR.: I think that's probably coming into District 2, probably the area that I'm least knowledgeable about. I understand that there have been some projects that have been suggested before, there's been some funding, but I wouldn't say that I'm well-versed on that area out west. [CONFIRMATION]

SENATOR LOUDEN: The idea of the transportation corridor from Canada down to the Gulf, you've not been...? [CONFIRMATION]

E.J. MILITTI, JR.: In terms of pipeline, are you talking about? [CONFIRMATION]

SENATOR LOUDEN: Well you can put anything in it. The transportation corridor primary for roads and traffic, but it can be railroads or power lines or pipelines or whatever, but that's what the federal government has designated that as a federal transportation corridor and I was wondering if you were familiar, because that's what we've been working to try and get funding out there to build some expressways across that part of the state of Nebraska for commerce from Canada to the Gulf of Mexico and I was wondering if you were...had anybody ever visited with you about it or if you've ever received any information from that organization or not? [CONFIRMATION]

E.J. MILITTI, JR.: No, I can't say that I've...no one has made it a point to really pull me aside and give me a, I think, a deep briefing on it. I mean, I hear things in the commission, I mean, it's...there's always an issue in anyone's district and I have heard of issues in terms of wanting projects developed in certain districts. Of course it always comes back to funding and it comes back to whether there's enough, I guess, traffic to support the need for that development. But, again, I don't want to speak out of turn to say that I really understand nor do I have any sort of opinion on development of that, no. [CONFIRMATION]

SENATOR LOUDEN: My last question, do you understand the formula for gas for fuel tax? [CONFIRMATION]

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E.J. MILITTI, JR.: The exact formula, no; but I'm quite familiar with how the formula works continuing today with projections into the future and fuel surcharges and fuel taxes while it services well now and we can certainly add more fuel taxes onto the current taxes of...it's not a sustainable way to support the transportation needs and the budget, so we'll have to get other sort of means coming forward. [CONFIRMATION]

SENATOR LOUDEN: Okay, thank you. [CONFIRMATION]

E.J. MILITTI, JR.: All right, thank you. [CONFIRMATION]

SENATOR HADLEY: Any further questions? Thank you, Mr. Militti, appreciate it. [CONFIRMATION]

E.J. MILITTI, JR.: Thank you very much. [CONFIRMATION]

SENATOR HADLEY: Are there further proponents to this appointment? Opponents to the appointment? Neutral? Thank you. We will close now the appointments part of the hearing. And we will have Senator Wightman introducing, and my understanding we will hear LB183, change abandoned motor boat and trailer privileges and LB206, provide for disposition of abandoned camper units and cabin trailers together. Senator Wightman. [CONFIRMATION]

SENATOR WIGHTMAN: Thank you, Senator Hadley and members of the Transportation and Telecommunications Committee. Now it is my understanding that you wish to hear, or are willing to hear two bills together. [LB183 LB206]

SENATOR HADLEY: Yes. [LB183 LB206]

SENATOR WIGHTMAN: LB183 and LB206, one deals with boats, abandoned boats; the other one deals with abandoned trailers and campers so I will present it in that manner because I think it will save you some time. [LB183 LB206]

SENATOR HADLEY: Yes, we have agreed to do that, Senator Wightman. [LB183 LB206]

SENATOR WIGHTMAN: I'm John Wightman representing District 36, spelled J-o-h-n W-i-g-h-t-m-a-n, that's my name spelling, not District 36. As you may remember, I introduced LB688 a year ago that sought to amend the law on abandoned vehicles and to do the following broadened the definition of vehicle to include any type of motorized vehicle that transports people or property. But also, in the same bill would have broadened the definitions to include abandoned boats and include campers that require a permit. Last year LB688 did not advance from this committee. Last year we included counties, as well as municipalities. This year we're limiting it to second class cities,

villages, and first class cities as well. This year I hope we'll learn from past experience, and I've introduced it as two bills so that you can consider them separately, if you wish to do so. But I think, probably, for most of your consideration, you probably can consider them together. LB183 which addresses abandoned boats and LB206 which addresses abandoned campers, including campers mounted on trucks and camper trailers. LB183 and LB206 are intended to narrow the language from LB688 that was submitted last year and incorporate changes into existing laws and focus on the problems brought to me by the city of Gothenburg; but also being supported by the League of Municipalities. Under current Nebraska law, a question exists about the authority of a municipality to act and dispose of abandoned motor boats and campers. The Nebraska Supreme Court has adopted and consistently applied the rule commonly referred to as Dillon's Rule on Municipal Corporations and I'm going to quote from a Supreme Court opinion in Christensen v. the City of Fremont, which, perhaps, Senator Janssen is familiar with, but, and that was an 1895 case, so it's been followed for a year or two...or a century or two, or whatever. The essence of Dillon's Rule is that the requirement there be enabling legislation in the form of a state law for every power exercised and every action taken by a municipal official or agent on behalf of a city or village. Nebraska and other states that operate under Dillon's Rule are known as grant of power states. All powers which municipalities are authorized to exercise have been granted to them by the state. It is incorrect to assume that a municipality has the authority to exercise any power or take any action simply because such authority is not prohibited by statute. Any municipality or official operating on this false assumption is destined for trouble; now this is a quote, and potential liability for ultra vires unauthorized acts. So you see, we have to look at what the statute says in order to have any authority. Current Nebraska law in Section 60-1901 of the Nebraska Revised Statutes, Supplement 2010, provides the authority for municipal ordinance needed to address abandoned vehicles, but not authority to dispose of abandoned boats. LB183 amends existing law and would seek to amend the existing law on motor boats to address abandoned boats and any trailer upon which the same rests which are found on private property. The municipality may act if under this legislative bill, the boat is inoperable, partially dismantled, wrecked, junked or discarded, if left unattended and visible to the public for more than 30 days on private property within a municipality or its extraterritorial zoning jurisdiction. Boats found in authorized junk yards are excluded. This language is based upon provisions found in municipal ordinances governing abandoned vehicles. Provision is based under the legislative bill for the storage of motor boats in the off season and for long-term storage. Wrecked, junked or discarded boats, if left unattended and visible to the public, will still be subject to the law if the other requirements of the law are met. The remaining sections of LB183 outline the process used to attempt to find the owner of the boat and trailer, how the boat or trailer may be sold and that the proceeds of any sale, if any, above the storage and sale cost must be held for the owner for two years before they are transferred to the municipality's general fund. You will hear from representatives of the city of Gothenburg about the issues and see pictures of abandoned boats. You will hear from a representative of the League of Municipalities that the disposition of abandoned boats is

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a statewide problem for municipalities. In summary, we would ask you to support LB183 for the following reasons: municipalities must have clear authority to address abandoned motor boats like they do for abandoned vehicles. Since I won't be saying all of the same things with regard to campers and trailers, that would also apply under LB206 to abandoned campers and trailers. It would also apply if abandoned boats present a public health threat because they are breeding grounds for rats, mice, and mosquitoes that transmit the various diseases including the deadly West Nile Virus. Abandoned boats are both an attractive...that's my language, attractive and an unattractive nuisance. For you who follow some of the legal cases in attractive nuisance, one that is likely to invite or cause children to play around them and maybe get up on the boats or campers or whatever they might be and might be subject to injury. And then the owner could have liability for that. But I think we're...at least is interested in the unattractive nuisance prospect of this particular bill. Abandoned boats are unattractive. Maybe they are attractive to the owner in some cases, but many of these have been sitting in the same location for years. Municipalities and the residents have a vital interest in keeping their cities from becoming unsightly and unsafe. No one wants to live in a neighborhood that has turned into a junk yard by abandoned boats, or in some cases by abandoned campers or trailers. Abandoned boats, like I said, are an attractive nuisance because children are attracted to them and certainly mothers and fathers would like to keep their children free from this possibility. Municipalities large and small must be attractive to new residents and present a safe environment for children. And finally the process for the disposition of abandoned boats set forth in LB183 and for campers and trailers in LB206 parallels the process for abandoned vehicles that has worked well. I urge you to advance both LB183 and LB206 to General File. I'd like to discuss basically LB206 parallels almost entirely, LB183, except for one thing and we went back and we're offering an amendment. I think it's in the hands of the legal counsel at this point and it was brought by people representing the lending industry. Because of the fact that there's usually no title to these campers that fit into a pickup chassis or pickup box, and so their interest might...were not protected as we had it, because there's no title to this. So they felt it was necessary that we have something that would allow a city municipality to take into account and see whether there were any liens under the Uniform Commercial Code. And so basically that's the big difference between them right now, LB206, because...with regard to boats, there is a title to the boats. I don't know if there's always been, but there is now. And with regard to at least that type of camper, not a pull type of trailer, those would have a title, but the campers that fit into the pickup box frequently do not and so it provides that the governing body of the municipalities would have to make a check of the UCC Codes to see under the owners name, if they can find an owner's name, sometimes that's difficult to do. So basically the argument is the same on both. We would hope that both of them would be passed onto General File. Our amendment that we proposed is AM181 and because of the fact that a lien would not be noted on the title, they would need to look at financing statements in the...filed under the UCC. Just to review, and probably most of you know, zoning jurisdictions for villages and cities is second class...of the second class would be

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one mile; two miles for first class cities and for metropolitan class; and I think both Lincoln and Omaha is three miles beyond the corporate limits. So with that, I would be happy to answer any questions or try to answer any questions you have. We will have some testifiers. [LB183 LB206]

SENATOR HADLEY: Thank you, Senator Wightman. Senator Price. [LB183 LB206]

SENATOR PRICE: Thank you very much, Senator Hadley. Senator Wightman, I understand and appreciate what you're trying to do here and when I had my county ordinance bill we had some issues here. One of the things that perplexes me in both bills is that these are recreational vehicles that...like if we take the boats and you follow the manufacturers expected storage requirements and if you look at when they're used, there's 150 days out of a year that you won't use a boat in most places in Nebraska because, you know, you have April to October to use it, so we're already kind of setting ourselves up, because one man's junk is another man's treasure, so the \$250 threshold I have questions about. So, I'm going to be a little hung up on 30 days. And I notice in LB206, it would be page 5, line 9, Section 6(a), you have seven days for a trailer, seven days. [LB183 LB206]

SENATOR WIGHTMAN: Well let me tell you a little bit, Senator Price, and we're going to have Officer Randolph from the Gothenburg department, they've gone through a lot of these with motor vehicles which are very similar, and he's told me about all the protections that they take. Usually they...they always contact the landowner first...not the landowner, but also the personal property owner; talk with them, give them a notice that they need to clean it up. They visit with them. Very few of these have even gone into court. They give them a 30-day period and I'm not saying that all of this would be required by law that the city of Gothenburg does, but it's the way most of them are handled. I'm stealing his testimony here, I suppose. They give them a 30-day waiting period, sometimes give them a second notice. They had...again, I'm using a lot of his testimony, but as I understand it, they had 97 cases with regard to abandoned vehicles; 93 of them were cleaned up by cooperation if they...they had the authority then they'll get cleaned up. Four were not; actually went into court, as I understand it, and you can question him more about this, of those four, the court entered an order on all of them with no fines in which they were given 30 days to clean up and all of them cleaned it up within the 30-day period. So not one of them ever...and I think he'll tell you that they never seize the property. [LB183 LB206]

SENATOR PRICE: And I don't quite follow that. I just saw those dates, I saw the days and I thought for purposes of anybody coming to discuss if they want to elaborate on that, but when you...it was kind of interesting when you put it in a statute seven days and you have a neighbor who you may have less than a sterling relationship with, I'm also thinking about people calling and saying, well, I'm mad at Joe so I'm going to turn him in because he's had his camper out there for a week. I understand that takes it

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almost to the absurd, but when you read through it, you look at and the area I deal with and the rural part of Sarpy County and my area we have a lot of military members who will get a one year, a lot of guard reserve are out for a year, I'm sure people will take the best efforts to make sure no one gets injured by this, you know, because the guy is gone for a year, but it just caught my eye that in one bill we say 30 days and in another we say seven. So I'll leave it at that and listen to testimony, I just wanted to... [LB183 LB206]

SENATOR WIGHTMAN: I think there are even different parts of the same bill so. But it does provide that they have to meet certain tests with no decal affixed, in a condition that appears to be partially dismantled, like junked or discarded. And so it does require some additional tests to see if it's going to meet this. [LB183 LB206]

SENATOR PRICE: Thank you. [LB183 LB206]

SENATOR HADLEY: Are there further questions for Senator Wightman? Seeing none, thank you, Senator Wightman. [LB183 LB206]

SENATOR WIGHTMAN: Thank you. [LB183 LB206]

SENATOR HADLEY: Will you waive closing? [LB183 LB206]

SENATOR WIGHTMAN: Oh, I'll stick around for a little... [LB183 LB206]

SENATOR HADLEY: Okay. Are there proponents to the bills? Yes, and if you're...since we're taking the two bills together, make sure that you specifically state whether you're speaking to one or both of the bills. [LB183 LB206]

RYAN RANDOLPH: Okay. [LB183 LB206]

SENATOR HADLEY: Thank you. [LB183 LB206]

RYAN RANDOLPH: (Exhibit 3) Good afternoon. Vice Chair Hadley and members of the Transportation and Telecommunications Committee. I'm Ryan Randolph, R-y-a-n R-a-n-d-o-l-p-h. I'm a police officer representing the city of Gothenburg located in the 36th District. On behalf of Gothenburg I personally want to thank our district senator, Senator Wightman, for the introduction of this bill. I believe Senator Wightman's career as an attorney and his experience in city government, both as a city councilperson and as a mayor, has provided him with a background to understand the complexities and even sometimes the frustration cities experience in dealing with abandoned and/or inoperable vehicles. I also believe Senator Wightman recognizes that these vehicles may at times, ultimately, may be a question of health and sanitation to our citizens. LB183 and LB206 provide for an expansion to an already existing statute in regards to

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abandoned and inoperable vehicles. Under Nebraska's Revised Statutes 60-1901 the standard is set forth to deal with the unlicensed and/or abandoned vehicles of which these vehicles must be licensed under the Motor Vehicle Registration Act. What 60-1901 does not currently cover are other types of mechanized or nonmechanized machinery beyond those currently covered by the statute. This machinery includes boats, campers, trailers, etcetera, or any other vehicle or vessel that might have a certificate of title issued pursuant to the Motor Vehicle Certificate or Title Act with no permit issued pursuant to Section 60-1801 and 60-1808. Many communities constantly struggle to enforce the abandoned vehicle statutes and city ordinances and Gothenburg is not an exception. Over the last five years, as Senator Wightman said, we have issued 97 notices for cleanup or removal of unlicensed or inoperable vehicles. In the last five years, 93 of those vehicles have been removed from the property or have been licensed and made operable. The remaining four property owners were issued citations, convicted by the county court and the county court ordered the removal of the vehicles. I believe that the enforcement of the statute and the city ordinance is important to any community wanting to protect their citizens against vehicles or other mechanized equipment from a health standpoint, a trash standpoint, and overall common decency. LB183 and LB206 provide for an expansion of current laws to cover boats, trailers, etcetera. As you will notice in the first picture, there is a rather large boat and motorized camper. The camper already meets the definition of a motor vehicle under the current statute. What is frustrating to the enforcement of our city ordinances is that under existing state statute and city ordinances we will be able to cite this property owner for unlicensed vehicles if the vehicle is not registered in the state of Nebraska. In addition, we would also be able to cite the owner of this vehicle if the vehicle was licensed but was inoperable, partially dismantled, wrecked, junked, or discarded. Conversely, the boat on the right is currently not required under any statutes to meet any of the requirements of the abandoned vehicle statutes or the inoperable vehicle statutes currently in place. The only regulation available to municipalities of the boat is through our nuisance ordinances which must meet a much higher standard of proof. It is our opinion that either of these mechanized pieces of equipment are ultimately the same when sitting in a back yard, or even worse, in someone's front lawn. Again, we believe both types of machinery should be treated equally under the state statutes. We believe that LB183 and LB206 are the right procedure for this community to issue. I want to thank you for your consideration. I would be happy to answer any questions you have of me. And again, I urge you to support the advancement of LB183 and LB206 to the General File. [LB183 LB206]

SENATOR HADLEY: Are there questions for the officer? Senator Janssen. [LB183 LB206]

SENATOR JANSSEN: Thank you, Vice Chair Hadley. Officer Randolph, thank you for coming here today. [LB183 LB206]

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RYAN RANDOLPH: Thank you. [LB183 LB206]

SENATOR JANSSEN: I was just looking at some of these photographs you have and I was just kind of...some of these boats, at least from the appearance, they look like they're operable, and even some of the campers look like something that they're just storing there for the winter in this case which I see quite a bit in my neck of the woods around Fremont, we have the state lakes there, so we have quite a bit of that that goes on. Granted these don't look like they're in the best...they look like they're in alleyways almost, but if somebody stores it, they're allowed for a certain amount of time, as long as they upkeep it. I'm not...are these...are you saying these are not kept up or, I mean, I'm looking at the first photograph here? [LB183 LB206]

RYAN RANDOLPH: They're difficult to see in the photographs. The first photograph is kind of an exception, I mean, that's a really large boat that is in a state of repair. The problem with that particular boat is that it has been there for four years in the same state of repair. I mean, anytime you ask that gentleman if he's working on the boat he will tell you he is, but it's no different than a lot of these classic cars that, you know, people have, you know, they have big ambitions, but not the resources to fix them up properly. Some of the other boats are definitely, I guess operable is kind of an interesting word when it comes to a boat, I agree, but putting it in the water and having it float could be operable per se. The problem is, is that...does it...I mean, does the motor work? I mean, is it a functional boat? I mean, can you use the boat? If you want to put it in the water and row it around the lake, I guess that's, you know, there's a lot of things that will do that. So we're asking you to be reasonable and our own...how we're stating that the boat is an inoperable vehicle, okay. [LB183 LB206]

SENATOR JANSSEN: Okay, maybe I'm just thinking under present law you can...I mean, in the city of Fremont we have city ordinances that says you can or can't have a camper out or a boat out in your driveway if you're in certain parts of town and I don't know if that's available in Gothenburg or in the other areas as well. I'm even looking at your second picture and that actually looks like a pretty decent boat there, but again I don't know the history, I don't know that that one has been sitting there for four years in disrepair. Obviously you do. I'm just trying to...trying to gauge the pitfalls that we had with LB688 and try to apply them to this law as well. [LB183 LB206]

RYAN RANDOLPH: I understand that. It's a situation where Gothenburg has its own ordinances regarding certain things; usually it's with parking it on public property. When you get to the private property portion of things, that's where things get difficult. I'd like to emphasize to the committee today that our intention is not to come in and physically remove property from citizens. And that's not really within my means as a police officer. Our goal is to clean up the community through this process. And it's a very...we take a very lenient approach. We contact the person; we issue them a 30-day notice to remove the vehicle. If the vehicle is not removed in 30 days, they are issued a citation. A few

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weeks later they are in court, you know, that's another, probably, two to three weeks of time, then from that point the judge usually, our county judge, gives them an additional 30 days to either remove the vehicle or have the vehicle be compliant with the statute. So they have well over two months in our county just to get the property fixed up if they choose not to get rid of it. Even after the judge's 30 days, he imposes a fine at that point and he doesn't send the county sheriff to physically remove property from someone's property. I mean, that's...you know, we tread on the edge of violating civil rights when we do those things. So I just, you know, my point is that we take a very PR-friendly approach to getting the community cleaned up. [LB183 LB206]

SENATOR JANSSEN: Thank you, Officer Randolph. [LB183 LB206]

RYAN RANDOLPH: Yes. [LB183 LB206]

SENATOR HADLEY: Senator Price. [LB183 LB206]

SENATOR PRICE: Just to follow up with...would then this legislation allow you or in general to take a nonPR-friendly one? So what do you get at, what I'm saying is, if your business practice is to be as considerate and...and I don't want get into lenient, but agreeable as that, what will this change then? Because you have...you're already being agreeable. I mean, I think I know what it says, it will give you teeth to go and do things that you really right now you can't do, but if you're not going to use those teeth, you know, it's meant that you're going to use them if you have them within the boundaries that you've already set up; boundaries that you've already set and the parameters that you've set. But on one hand you're saying we're not going to do much and we'll give them plenty of time; but on the other hand, you're going to say, but we want this in statute. [LB183 LB206]

RYAN RANDOLPH: I guess my point is, is, you know, we have a ton of compliance from our citizens in general. That's a huge percentage, okay. For those that don't comply, I don't mean to make it seem like we're overly patient, I mean we're acting, I mean we're doing our job. We go out and do our job. And within two months if I can have your vehicle either operable or removed within two and a half months, that's a pretty significant amount of time. However, we're talking about vehicles that have been here for ten to fifteen years sometimes. You know, it's a small...you know, in my time at...I've been a policeman for seven and a half years and in my time we've removed countless vehicles and in a very, you know, friendly manner in an effective time frame. Okay? [LB183 LB206]

SENATOR PRICE: Okay, great. Thanks. [LB183 LB206]

RYAN RANDOLPH: Yep. Yes, sir, no problem. [LB183 LB206]

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SENATOR HADLEY: Further questions for...Senator Louden. [LB183 LB206]

SENATOR LOUDEN: Yeah, thank you, Senator Hadley. Were these pictures all taken the same day? [LB183 LB206]

RYAN RANDOLPH: Within a few days time I would say, yes. [LB183 LB206]

SENATOR LOUDEN: Okay. And were they all taken in Gothenburg? [LB183 LB206]

RYAN RANDOLPH: Yes, sir. [LB183 LB206]

SENATOR LOUDEN: You must have a lot of fishermen in there if these are just the bad boats that you took pictures of. How many good boats are sitting in Gothenburg? [LB183 LB206]

RYAN RANDOLPH: Well this is a small portion of the number of boats. We do have a lot of people that have boats and, you know, we got some water nearby, I guess, not anything really close, Jeffrey and Johnson Lake. [LB183 LB206]

SENATOR LOUDEN: Is that a problem then with these campers and boats being stored on...most of them are always sitting on private property instead of sitting on the streets aren't they? [LB183 LB206]

RYAN RANDOLPH: We don't allow an unattached trailer to sit on the street no matter what it is whether it's a boat or a camper. However, I mean, I guess, the problem isn't so much that it's on public or private property, is the fact that it is visible to the public from private property. Does that make sense? [LB183 LB206]

SENATOR LOUDEN: But I mean these are all in view of the public. [LB183 LB206]

RYAN RANDOLPH: Absolutely. [LB183 LB206]

SENATOR LOUDEN: And that's what the deal is. [LB183 LB206]

RYAN RANDOLPH: Right. [LB183 LB206]

SENATOR LOUDEN: Now as these...all these boats or campers or whatever if there was a health issue, those people are all liable, aren't they? I mean, there's a certain amount of liability if you store something on your property and some little kid crawls in it and falls over and hurts himself or something? [LB183 LB206]

RYAN RANDOLPH: True, it's no different than if I walk in front of your house; you know, you have liability...a civil liability... [LB183 LB206]

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SENATOR LOUDEN: Do you have any problems with things like that happening?
[LB183 LB206]

RYAN RANDOLPH: Not to my...not to my recollection, personally, in Gothenburg, no.
[LB183 LB206]

SENATOR LOUDEN: I just wondered if kids are crawling around in them, or people or something like that are...I don't imagine you have very many homeless people in Gothenburg, but anybody sleeping in these trailers and that sort of thing? [LB183 LB206]

RYAN RANDOLPH: Yeah, you know, that's a possibility and the other thing that we...you know, we're not called on every injury so, I mean, there's a possibility that things are happening that I'm not aware of, so yeah. [LB183 LB206]

SENATOR LOUDEN: Okay, thank you. [LB183 LB206]

RYAN RANDOLPH: Yes, sir. [LB183 LB206]

SENATOR HADLEY: Other questions? Senator Campbell. [LB183 LB206]

SENATOR CAMPBELL: Would you say then that of the pictures that are before us of these vehicles that they could never be repaired? I mean, they're in really, really bad shape (inaudible). [LB183 LB206]

RYAN RANDOLPH: The problem we have, and I don't have a set of pictures in front of me, the problem we have with a lot of boats is, you know, they're fiberglass and when you have, you know, an old boat, it starts looking...it starts looking pretty bad and there's not really a whole lot people can do with it. You know, I think restorations are expensive and they just become kind of a burden, they just leave them out in the grass and, you know, it's not really something you can haul for scrap metal or anything like that. There's nothing...there's no junk yard that will take it. I mean, they're not going to use the parts for any purpose. So it's one of those things that just kind of...once it breaks, it just sits and it just stays so. [LB183 LB206]

SENATOR CAMPBELL: So if I came out and I owned the property there and I had a boat like this and I built a garage around it, be fine because nobody could see it, right?
[LB183 LB206]

RYAN RANDOLPH: That would...yeah, I would appreciate it. [LB183 LB206]

SENATOR CAMPBELL: That would be great, huh? [LB183 LB206]

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RYAN RANDOLPH: If everyone did that, yes, that would make my job easy. Yes, and in fact, an enclosed fence works too; as long as it's not visible to the public. [LB183 LB206]

SENATOR CAMPBELL: We've had such a long conversation, even in the city of Lincoln, a large city about people who...and this is on cars, are parting out cars, or hobby cars, and so we finally got to the point where we just said, well, build a garage around it, you know, if you really want to save it that badly. But I suppose in some parts it wouldn't apply to the zoning to even build a garage around it. It might not have enough land. [LB183 LB206]

RYAN RANDOLPH: Yeah, there's definitely going to be certain people that don't have the means to build a fence or a garage. I mean, that's understandable that you just don't have it or there's just going to be (inaudible) that financially don't have the means for that too. But, you know, I wish the pictures were a little bit more clear. They look a lot better on the camera. But the boats are in a pretty good state of disrepair, you know, the majority of the boats and campers. [LB183 LB206]

SENATOR CAMPBELL: And Officer, I think you speak for a lot of small communities in the state, I don't think your community is the only one that has that. I think one of the questions we had last year, and we may want to pose that again, was are there not zoning ordinances within that would give you the power and I'm looking at the league people that would give the smaller communities the power without this additional law. And that was one of the questions we posed last year. I don't know that we ever got that settled or not, but maybe the league can answer that. [LB183 LB206]

RYAN RANDOLPH: Yeah, that would be probably...Gary, would be a better guy to ask I think. [LB183 LB206]

SENATOR CAMPBELL: Thank you. [LB183 LB206]

RYAN RANDOLPH: Yes, ma'am. [LB183 LB206]

SENATOR HADLEY: Thank you, Senator Campbell. Officer Randolph, I guess I echo a few things that have been said. On one hand I know I wouldn't want to live across the street from somebody who kept one of these in their side yard and it had been there for two years and, you know, was really an eye sore. On the other hand, I think is 30 days the right time limit, you know, how do we judge when it's time we should move and I think that's...that's what I think some of the committee might wrestle with is it, you know, we're dealing with the condition of the boat or trailer or camper and then we're also putting a time limit on it. So those are difficult things...I guess we...we want to trust the place to do the right thing...police officers to do the right thing and we know that 99.9999 percent of them will, but you always worry about the one percent that's going to decide

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that it's been sitting there 31 days and I'll make the decision about whether it's...looks abandoned or not and issue a citation. [LB183 LB206]

RYAN RANDOLPH: I understand. And...and, you know, and what I've dealt with personally, which is motor vehicles, you know, 30 days doesn't seem like a great deal of time to get a vehicle running or...but that can be a lot of different things, I mean, the vehicle just could have something as simple as a missing battery or the battery is uncharged. But then there's other vehicles that are in a state of repair where they don't even have wheels on them. So I guess when it comes to these time frames, 30 days is an ample amount of time to take the vehicle, stick it in a garage, move it behind an enclosed fence, sell it to somebody else who wants the vehicle, dispose of the vehicle, get it hauled off for trash, you know, 30 days is an adequate amount of time to get rid of cars. And so I suppose maybe that will help, you know, give you a little perspective on, you know, how easy it could be to get rid of a boat. I mean, a boat actually is probably easier to dispose of than a car, you know, just based on the fact that it's already on a trailer and it's a light object, most of the time, so it's less heavy. [LB183 LB206]

SENATOR HADLEY: Okay. Thank you, Officer Randolph. [LB183 LB206]

RYAN RANDOLPH: Yes, sir. [LB183 LB206]

SENATOR HADLEY: Any other questions? Seeing none. Are there further proponents for the bills? Thank you. [LB183 LB206]

GARY KRUMLAND: Senator Hadley, members of the committee, my name is Gary Krumland, G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of both LB183 and LB206. One of the most problem, or common complaints that elected officials receive, especially in the smaller communities, is junked cars in the lot, weeds, litter, anything that seems to create a nuisance and causes the surrounding property values, maybe, to be lowered, and so that's what local elected officials get a lot of calls about. A lot of the concerns can be taken care of with nuisance statutes, sometimes with zoning statutes. I think it's more of a problem in smaller communities where they may not have the staff all around all the time and some of the city attorneys in the smaller communities don't think that they really have the authority through the zoning alone to take care of some of these problems, and that's why these bills would be very helpful for some of the communities. Both of our legal legislative committees voted to support these bills, they thought it would be a helpful tool in helping clean up some of the property. And just to answer some of the questions that were asked, and Senator Price you asked, and I didn't quite catch the page, on LB206 on page 5 there, 7 days for one, 30 days for the other; these are modeled after what are current law for abandoned motor vehicles. And the time frame depends on where it is abandoned. For example, 7 days if it is on public property or if it is on private property without the permission of the owner. So if somebody would leave a boat or camper on

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somebody else's property and just leave it there, they don't have to wait 30 days, they can, after 7 days, they can call and make sure...and just start the process. Thirty days comes in when it is on the owner's property, the owner of the boat or the camper's property. And even then there are some special requirements imposed. For example, for a camper in LB206, if it doesn't have the state decal that's required to show that you've registered...registered is the wrong term, but show that you have filed it with the state and if it appears to be wrecked, dismantled, that's some prerequisite requirements before you can begin doing this. So there is...different standards depending on where it is abandoned and where it is left. I'd be happy to answer any questions. [LB183 LB206]

SENATOR HADLEY: Thank you, Mr. Krumland. Are there questions for Mr. Krumland? Senator Campbell. [LB183 LB206]

SENATOR CAMPBELL: Mr. Krumland, I want to go back to the question I asked a little bit and only because in some cases on abandoned vehicles and things, we've been able to use health statutes because it is a health hazard and I didn't... [LB183 LB206]

GARY KRUMLAND: Yeah, and that's where the general nuisance statutes come in is that you can declare some of these a nuisance, as Officer Randolph mentioned, sometimes a problem is the proof is a little higher, you have to prove that, yeah, there is actually a health standard involved and very often there would be if you leave an abandoned boat or camper, motor vehicle sitting there without moving, the grass grows around it, it attracts rats and other vermin, you can show that is a health hazard. Sometimes though you have to wait a long enough time to show...to develop the proof to show that it is a hazard, and by that time you've got a lot of complaints from the neighbors that things have gone on. This way you can take care of it before it gets to the point where it becomes too dangerous. [LB183 LB206]

SENATOR CAMPBELL: The waiting period may be a problem. [LB183 LB206]

GARY KRUMLAND: Yeah. [LB183 LB206]

SENATOR HADLEY: Other questions for Mr. Krumland? Seeing none, thank you, Mr. Krumland. Are there further proponents to the bills? Seeing none. Are there opponents to the bills? Seeing none. Are there anyone to testify in the neutral capacity? Seeing none. Senator Wightman, would you like to close? [LB183 LB206]

SENATOR WIGHTMAN: Yes, I'll try to do this in a minute or two, or less if you have no questions. [LB183 LB206]

SENATOR PRICE: That might be the problem. [LB183 LB206]

SENATOR WIGHTMAN: Well certainly Senator Hadley and some of the rest of you are

right, but it does get to be a balancing act between a property owner and what right they have on their own property and adjoining landowners or neighboring landowners that see this as being a real nuisance within the area. And while there may be some nuisance statutes and can be ordinances, most of those don't have any ultimate authority such as you have here to obtain the title and do something and really enforce the removal of whatever it is, the trailer, the camper, or the boat, so. And not only is it a nuisance to these people in that it makes it unsightly, but it's also a risk to their families and to their children if taken at the worst when...snakes, which some of us like snakes and some of us don't, I'm not really wild about them myself, but rodents are a real common problem when these are allowed to sit and they can't mow around them and so that becomes a problem. And then the attractive nuisance issue also where the children are there. If they put it behind a fence, the children aren't going to see it. I don't think there are any standards set forth in here with regard to the nature of the fence that has to be built some of them probably are not going to be very sightly just because an abandoned boat or camper isn't very sightly, but probably will at least eliminate the problem that we have in the enforcement of the ordinance. So those are just a few of things that I thought of as you questioned the various testifiers. [LB183 LB206]

SENATOR HADLEY: Questions for Senator Wightman? Seeing none. [LB183 LB206]

SENATOR WIGHTMAN: Thank you. [LB183 LB206]

SENATOR HADLEY: Thank you, Senator Wightman. With that we will close out LB183 and LB206. LB164, Senator Louden, you are welcomed to open on LB164, provide notification requirements for moving buildings or other large objects on a county or township road. [LB183 LB206]

SENATOR LOUDEN: Thank you, Senator Hadley and members of the Transportation Committee. My name is LeRoy Louden, that's spelled L-e-R-o-y and I represent District 49 in the Legislature. Now the provisions of this LB164 would provide that a person moving an oversized structure on county or township roads must notify the local authority which would be the entity responsible for the road and the electric utility organization if the object is over 15.5 feet higher or wider than the road traveled that are being moved. This is a bill I introduced for the utility organizations, which is our public power districts for the most parts and the rural co-ops. And the reason for this is that at the present time there is no legislation or anything on the height of anything being moved on a county road. There is on state roads, you can't be over about 15.5 feet high or whatever it is, but on county roads there isn't and that has been instances where people would move something down a county road and hit the power lines. And all they're asking with this bill is that they be notified so that they can either check to see the height of the lines or else raise the power lines to accommodate those people moving these structures down the roads. There will probably be other people here to testify in favor of this bill and have more of the technical part mixed up with it. So with

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that I'll be happy to answer any questions. [LB164]

SENATOR HADLEY: Senator Janssen. [LB164]

SENATOR JANSSEN: Thank you, Vice Chair Hadley. Senator Louden, I think, actually, you would probably have more expertise in this question so I wanted to ask you. Last year I had a bill that dealt with heights and weights, basically dealing with fire trucks. When it got to the floor, Senator Schilz had a bill amended onto it dealing with the hauling of straw or hay bales. Do you recall the height that we used for that? [LB164]

SENATOR LOUDEN: I thought that one last year, if it is the one I'm thinking of, had to do with trimming trees along roads that were getting in the power lines; they had the authority to trim the trees to the width so... [LB164]

SENATOR JANSSEN: I think this one...with amended...as it was amended under my bill was... [LB164]

SENATOR LOUDEN: I remember Schilz's bill with the height on the hay, but I didn't remember what your bill was. [LB164]

SENATOR JANSSEN: There was a fire truck bill, basically, to take heavier fire trucks out of the state. [LB164]

SENATOR LOUDEN: Okay, if they could move fire trucks that weighed over 100,000 pounds or something like that, yeah. [LB164]

SENATOR JANSSEN: With tandem axle. [LB164]

SENATOR LOUDEN: Okay, now I remember. [LB164]

SENATOR JANSSEN: And then we just threw this on, that's where I got kind of familiar with it and I didn't know if...because of the way they make the bales of hay or straw now in order to get...they weren't over the weight limit, they were over the height limit and I didn't know if we getting a case... [LB164]

SENATOR LOUDEN: I think they just raised that height above 14 feet, didn't they? Or something like that. [LB164]

SENATOR JANSSEN: That seems to come to mind and I didn't know if that would be inside of the scope of...I'm sure we could find out. [LB164]

SENATOR LOUDEN: I remember...but you about got to be under 16 feet or you won't go down the interstate. [LB164]

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SENATOR JANSSEN: For the overpasses. [LB164]

SENATOR LOUDEN: Yeah. [LB164]

SENATOR JANSSEN: Do you recall that? Well maybe legal counsel can figure something out for us. I just wanted to...I didn't want to get into a case where you had farmers out there using the county road and they had to give ten days notice to haul hay or straw or something. [LB164]

SENATOR LOUDEN: I think mostly it's been more grain bins than anything hauling on trailers or something. [LB164]

SENATOR JANSSEN: Okay. Thank you. [LB164]

SENATOR HADLEY: Senator Price. [LB164]

SENATOR PRICE: Senator Hadley, thank you. Senator Louden you probably have an answer to this question just as easy, but again, being a new member and everything, I don't know, I'm reminded of an old joke about a vehicle being stuck under an overpass and no one could figure out how to get it out and a child comes by and says let the air out of the tire, right. And I'm looking at this and I'm seeing it says the height of the object being moved, but not inclusive of the height of the vehicle moving it, so the total height. So I can...you know, I mean I wonder what thought process, if you don't want to answer that, someone behind you deals better...is looking has said 15.5 feet, well what if I have it on the back of my...or it's on the back of a larger truck, you don't really have a problem if it was only 14 foot high. So instead of saying the overall height of anything being moved down a county road will not be...if it's higher than an aggregate 20 feet must be considered, because I could be moving something that 14 feet but on something else, and be in the same problem and have the same damage. So I was wondering if the thought process was there and if someone behind you will share that I'd appreciate it. Thank you. [LB164]

SENATOR LOUDEN: Well I think the idea is that the whole height shouldn't be 15 foot 6 inches and perhaps that has to be clarified in that law there so that somebody like...somebody from Omaha wouldn't get their own idea that they can haul something 15.5 feet above their truck, but that would be fine. If they wanted to, they just have to notify the...have to notify the local entity. [LB164]

SENATOR PRICE: All right, well thank you very much. [LB164]

SENATOR HADLEY: Let the record show it would be somebody from Omaha that would think of something like that. (Laughter) Senator Campbell. [LB164]

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SENATOR CAMPBELL: I'm not going there today. Senator Louden, this is kind of a strange question, but in the bill that you proposed, has anybody from the railroads talked with you? [LB164]

SENATOR LOUDEN: The railroads? [LB164]

SENATOR CAMPBELL: Yeah, I just remember once...we moved a church of all things, and we had to notify the utilities, all that, we also had to notify the railroads. And there is somebody nodding behind you. [LB164]

SENATOR LOUDEN: Now was that back in the days when the railroads still had telegraph lines running along the railroad track? [LB164]

SENATOR CAMPBELL: I don't know. One of the testifiers is nodding, so I'll ask her that question, but I was just curious if the railroads had contacted you? [LB164]

SENATOR LOUDEN: At the present time most of the railroads have their telegraph lines down, but we used to have slide stackers when we hayed with, and yes, we had to have the railroad build us crossings where we could cross under their telegraph lines. [LB164]

SENATOR CAMPBELL: And that may be what I'm thinking of. [LB164]

SENATOR LOUDEN: But those are gone now so we don't have to worry about it. [LB164]

SENATOR CAMPBELL: If they don't...if they haven't contacted you yet, it's good to go, huh? [LB164]

SENATOR LOUDEN: Okay, thank you. [LB164]

SENATOR CAMPBELL: Thank you. [LB164]

SENATOR HADLEY: Any other questions? Seeing none, thank you, Senator Louden. Next proponent. [LB164]

KRISTEN GOTTSCHALK: (Exhibit 4) Senator Hadley, 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. And I'm here today representing my 35 rural electric public power districts and electric cooperatives who provide low cost, reliable electric service across rural Nebraska. I'm...you always got to get the plug in. I'm also

going to testify on behalf of the Nebraska Power Association which represents all of the electric utilities in the state. I do want to thank Senator Loudon for introducing LB164. There...we were to have another individual testify today, an engineer from one of our distribution systems that has some direct experience; unfortunately the weather has created a problem for him so I can't use that--there will be an expert testifying after me. I will do my best to answer any questions that you may have. And I'll probably provide you a little bit of commentary from his testimony which the pages did hand to you. As you may know my association provides a number of services for our members. We provide legislative service, director training, subscription service to our Rural Electric Nebraska magazine, benefits administration, and probably the most important thing that we provide is our safety program which includes job training and safety for our utility personnel. Safety is a priority for our members. We work with a necessary resource, but which is also very dangerous. Our employees are well trained to work with live high-voltage lines in a variety of weather conditions including days like today where I'm sure we'll have utility crews out trying to keep the lights on for the rest of the storm. But even in good weather, the work they do is dangerous and it is minimized by the significant training that they receive. We hope that the end result is a safe resource for the consumers in their homes and businesses, but we've got to go one step further, so another component of our commitment to safety is to ensure that our consumers are also safe and people who may work or be around our power lines. And that is the real reason for the introduction of LB164. And there are some recent incidences which I'll share with you that were included in the testimony from Mark Thompson the director of operations at Niobrara Valley Electric Membership Cooperative. They really have highlighted a need to create a means to at least provide at a minimum notification to a rural electric or any electric utility when an individual intends to move an oversized load down county or township roads. These really aren't isolated incidences. Similar stories are going to be heard from across the state. When you see a large house going down a state-controlled highway, or a church, or another large item if it's going down state controlled highways, there is a permit process which does require notifying electric providers and coordinating the management of the power lines with the utility. Management of power lines basically means that you have a crew on hand so that if the load is too large they can either lift the power line or in most instances we try to create a route that avoids any conflict with power lines whatsoever. Now there is no standard requirement for when you move that same type of load down a county or township road. Now there are a handful of counties that do have permit requirements. Those are not required by law and they would vary by county to county and so there really is no uniformity. The State Patrol does maintain a list of those counties that do have permit requirements for individuals that need to comply, but, of course, that's not standard and across the board. Fifteen and a half feet, which should be in total, so that was a very good question, I'm glad you brought that up, and if that needs to be clarified we would need to; and the reason for that is 15.5 feet is the lowest clearance allowed for power lines. We can't have less than that. Now having said that, most of the power lines in Nebraska, I would say almost without exception, power lines in Nebraska are

constructed at 18 feet or greater clearance and of the more power running through the line there tends to be a requirement that those lines are higher for a variety of reasons. And we can talk a little bit about that too. When a utility is notified, it's important that we go and check to make sure that those line clearances are what they say they are. Ice storms, exceedingly warm weather can cause power lines to sag. And while we do try to make sure that everything stays at about that 18 foot clearance, there are 80,000 miles of distribution lines in the state of Nebraska just with my rural electric providers and that doesn't get into some of the other subtransmission/transmission lines owned by NPPD and other utilities. So, it is a significant amount of power lines out there. So we do want the opportunity to extend safety to our consumers by checking those power line clearances. Often, you know, the preference is, if you're moving down a county or township road that we could, perhaps, guide the consumer to a road that does not have power lines in place to avoid any potential conflicts whatsoever. While we're not particularly concerned with professional house movers with respect to this bill, typically we've had good response, these are people that do this on a day-to-day basis and understand the dangers involved and the need to protect the load they're carrying, as well as the people driving the load. So that's not really what we're trying to get at. But let me just highlight a couple and you'll be able to read these in Mark Thompson's testimony. The one, and I'll just talk about the one, you can read about the other. But there was a Sunday afternoon, one of our utilities received a phone call from the sheriff's dispatch saying that someone had just called in saying they had tore down a power line. And, indeed, that is what happened. The utility personnel got the phone number of the person who made the call in; called, and he says, well, we're moving a grain bin, torn down the power lines. So they immediately dispatched a crew out there. When they got there, you know, his comment was that the mood was a little bit jovial, the guy moving the load was a little bit embarrassed but not particularly concerned about the safety or that he had just damaged property. Now here comes part of the concern; depending on which phase of line he hits, typically if you have a single-phase wire going across you're going to have a ground wire and you're going to have a hot wire. Now if you clip the ground wire alone, you're probably going to be okay. But often what happens, you pull that, the wires tip and the hot wire drops as well. Contact with that hot wire can be disastrous. You know, at that point the utility person tried to explain that this is a very dangerous situation; we need to check the rest of your route; we'll help you along the way; no concerns. The guy got a little agitated, decided he wanted to move the load, he was going to move the load, so he drove on. He drove on; he did tag another line, a line that belonged to NPPD, so he backed up and went at another angle to try and make the clearance. I did believe he did make that clearance, but it really took having the utility personnel drive ahead of him, block his route on the road to protect that driver. And when Mark talks about this issue, his voice shakes because the thing that struck him the most is when he stopped that vehicle there was a 3-year-old child in the front seat. Now had they come in contact with the hot line, both the driver and the child probably would have been either severely injured or killed. So it is a real concern that needs to be addressed. There was no intent to create an additional burden with this

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bill or a new permit requirement. Counties were especially sensitive to that. And absolutely no intent to disrupt the regular movement of farm machinery and standard movement of ag commodities on the road. But rather this is just meant to provide a simple notification when loads are oversized, over-height, and there is concern with coming into contact with power lines. With that I'll try to address any additional questions you might have. [LB164]

SENATOR HADLEY: Thank you, Kristen. Senator Price. [LB164]

SENATOR PRICE: Senator Hadley, thank you. And I don't mean to be too inquisitive, but I have two questions. One, talk with you, want notification; so I've told you I have one; I've notified you and then I go because I met the requirement, even if there is a problem, right? [LB164]

KRISTEN GOTTSCHALK: What the bill, yeah...the bill states that when...requirement...notified within 10 days, and the requirement would include the time and hours that you intend to move. So even if that individual did not want to change his route or do something else, we could, at least, dispatch a line crew to escort the load to ensure the safety. [LB164]

SENATOR PRICE: Okay, great. And then the second part of that is, this inspection, would that be like a tabletop, you know, you tell me your route, I'm going to go down this road, this farm road, county road, whatever, and get to where I want to tabletop. Is that what you envision? That's how the inspection would take place? Because if that's the case, my concern is, and you alluded to it both in your verbal testimony and what you provided to us, in that during extreme weather the droop on the line...the drop on that line and it's laxity, if someone doesn't actually go put eyes on, what if they don't say, hey, I'm looking at my outside ambient air temperature is 97 degrees, we know therefore this line is going to drop six feet and I have to have ten feet of arcing space so I've got a 16 foot clearance now because I need the additional six feet. So do you envision that this would be more than a tabletop or is the tabletop robust enough to get what you want? [LB164]

KRISTEN GOTTSCHALK: No, absolutely not. It would be a...you know, if they give us the route and we know that there's a line crossing on that route, we would physically go out, measure and confirm that the height is appropriate. [LB164]

SENATOR PRICE: Thank you. [LB164]

SENATOR HADLEY: Senator Janssen. [LB164]

SENATOR JANSSEN: Thank you, Vice Chair Hadley. Miss Gottschalk, do you know how many...you said 15 is the lowest? [LB164]

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KRISTEN GOTTSCHALK: It's the lowest allowed clearance. Most, and I know of very...I know of none of my distribution systems that are building for clearances lower than 18 foot at this time. There may be some out there...there may be some rural lines from a municipal utility that maybe be at that level. [LB164]

SENATOR JANSSEN: Is there a...I mean, would you know...let me clarify first, when you say 10 days notice and I read through it and I just got a little confused listening to Senator Price, which is not uncommon for me, 10 days, is that 10 days notice or within 10 days of moving. So if I'm going to...I don't know if I've moved some farm machinery, but I need to do it, I'm in harvest and I need to move it now, or can I call and like, hey, I'm going up county road F to G to B and I'm going to move it tomorrow. [LB164]

KRISTEN GOTTSCHALK: Well the bill would state that you give 10 days prior notice. The intent was, and the height differential was set so that it would hopefully not conflict with moving farm machinery, say a combine on the back of that flatbed trailer, or moving up again, farm machinery gets bigger and bigger, but as I was told, 14 foot, 10 inches seems to be the top when it comes to moving that type of equipment. [LB164]

SENATOR JANSSEN: My only experience with combines are seen at the county fair and they appear to be very colossal to me so I was wondering about that. [LB164]

KRISTEN GOTTSCHALK: They're huge and getting bigger. [LB164]

SENATOR JANSSEN: And when you get into Senator Price's discussion of letting the air out of the tires, you know, they're already pretty big and how much bigger would they be. I'm certainly on board with you the safety aspect, I just want to make sure we're not being too over the top for something that may be a very small problem because there may not be that many...maybe it would be easier to flag...if it was less than 100...(inaudible) flag that would say this is low clearance. I'm just trying to... [LB164]

KRISTEN GOTTSCHALK: Well typically if we have a low clearance, we're going to go out and fix it. But we want to be sure that we have the opportunity to check before they go. I mean, we wouldn't leave a clearance below what we consider a safe height. [LB164]

SENATOR JANSSEN: Thanks, Kristen. [LB164]

SENATOR HADLEY: Senator Dubas. [LB164]

SENATOR DUBAS: Thank you, Senator Hadley. Thank you, Kristen. Coming from a family who, if you give my father-in-law a hay mover, he will move anything. So I understand this very up close and personal. Does the power company have any

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recourse for damages that someone does, I mean, like the power lines that were tore down? Do you have the ability to put that financial repair back on that individual or... [LB164]

KRISTEN GOTTSCHALK: If damage is incurred, we can do what anybody would typically do if they incurred damages, we'd have to sue for damages at that point. Adding a penalty to failure to notify just gives a little bit more teeth so that we can maybe facilitate prevention of damage ahead of time. [LB164]

SENATOR DUBAS: Okay, so if they notify you, then is there any potential for you to charge them extra for crews going out or any work that you may have to do? [LB164]

KRISTEN GOTTSCHALK: The typical...on state roads what happens if we have a crew present, there's typically not a charge. If, because a load exceeds a power line's clearance at its standard clearance, then we would charge, possibly to lift the lines, but to have a crew on hand to ensure safety I'm not aware of any of my distribution systems that do that. I can't speak for all 167 utilities. [LB164]

SENATOR DUBAS: So just by them notifying you wouldn't necessarily mean that there could be...or would be a charge,... [LB164]

KRISTEN GOTTSCHALK: Right, no. [LB164]

SENATOR DUBAS: ...but depending on what they might have to do there is the potential. [LB164]

KRISTEN GOTTSCHALK: Right. If they...if there is not an alternate route where they could avoid the power line, let's say you got a power line clearance that's 18 foot, somebody's got a 19 foot building or even a 17.5 foot building because you made the comment about arcing and that is a real danger that you don't even have to touch the power line in order to have a contact issue. In those situations where we know, then yes, there would likely be a charge. And with the state notification moves, I think some of the utilities would require a deposit in anticipation that there would be some. Like I said, the anticipation here is that we would perhaps direct them away from routes with power lines present. [LB164]

SENATOR DUBAS: We moved the house that we live in right now, we moved it quite a ways so I know...I remember us going through the state with the roads department, etcetera, and also with public power with our power department. If you're moving it and you're involved with both county and state roads, you're likely to already be involved. This is just dealing with specifically county roads where there isn't anything. [LB164]

KRISTEN GOTTSCHALK: Right, where there would be no other permit requirement,

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nothing, you know, that there's just a need to provide someone advance notice. [LB164]

SENATOR DUBAS: Thank you. [LB164]

SENATOR HADLEY: Miss Gottschalk, I guess to follow up on Senator Dubas' question, it's very possible that this grain bin or whatever it is might have come down an interstate, it went through Kearney, it went through on a state highway and then it went on a Buffalo County road, is there consistency between those three or four different transportation routes as far as heights and such as that? [LB164]

KRISTEN GOTTSCHALK: Well when you're on interstate and state roadways, the height clearances are usually based on overpasses and there tends to be a slightly higher line height requirement over some of those types of roadways. So to answer your question, no, there would not be consistency. There is the potential that you will have lower line sets, you know, a more narrow road and a lower clearance on a county or a township road. [LB164]

SENATOR HADLEY: And the same would be probably true potentially if cities, you know, if somebody goes through Grand Island or something like that...the Grand Island ordinances. [LB164]

KRISTEN GOTTSCHALK: Right, and the cities, a majority of them, if not all of them, have a permit requirement and specific requirements to notify for oversized moves. It's a lot harder to go through a city with a grain bin than down a gravel road. [LB164]

SENATOR HADLEY: I certainly...I'd hate to drive one of those with a big grain bin or something, would not be easy. Thank you, Miss Gottschalk, thank you. Is there other proponents? Are there opponents? Anyone want to testify in the neutral? Seeing none, we will close LB164. I'm sorry, Senator Louden. [LB164]

SENATOR LOUDEN: I'll waive. [LB164]

SENATOR HADLEY: Waive closing, okay. Senator, LB215, Mr. Vaughan, are you going to handle that for Senator Fischer? [LB164]

DUSTY VAUGHAN: Good afternoon, Senator Hadley and members of the Transportation and Telecommunications Committee. For the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB215 is a continuation of a review of the Nebraska driver license process that began in 2005. This analytical process was started in response to the federal REAL ID Act. For those new to the committee, this may be your first introduction to REAL ID. The federal REAL ID Act of 2005 was passed by Congress to create national standards for the issuance of state drivers' licenses and identification cards if state issued ID's are to be accepted as valid

identification for the federal government. As REAL ID currently stands, no citizen will be able to board a commercial airline without a valid REAL ID driver license or identification card in hand. States are required to begin issuing a REAL ID compliant license to their citizens by May 11, 2011, this year. The DMV is taking the necessary steps to analyze our current process and look for ways to improve the system against potential fraud and security concerns regardless of what is happening at the federal level. LB215 is an attempt to strengthen our process so that when a person presents a license or identification card, we can be sure that he or she is actually the person depicted on the license. LB215 implements several processes that will be implemented in the near future. By January 1...or no later than January 1, 2014, background checks will be required from all employees who have the ability to affect information appearing on the driver license. These background checks will include criminal history, past employment references, and lawful status. The bill would require all driver license and identification card applicants to prove date of birth and lawful status through a limited source document list. The DMV will retain images of an applicant's source documents in its system and verify the documents with the issuing agency. Individuals will not be allowed to hold a driver's license and state ID card at the same time. Temporary licenses will be issued for noncitizens legally in the U.S. after such proof is furnished. The document will be marked temporary and limited to the expiration of the person's authorized stay, or if no expiration date, one year. These measures will help make a Nebraska driver license and identification card secure in the eyes of the government and the public, and add validity to the license as the prime evidence of identity for our citizens. And I saw Director Neth in the audience, Senator Hadley, so she will give some background on how the DMV is going to implement this, but I can answer any questions the committee has at this time. [LB215]

SENATOR HADLEY: Are there any questions for counsel Vaughan by members of the committee? Seeing none, thank you, counsel Vaughan. Director Neth. [LB215]

BEVERLY NETH: (Exhibit 8 and Exhibit 9) Good afternoon, Vice Chairman Hadley, members of the committee. I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles. I'm here today to testify in support of LB215 and want to thank Senator Fischer for sponsoring this bill on behalf of the department. I also want to apologize to the committee, it appears that our copy machine was malfunctioning today so you have a line across the testimony, not usual, but...it doesn't obscure any of the information on the testimony, but I do want to apologize for that. This bill does a number of things. It gives the authority to conduct background checks on employees of the DMV and counties who are engaged in driver licensing. It limits a person to holding either a driver license or a state ID card. A person cannot hold both documents simultaneously. It gives the DMV the authority to image and store the applicant's source identity documents. Lawful immigrants will be issued a temporary document that will expire upon the expiration of immigration documents, or if the immigration document has no expiration date, then the temporary document is only valid for one year. It contains

permissive language that will allow the DMV to verify the applicant's source identity documents to the original issuing agency. Currently we verify documents with the Social Security Administration using the Social Security Online Verification Network or SSOLVN and the Department of Homeland Security using the Systematic Alien Verification for Entitlements system known as SAVE. Active military personnel will be required to begin their driver license renewal process with the DMV driver license examiner and not the treasurer. Since 1999, the DMV has focused on improving its driver licensing system. There's a list of improvements we've put into place. In '99 we developed and implemented the Interactive Driver License System. In 2001, was the Digital Driver License System. In 2004, we implemented the digital watermark; in '05 we implemented the Automated Testing System; in '06 we developed the DMV Fraud Unit; in '07 we conducted the Anti-Fraud Report; 2009 we implemented the secure central issuance system for driver licenses and ID cards; and just this year we became one of the pilot states to do the interactive SAVE verification process. The principal objective guiding the department in each phase is improving the security and integrity of our driver licensing process and systems to mitigate the opportunities for fraud, card counterfeiting and identity theft. LB215 continues that effort. I have provided the committee with the DMV Fraud Unit 2010 report which demonstrates the improvements to our driver license system are meeting our principal objectives. LB215 is also required to meet the substantial compliance with the REAL ID Act of 2005. Despite all of the debate, the REAL ID Act, and its duly promulgated regulation, remains the federal law; and there remain possible consequences to citizens for a state's noncompliance. The REAL ID Act has a compliance date of May 11, 2011. As of the end of 2010, the state's progress toward REAL ID compliance is as follows. And I got this information from the Department of Homeland Security. Six states are issuing compliant documents with approved DHS markings. Eight states have self-certified that they meet material compliance. Eleven states have stated they are committed to becoming compliant by the end of last year. Three states have comparable programs that could be approved and accepted to meet compliance. And 15 states have committed to meet 15 of 18 material compliance benchmarks in the near future. DHS previously announced that all currently issued driver licenses and state ID cards would be accepted for official federal purposes until May 11, 2011. After May 11, 2011, a state must either comply with REAL ID Act and mark its cards accordingly, or it must have obtained an extension of the May 11, 2011, deadline from the Department of Homeland Security. The request for an extension of the deadline must be submitted by February 11, 2011. A state requesting an extension must be able to demonstrate good faith efforts towards compliance. I have attached Nebraska's REAL ID Material Compliance Checklist. As you can see from the checklist, the items that are in red are benchmarks we currently do not meet. However, LB215 as drafted would place Nebraska in a position to meet all of the benchmarks. I will be happy to answer any of the questions and to provide any additional background information you might need regarding this issue. [LB215]

SENATOR HADLEY: Senator Campbell. [LB215]

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SENATOR CAMPBELL: Director Neth, I noticed in our folder we don't have a fiscal note, but I think there was something on-line about the cost of checking everyone...doing everyone's background checks and at one point I thought there was a little line that said Director Neth thought that the federal money would more than cover this. And then I thought, well, maybe I should ask that question. Is that...did I read that accurately? [LB215]

BEVERLY NETH: Well I think you did. We currently have three grants from the Department of Homeland Security and FEMA, 2008 REAL ID grants, 2009 was considered the Driver License Security grant, and 2010 grants. In total, Nebraska was granted just under...just over \$2 million, \$2.25 million. We have spent out of the '08 grant, we still have a little over \$200,000 remaining to spend in those grants. The '09 grant we have about \$836,000 and the 2010 grants we have a little over \$800,000. What we've identified in these particular projects in spending really is to cover those...the background checks that will be necessary. One-time background of all the...most DMV employees, quite frankly, not even...outside of driver licensing as well, all county employees which there are about 400 county employees that are engaged in the driver licensing process. We are also looking to covering the cost of the imaging system that's identified...the imagining resource documents and storing those and any other costs associated as well. One caveat of that is that states, not only Nebraska, but some states that are attempting to comply that lack statutory authority are having troubles spending those grants, those federal grant dollars and the feds have, on a number of occasions, looked at those and questioned why aren't the states spending these monies we've given them and should we be taking them back. There's a continuing conversation at the federal level to come back in and take some of that money back away from states. So moving forward, I think, is kind of critical, not only for REAL ID compliance, but also for the DMV to be able to spend the available federal funds to comply with those requirements. [LB215]

SENATOR CAMPBELL: So when the federal funds run out over the course of years, I mean I'm assuming at some point because we'll have new employees come on and we'll have to do background checks for them, we're assuming that the DMV cash fund can cover that. [LB215]

BEVERLY NETH: Yes, we would be covering that. We currently do background checks of our driver licensing personnel now. [LB215]

SENATOR CAMPBELL: Okay. [LB215]

BEVERLY NETH: So this would expand some existing personnel and cover some additional personnel. So our cost really would be assumable within our budget. The counties, to my understanding, some do, maybe Douglas County and Lancaster County

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may do background checks; other counties don't do that kind of thing. So on a county level there would be some costs, but turnover I don't think is that great in those positions. So it would be new staff as they would come on. [LB215]

SENATOR CAMPBELL: I have one other question and that is, you have then the authority to image and store the applicant's source identity documents; I'm assuming that's what we bring in to prove that...who we are, like a passport and so forth. How long do you have to retain that information? [LB215]

BEVERLY NETH: Well we would be retaining that information a minimum period of a five-year renewal cycle, within in your driver license. There is also conversation on a national level about what if we've stored that information, we vetted that information through the sourced identity...issuing agency, excuse me. Is it reasonable for us to transmit that information to another driver licensing agency? If you left Nebraska and you've surrendered your driver license to Ohio, should Nebraska be able to, as a customer service initiative, send those documents to that other place so you don't go through that vetting process again. That conversation is taking place and we certainly haven't reached any resolution to that. But there is embedded in REAL ID is the concept that there should be one driver/one record for all drivers, much like exists within the commercial driver licensing program. Part of the federal grant funds that were distributed were distributed to a number of jurisdictions, about five jurisdictions that are developing the specifications and the pilot projects associated with vetting the documents, vetting through a source document. So right now we vet social security numbers and we vet...we vet immigrate...immigration documents through SAVE. But there's also under REAL ID you're required to vet birth certificates. There is a system called EVVE, I believe, or EVVER, that is being developed, but all birth certificates aren't currently sent there. There's also the Department of Justice also has a passport database that many people provide their passports to us. So from our perspective, what we're trying to do as driver licensing agencies is find one common portal that we can enter to do that vetting and then come back out of rather than having to go through several different vetting processes with what we're getting. That's a national pilot project that's being conducted within that then is also the concept of a, potentially, a pointer system that would tell us if you have a driver license document in another jurisdiction. It sits over here, we don't see into that database; we can't do anything with it; all we can say to that database is send us that record now, that person is now in Nebraska. So it's complicated. [LB215]

SENATOR CAMPBELL: Thank you. [LB215]

SENATOR HADLEY: Senator Price. [LB215]

SENATOR PRICE: Senator Hadley, thank you very much. Thank you, Director Neth, for coming forward and explaining this to us. My question is kind of a serial question. In

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dealing with Section 9, which was that last part retaining images, that deals with all applicants for driver licenses or only the people who are working within the DMV?
[LB215]

BEVERLY NETH: That deals with all applicants for driver licenses. [LB215]

SENATOR PRICE: Okay, so now my next question that goes on is in page 18, line 24, Section 9, it says here, in that line and you don't have it right in front of you, it says, the department "may" verify. [LB215]

BEVERLY NETH: We put permissive language in there because some of those databases don't exist. [LB215]

SENATOR PRICE: Okay. [LB215]

BEVERLY NETH: And we would not attempt to verify to something that would be too costly, too onerous, and, quite frankly, not productive for us. So our goal would really be if the national project succeeds in accomplishing its objectives, then we would use that national data...that kind of a pointer system on a national level to do the vetting of source documents from issuing agencies that are participating in that project. [LB215]

SENATOR PRICE: Okay, great, because as I was looking at that...as it was put to us some of it is just within DMV and other parts talk the entire gamut of retaining that and then the searching was the question. Thank you very much. [LB215]

BEVERLY NETH: You're welcome. [LB215]

SENATOR HADLEY: Senator Janssen. [LB215]

SENATOR JANSSEN: Thank you, Senator Hadley. Director Neth, LB403 I think it was the name where you basically had...basically check a box say I am a citizen. There's no penalty unless you were found otherwise which it was...I can't remember the class of the...it was fairly substantial though, if you were caught doing that. [LB215]

BEVERLY NETH: Um-hum. [LB215]

SENATOR JANSSEN: Now, under this, that would change, you have to actually prove, am I reading this right, I read this this morning while we were in floor debate, but would it change the way I go in to prove my citizenship now instead of just checking the box I have to show...? [LB215]

BEVERLY NETH: Right now you have to show. It doesn't change. We do comply with the 403 requirements so everyone...every applicant for a driver license gives us an

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indication of one of two things, either I'm a citizen or a naturalized citizen of the United States or I am here in an immigrant status. If a person marks they're in immigrant status, then we require them to provide to us their immigration documents. Those documents are then vetted through the SAFE System and either they verify, which the vast majority of them do, or they don't verify. If the documents don't verify for whatever reason, you would be denied access to either the ID card or the driver license or the permit or whatever it is you're applying for at that point. [LB215]

SENATOR JANSSEN: So this is...so under LB215 as proposed, I still...I don't have any undue burden, say if I just want to lie about my status, if I go in and say, yeah, I'm a citizens, and I'm not, but there's nothing to say I need to see your birth certificate, I need to see your passport? [LB215]

BEVERLY NETH: You would...if you are a new applicant to Nebraska, you would be required to present then those kinds of source identity documents that would establish your citizenship or whatever the case may be here, whether it be a birth certificate or passport, whatever you would have. If you're a renewal applicant, because we have been using the SAFE System since...we piloted SAVE in 2002, most likely now your immigration documents would already be...that status would already be recognized within our system. And so we would know if you changed your status, we would know that you're probably not being forth coming on your application to us and it would either invoke additional questions being asked at the appointed time, or probably a refusal certificate being issued so that you wouldn't be allowed to obtain the documents. [LB215]

SENATOR JANSSEN: So the first time I went when I was 16, I think I showed a birth certificate, if I'm coming from, say, New Mexico or Utah right now and I have a driver license, I think they have...they are the two places that don't require... [LB215]

BEVERLY NETH: The only state right now that doesn't require is Washington. All other jurisdictions do require that you provide...Washington is the only state that allows you to indicate that I'm here in an immigrant status and I may or may not be here in a legal immigrant status. Other states, I think, follow the same kind of process that Nebraska does which is if you indicate you're in an immigrant status, then you're providing those immigration documents. Washington does have a process where you can say I may or may not be here legally and they'll provide you with a driving certificate. However, Washington, I guess Washington's system is coming...being called, seriously, into question and it may not be around much longer either. [LB215]

SENATOR JANSSEN: That's what I thought. I thought New Mexico was in it too. Governor Richardson said he was going to overturn or change that law. And then my concern was people are getting licenses there that were in an illegal status and coming to other states and showing that as their ID as a circumvention of the system. [LB215]

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BEVERLY NETH: Well what happened in those jurisdictions is they didn't issue a unqualified kind of driver license. They issued what they called driving certificates. So that document if presented to us would be...we would say, you don't have...you must be here in an immigrant status. We would ask for additional documents then as well, to say what are your immigration documents that would show that you have a legal status here in Nebraska. [LB215]

SENATOR JANSSEN: Thank you. Very helpful, thank you. [LB215]

SENATOR HADLEY: Senator Price. [LB215]

SENATOR PRICE: Thank you, Senator Hadley. And just to piggyback on that, would that mean to say that there are no people here in Nebraska who are not properly documented who have a valid driver license? [LB215]

BEVERLY NETH: No, who are not properly documented, who have a valid Nebraska driver license? Well, I wouldn't say unqualified yes or no to that. Primarily because it's only been since 2009 that we've been using the facial recognition technology that allows us to see whether or not a person may hold multiple documents in multiple names. One of the things that that system has shown us is that about 50 percent of what we're seeing that may be fraud, is someone who may not be here legally who used someone else's identity documents to obtain a driver license. So some of that still exists and some of that, I think, will exist until we've gone through a full five-year cycle and then be able to identify the fraud that existed in our system pre 9/11, 2009, central issue facial recognition technology. But the process we have in place right now, if you're coming in as a new applicant, I'm pretty confident that you're coming here either as a citizen, a naturalized citizen, or you're here in some legal status in Nebraska and your documents are vetting. [LB215]

SENATOR PRICE: Thank you. [LB215]

SENATOR HADLEY: Senator Neth, if you...if doing this, if you find people who are...when they're applying and they're in violation, what do you do? Do you call the law enforcement or do you have law enforcement as a part of your DMV? [LB215]

BEVERLY NETH: Well I think we're fortunate. We have our fraud unit at DMV that we've had in place since 2006. Three of the personnel in the fraud unit are certified deputy sheriffs, and so they have arrest powers and they have all the powers of law enforcement. They are a very active group in identifying the fraud that we're seeing through the use of our central issuance...gated issuance process. We're opening from really two to four fraud cases a day with the tools that we currently have in place. They open those investigations and actively investigate whether or not fraud has occurred or

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whether the case is unfounded. You'll see when you have time to take a look at this report that they have, I think, caught some extraordinary individuals attempting to perpetrate fraud in the state of Nebraska. We've responded to the request of 51 outside jurisdictions asking us to assist them with investigations of individuals they believe are here in Nebraska and we've been able to either verify that, yes, that person is here and we know where they are so we can help you arrest them and extradite them to another jurisdiction, or we've been able to say they're not here, one or the other. So that unit is very busy and they absolutely do follow-up on all the cases. We've also had, I think, we have a tremendous working relationship with the Nebraska State Patrol. And the colonel has allowed us to go into a number of his investigative units and train them on the identify theft and the fraud issues that we're seeing. And we're now operating with them in partnership so that they can help us throughout the state of Nebraska clear some of these cases, either go ahead and get them ready for prosecution or clear them as unfounded, whichever the case may be. There's a big case load they've got right now. [LB215]

SENATOR HADLEY: You know I appreciate your testimony because I have had a number of people in my district that have asked about the relationship of a driver license versus proper documentation to be here and I'm glad to see that we are...I can answer them now that I understand that, at least theoretically, the system is supposed to work that if you have a Nebraska driver license... [LB215]

BEVERLY NETH: I think that is one assurance we could make to the citizens is that the processes we put in place over the last 8 to 10 years really have given us an assurance that most people who are holding a Nebraska document are here in a legal status, they're here in school, doing a job, doing whatever they're doing while they're here they have a legal status. One of the things this bill will allow us to do is to tie that document to the length of stay. So if you're a student and you're only here for a couple of years at the university studying, what we'll be able to give that person is a document that says your immigration documents appear that you can stay here legally in Nebraska, the United States, for two years and so we're going to give you driving privileges for that period. That's one of the things that, oddly enough, it's called Foreign REAL ID, but the Department of Motor Vehicles actually proposed a bill like that pre 9/11. We put a bill in, I think it was in 1999 or 2000, saying we think this makes good sense. If people are here, their driving privileges should only last for their period of stay. So that concept has been out there and it, I think it certainly helps further the initiatives regarding legal status. [LB215]

SENATOR HADLEY: Senator Janssen. [LB215]

SENATOR JANSSEN: Sorry to follow up here. It just begs the question because I don't want to give...I guess I don't want to give a false sense that every driver in Nebraska is a legal citizen because that would be a kind of a head in the sand. I'm not saying that

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you're doing that. I just don't want...we're doing a good job, I just don't want to pretend that that's not happening. And I've got a question, kind of deals with the bill I run a lot, but it is pertinent to this one, I think, dealing with instate tuition to people that we know are not here legally. These are non U.S. citizens or illegal immigrants, they go to colleges here and they get benefits, they're not even citizens of Nebraska or the United States, so I'm wondering do they not have driving privileges at all? [LB215]

BEVERLY NETH: If they're not able to show us the requisite documents, they wouldn't have driving privileges from the state of Nebraska. [LB215]

SENATOR JANSSEN: So we'll pay...we'll allow them to pay the instate tuition, but we won't give them a driver license? [LB215]

BEVERLY NETH: That's a policy decision of the Legislature. I would say in response to your first comment is that there are people who are driving around the state of Nebraska who don't have driver licenses, period. Whether they're here legally...whether they're a citizen of Nebraska or here legally or illegally, there are people driving all over the state that don't have driving privileges. [LB215]

SENATOR JANSSEN: Right and that, right, and they may just decide I'm not even going to go through the process or... [LB215]

BEVERLY NETH: Or my license has been suspended or revoked and I'm still going to drive. But there's...driving is...driving without a driver license can...and not one that I just left it at home, but having the privileges suspended is pretty serious in Nebraska. [LB215]

SENATOR JANSSEN: I just wanted to strike at the irony of enticing people to stay here and then not giving them a driver license while they are here. So, I just had to do that for my personal aside. [LB215]

SENATOR HADLEY: Thank you, Senator Janssen. Senator Price. [LB215]

SENATOR PRICE: Thank you, Senator Hadley. And I apologize on that, Senator Neth, I didn't want to demote you, Director Neth. [LB215]

BEVERLY NETH: That's a serious pay cut. [LB215]

SENATOR PRICE: Yes, tell me. The question I have is when someone is securing their auto insurance, are they required to show a driver license? [LB215]

BEVERLY NETH: There's no state law, but I think by practice almost every insurance company in this state would require you to provide some kind of driver license in order

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to obtain insurance for your automobile. You're not required to have a driver license to license an automobile in Nebraska, but you are required to have motor vehicle insurance when you license and register a vehicle in Nebraska. [LB215]

SENATOR PRICE: And you...and if I understood you correctly, in about five years, there should have been enough churn to where an industry out there would know that if you bring in a driver license that doesn't have the facial recognition technology built in, however it's going to look different, they're going to know something's afoot because there shouldn't be any out there that are still valid in 2016. [LB215]

BEVERLY NETH: Right, your document would have expired. We have a five-year renewal cycle in Nebraska so a document from pre-2009, I guess, five years it will expire in 2014. [LB215]

SENATOR PRICE: Great, thank you. [LB215]

SENATOR HADLEY: Thank you, Director Neth. [LB215]

BEVERLY NETH: Thank you very much. [LB215]

SENATOR HADLEY: Are there any further proponents? Opponents? Anyone to testify in a neutral capacity? Seeing none. Since Senator Fischer is here, we will end the hearing. (See also Exhibits 5, 6, 7, and 10.) [LB215]

SENATOR FISCHER: Yes, I would like to make note that we've been joined by Senator Deb Fischer of Valentine. So I thank you all for being here today. Thank you. [LB215]