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Transportation and Telecommunications Committee
February 06, 2012

[LB1030 LB1040 LB1052 LB1112 LB1155]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 6, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1040, LB1052, LB1112, LB1155, and LB1030. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Louden; and Scott Price. Senators absent: None.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer. I am from Valentine and I'm Chair of the committee, and I represent the 43rd District here in the Nebraska Legislature. At this time I would like to introduce to you the other members of the committee. On my far right is Senator Scott Price who is from Bellevue. Next we have the Vice Chair of the committee, Senator Galen Hadley, from Kearney. On my immediate right is our committee counsel, Dusty Vaughan. On my immediate left is our committee clerk, Jonna Perlinger. Next we have Senator Scott Lautenbaugh who is from Omaha. And on my far left is Senator LeRoy Louden from Ellsworth. We do have three members who are not present right now. They might be introducing bills in other committees. Please don't be offended if senators come and go because other committees are holding hearings, too, and they do have bills to introduce in there. Our pages today are Gera Carstenson from Lincoln and Alex Wunrow, who is from California. They are the two young people who are seated up here. If you need anything, please let them know and they'll be happy to help you. Some housekeeping details for you: We will be hearing the bills in the order that they're listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. I would ask that you complete the yellow sign-in sheet--it's at that on-deck table--and have that ready to hand in before you testify. We use a computerized transcription program so it's very important that you follow the directions on that sign-in sheet, and you will need to hand that in to the clerk, please. For the record at the beginning of your testimony, please spell your last name and also your first name if it can be spelled several different ways. But I would ask that you spell your last name. Keep your testimony concise and try not to repeat what someone else has covered. We will have time limits on testimony. We use a light system in the Transportation and Telecommunications Committee. You have three minutes to testify. When the green light turns yellow, you have another minute and so try to wrap it up. Most of the time the committee members do ask questions, but finish your thoughts when the red light comes up, please. If you don't want to testify but you do want to voice your support or your opposition to a bill, you can indicate that at the on-deck table there also. There's a sheet provided. That will be part of the official record of the hearing. However, if you want to be listed on a committee statement that all senators are able to pull up when we are debating bills on the floor, you need to come forward, state your name, and state

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whether you are in favor or if you're in opposition to a bill. That way it does show up on the official committee statement. If you choose not to testify, you can submit written comments and those will also be read into the official record. At this time I would ask that you turn off your cell phones. I don't allow cell phones on in this committee and that means no texting. My husband was here last week and his phone rang so we had to remove him (laughter) no, not really. But he was here and it rang so he left. But with that, I will open the hearing on LB1040 and Senator Schilz is ready to introduce the bill. Welcome to the committee, Senator.

SENATOR SCHILZ: (Exhibit 1) Thank you. Good afternoon, Madam Chair and members of the Transportation and Telecommunications Committee. My name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent the 47th Legislative District. LB1040 changes provisions relating to the regulation of the state right-of-way. And since my time in the Legislature, I've been involved in multiple discussions dealing with state right-of-way issues in my district. This bill would allow for the physical functional encroachments, structures, or uses of the state right-of-way so long as it does not demonstrate clear evidence that such encroachment, structure, or use is unreasonable, unsafe, or contrary to the health or welfare of another. LB1040 also addresses an issue that my constituents along with my county commissioners have brought to my attention regarding snow removal on state highways. I will say that I do have an amendment on that. The bill was written incorrectly on the green copy and which I provide right here if somebody wants to hand these out. It clarifies when snow removal is not supposed to take place, not when it can take place. And with that, I thank you for the opportunity to introduce this bill. And there are others behind me that will have more of the reasoning and the explanation of why this is important. [LB1040]

SENATOR FISCHER: Thank you, Senator Schilz. I would note for the record that we are joined by Senator Annette Dubas from Fullerton. Are there questions for the senator? Senator Price. [LB1040]

SENATOR PRICE: Thank you, Senator Fischer, and thank you, Senator Schilz. I'm looking this over and particularly in light of this last weekend's snow, the questions I'm going to have and when someone comes up behind you this is just (inaudible) of what the answer if they can, do you know when there's a situation when 4 inches of snow isn't an emergency? I mean, is four the defining moment of an emergency? [LB1040]

SENATOR SCHILZ: Well, you know, it depends on where you're at, and there will be others coming behind me but from what I understand is that the states around us, including Colorado and Wyoming, each one of them, and I can't tell you which, but I think it's the state of Wyoming that 7 inches is when they start to plow. In Colorado I believe it's 4. And they also have a timing situation in there to where on some of these roads, you know, there's just times that you maybe probably shouldn't be traveling on them. And so that's where the impetus of this amendment or this bill came in as far as

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the snow removal was to look at what other states are doing. And I think that they do that in those states to, quote, unquote, reduce their costs. And we'll have some folks that are coming up later that will be able to explain that a little better, I hope. [LB1040]

SENATOR PRICE: Okay. And then in the latter part of the bill where we talk about encroachments, structures presumed reasonable, and safety, are you familiar with what the concept of frangibility is? [LB1040]

SENATOR SCHILZ: Frangibility. [LB1040]

SENATOR PRICE: Yeah. Frangibility is how well things break off so you don't get things...like in airports they have to have frangibility where you don't want wings going through poles because they tend to explode. That pole needs to break on contact. [LB1040]

SENATOR SCHILZ: Right. [LB1040]

SENATOR PRICE: So when we're talking about safety issues and if we were going to put poles, I saw here we're talking about putting poles and signs in right-of-ways. I mean is this going to somehow or another relax that burden and allow for a level or signage to go up to these right-of-ways? [LB1040]

SENATOR SCHILZ: You know, I can't see that that would necessarily be the case. And once again, we will have folks that come up that show you how a lot of the signs that are in place now are there as well. So I would say that with everything, quite honestly what I looked at doing with this bill and what we wanted to try to do was give the Department of Roads a bit of flexibility to do reasonable things where practical, and that's what we're looking at. We're not trying to push this off on somebody. We're saying, hey, if you've got a sign that's sticking 2 inches or a post that got put in place and it's 6 inches over the line, can we deal with that until there's another situation to where we can redo that and make it right, or do we have to tear all that out and start over? And that's some of the stuff that we're dealing with out there. And I understand the need for right-of-ways. I understand the need for safety, and I think everybody does. But the thing here is there also needs to come within that common sense as well. [LB1040]

SENATOR PRICE: All right. Thank you. [LB1040]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Louden. [LB1040]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Senator Schilz, when you were drafting this bill here, did you look...are there any regulations that the department has on

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how they plow snow and when? I mean they must have somewhere or another they call the shots on when they go out and do that, or do you know if there's any kind of...?
[LB1040]

SENATOR SCHILZ: You know, I tell you what. I don't know what their standard operating procedure is for snow removal or for any of this stuff. I don't know if there is a standard operating procedure. So I do not know that. [LB1040]

SENATOR LOUDEN: Okay. Thank you. [LB1040]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you, Senator. [LB1040]

SENATOR SCHILZ: Thank you. [LB1040]

SENATOR FISCHER: At this time could I have a show of hands for those wishing to testify in favor of the bill? In opposition? Okay. Thank you very much. We'll start with the first proponent, please. Good afternoon and welcome, Commissioner. Nice to see you.
[LB1040]

STEVE ERDMAN: (Exhibit 2) Good afternoon. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I am a Morrill County Commissioner in the home of Chimney Rock and I'm also the recent past president of NACO. Senator Schilz was kind enough to introduce this bill for us. And I give each one a red packet. In that red packet there is a picture folder. If you would, I'd like to briefly go through those and describe what those pictures are and what they mean. And then I have several letters included also of testimony from people who are in our communities, and then I would...in fact, as I go through this if you have questions about these pictures as I describe them, please ask me. And I do...Senator Fischer, I appreciate you putting me on first so that I maybe can drive home tonight. Thank you very much. [LB1040]

SENATOR FISCHER: How were the roads coming down? [LB1040]

STEVE ERDMAN: The roads were fine. [LB1040]

SENATOR FISCHER: Good. [LB1040]

STEVE ERDMAN: Yeah, the roads were fine. Okay. In the top of the picture, pictures 1 and 2, those are pictures taken just outside of my home on the 4th day of February. We had maybe a half inch of snow. The snowplows had gone by numerous times that evening and that morning. That picture was taken just before the sun came up, the sky was clear, it was going to be obvious the sun was going to come up. Within an hour after taking this picture, the sun had melted all the snow off the road. And so my

question is about when they plow snow is the fact is this. And people say, well, you're a county commissioner; why do you get involved in this? Well, it's very simple. When the state does not pay jail reimbursement, they take away state aid to counties, the cities, and the schools. There's only one place that those entities can get revenue and that's by raising property taxes. And when they raise property taxes, the notice comes from the county, it comes from the assessor's office, and they in turn then, the taxpayer, call me and come to the county commissioners and say, why did you raise my taxes? So when the state is doing unnecessary snowplowing and doing things that are unnecessary, they're spending the state's money, which, in fact, is coming out of the pockets of my taxpayers, and consequently there is why I got involved is because it is basically balancing the state's budget on the back of my property taxpayers. And as all other counties that are agriculturally based like ours, the revenue or the value of ag land is going up and the other values are going down, and so ag is paying a greater share of their portion to fund the schools and other things. So I have a vested interest in having them snowplow when it's necessary, and not...when the sun is coming up, it's not necessary to be out there. And so let's just move down through those pictures for the sake of time. Picture number 3, those are delineation poles put out by the state Road Department to stop a farmer from driving into his field to check his pivot. He drives in there between the 1st of July and the 1st of September probably once, maybe twice a day. They put up five poles the first time; the farmer drove around them. They put up five more; he drove around them. They put up five more; he drove around them. And then they came out and put the other 18 up so there's 28 poles there to delineate where their right-of-way is. And I guess what I would like to see is some type of permitting process where the state Road Department personnel would have the authority to grant a farmer or whomever the opportunity to periodically drive into his field, check their products and proceed out of there without a lengthy process of applying for a permit to have a driveway. I think this process should be simple and easy and quick. And I don't know what it cost to put those 28 poles up, but I bet they got a couple thousand dollars by the time they spent the time driving out there, three people driving the posts, and all the things that they do. And then they put a no trespassing sign there. Does that mean there's no trespassing on the farmer's property or is that from the state right-of-way? And so then we'll move down and the number 4 and 5 is by a little village called Angora. That is a vacated highway and we used to use that...the farmers used to use that to drive down that road, down that frontage part to cross the road because the two county roads don't line up. And now that the state has put those delineation poles up, the farmers were forced to go out onto the highway with their 40-foot headers and their big drills and drive down the highway to cross the road. And before they put those poles up, it was a safe access; they could cross directly at a 90-degree angle and they didn't have to have anybody to block traffic for them. And so...and when we get down to number 6, this is an interesting story. Number 6 shows a gentleman there by his house. His house is near the highway, Highway 26, and he had a wood-burning stove where the crocodile is. And the purpose for the crocodile is about this time in the presentation I thought there should be a little humor, so anyway, he took the stove out and the put the

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crocodile to protect his property. But the point is the stove was where the crocodile is. It was 12 feet from his house, but it was 9 inches on the right-of-way. And the Road Department rode this gentleman for four years, finally sending him certified mail, said by the first of the month you must move this stove or we'll remove it for you. So he did remove it and put it behind his house, and then he placed that crocodile there. So the crocodile is setting about where the stove was except it's not on the right-of-way. It's just back a ways. And so that's the instance there. Instead of granting the person 9 inches of right-of-way, they made him move his stove. And so then the bottom, the 8 and 9 and 10, are just examples of how they go out and put road marker signs, ROW signs up to mark their...delineate their right-of-way. And some of those are places where people can't even drive anyway so they're spending money unnecessarily. And the bottom two are probably the reason for the introduction of the bill. These two signs...this one sign, those two pictures are in front of a property, a business in Bridgeport, Nebraska, that the state Road Department came by and instructed this business that they must move that sign; it's an obstruction, it shouldn't be on the right-of-way, and you have to move it. And they gave him something in writing and the businessman said, I would like to have something more authentic so he got in his pickup, drove 35 miles to headquarters, printed up something on state paper and drove 35 miles back and give it to him and said, you got to move the sign. Now that is not an obstruction. It's not going to affect anyone. There should be a permitting process for those kind of things. There are permits now available for flowerpots and trash receptacles. And so I would like to see the Road Department come to the table and discuss how it is that we can do these things commonsensewise and apply that so that we don't have to keep spending money to do the kind of things that are unnecessary. The written testimony is from the mayor of Bridgeport and the business owners in Bridgeport, and they kind of speak for themselves. The one that's from The Tarnished Halo, it's a three-page document, and it also has a picture on the back and it shows what they had in front of their property was a sign that basically said we're open for business selling jewelry, and that had to be moved also. And so I just think some common sense needs to apply in this whole situation. I don't find that to be the case. I have had numerous conversations with the Road Department, and I don't seem to get any traction out of that. I did also include in your packet, as you will see, there's a document with the numbers on it. Those are the number of state highway employees since 1935...1895, excuse me. And as you'll see, back in the '70s and '80s I would assume the Road Department had a bigger role in building and surveying and doing all the things that they do. And nowadays they subcontract a lot of that work out, and they nearly have the same number of employees as they had 30, 40 years ago. And so I don't know how many supervisors are needed or how many employees are needed, but when you figure there's 2,113 employees in 93 counties, that's a lot of highway department people for each county. Now on the snow removal, I understand and I visited with the Road Department. I understand that one can never introduce a bill that's all inclusive and it directs when you should plow snow and when you shouldn't. And so I had Senator Schilz introduce this bill to start the dialogue to try to come to some commonsense approach about snow removal, what

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works and what doesn't, and about what permitting is and what permitting is not. I'm not asking for us to put up signs in the right-of-way. I'm not asking for that at all. But what I would like to see is if a business wants to have a pop machine in front of their business, they fill out a form. The guy from the Road Department looks at it and says it's not restrictive to pedestrian traffic, it's not a danger, it's not a tripping hazard, permission granted. I don't think we should have to go through a process of six months somebody studying the traffic pattern and all this stuff. It should be a simple process: I would like this to be here and the permission is granted. And so those are my comments. If you have questions about the pictures or about anything that I said, please, I'm open to try to answer those. [LB1040]

SENATOR FISCHER: Thank you, Commissioner. Are there questions? Senator Hadley. [LB1040]

SENATOR HADLEY: Senator Fischer. Commissioner Erdman, thank you for coming in and talking to us about this. [LB1040]

STEVE ERDMAN: You're welcome. [LB1040]

SENATOR HADLEY: I was concerned about in the fiscal note the Nebraska Department of Roads talks about the federal government's role in this. Have you looked into that at all and how the federal government works on the certifying the rights-of-way are correct? [LB1040]

STEVE ERDMAN: No, I have not. I'll tell you what happens and it happens in our county a lot is when I suggest something to our road superintendent, our county road superintendent, that we should do something different than we're doing now, it's impossible. And that will be the same approach that I get from the Road Department. When I asked them about can you deviate from this standard, their answer is no, the federal law doesn't allow us to do that. Well, in one of those letters, and you'll see in there that they insinuated that the Attorney General Jon Bruning was on their side and he was going to enforce this statute. And so I happened to have the Attorney General's cell phone number so I called Jon Bruning to see, and he said, I'm not on their side. He said they need to apply common sense. And so a lot of times what they do, they hide behind the fact that there is federal regulations and when, in fact, they could just go ahead and grant what they do and it wouldn't make no difference to anyone. And I think there will be someone else testifying to how that happens. And so I don't know what the ramifications is there, but it appears that they don't do anything at all because they don't have to because they can hide behind the federal statutes. [LB1040]

SENATOR HADLEY: I guess the only reason I brought it up, this committee has heard instances where the federal government has told us that we will lose funds. We've received letters from the federal government saying if we don't...we just had one on I

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believe it was on beef hauling from your area out there... [LB1040]

STEVE ERDMAN: Right. [LB1040]

SENATOR HADLEY: ...where the federal government said if you don't change this you're in violation of...and you will pay the penalty in loss of highway funds. So I sometimes don't think it's an empty threat from the federal government. [LB1040]

STEVE ERDMAN: Yeah, I understand that. I understand that. But I also understand that it just seems difficult to make commonsense decisions in government sometimes. [LB1040]

SENATOR HADLEY: Okay. Thank you, Mr. Erdman. [LB1040]

STEVE ERDMAN: Thank you. [LB1040]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? I see none. Oh, I'm sorry. Senator Louden. [LB1040]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Well, Commissioner Erdman, thank you for coming down today. I was wondering about this picture number 5 here and it shows these posts across. [LB1040]

STEVE ERDMAN: Yes, sir. [LB1040]

SENATOR LOUDEN: Now was that...where is that taken at? [LB1040]

STEVE ERDMAN: That's taken right north of Angora, looking south towards the white pickup is where the other poles are. [LB1040]

SENATOR LOUDEN: Yeah. [LB1040]

STEVE ERDMAN: And that area, Senator, was where the farmers from that area would come from the west on the road down by the white pickup and they would drive on that frontage road on that abandoned highway and then they would cross directly across Highway 385 at a right angle, at a 90-degree angle. [LB1040]

SENATOR LOUDEN: That's what they were using, that abandoned highway there? [LB1040]

STEVE ERDMAN: That's correct. That's correct. [LB1040]

SENATOR LOUDEN: Was it still smooth or was the surface there or had they picked

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the surface up or? [LB1040]

STEVE ERDMAN: There was some leftover asphalt and there were a few chuckholes in the asphalt, but it wasn't such that it wasn't... [LB1040]

SENATOR LOUDEN: It was passable for farm machinery and truck and that sort of stuff. [LB1040]

STEVE ERDMAN: Yeah, yeah, yeah, it was. [LB1040]

SENATOR LOUDEN: And did they give a reason for putting those posts across there? [LB1040]

STEVE ERDMAN: It's their right-of-way. [LB1040]

SENATOR LOUDEN: That was all? [LB1040]

STEVE ERDMAN: Um-hum. [LB1040]

SENATOR LOUDEN: Okay. And the picture 8 there shows a whole bunch of these orange signs down through there. [LB1040]

STEVE ERDMAN: That's correct. [LB1040]

SENATOR LOUDEN: Now was that they stopped it so that the farmer wouldn't farm the ditches? Is that what that's all about? [LB1040]

STEVE ERDMAN: I believe that farmer was turning around on that part and he was probably farming a little ways out onto the road. And they told him once they put the signs up that they would take care of the weeds there. And I don't know whether he mowed them or the Road Department mowed them, and I would assume that he probably did because they don't mow out that far. And I think in cases, a lot of cases, Senator...I'll give you this example. A farmer was building his electric fence along the highway and he had his big T-posts that hold the wire behind the little yellow right-of-way markers. But as he got going down through there, he got his little three-eighth's-inch insulator posts out on the right-of-way. And the Road Department person stops and says, you have a couple of posts on the right-of-way. And he said, oh, maybe I do. And the Road Department person said, you need to move those or I'll move them for you. And he said, what? He said, we're only going to be here for a short time and they're just like as big around as a pencil. And he said, that doesn't make any difference; you need to move them. So the farmer invited him to step over on his land because what he was going to do to him he didn't want to do on state property. And if the Road Department person would have shown up and said, hey, you know, you've got

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a couple of posts on the right-of-way; the next time you build your fence if you could keep those back from the right-of-way, I'd appreciate that. And the farmer would have probably done that if he was spoken to in a nice way. But when that approach is taken, the next time the farmer builds a fence, he's going to build it on the right-of-way. You know, there's just some commonsense things that they could apply here that would go a long ways in making us all compatible. It's just difficult. [LB1040]

SENATOR LOUDEN: Well, yeah, I know, and I'm acquainted with a lot of people up in Box Butte County and that wasn't uncommon, as they said, farm the ditches, because it kept the weeds down. And I'm wondering, you know, why that's a problem especially in that area there because it does. I don't know as they ever cut any crops off of it or not, but they usually, when they're pulling their machinery through there, why, they clean the weeds up at the same time. This other one, there's a letter here from a...it was a Dave Dermer. Who's Dave Dermer? [LB1040]

STEVE ERDMAN: Dave Dermer is one of the highway employees that supervises the right-of-way. [LB1040]

SENATOR LOUDEN: Okay. Then on this echelon deal, Craig Lind is the state engineer out there, and where does Dave Dermer fit in there and Chris Ford and some of the people like that? [LB1040]

STEVE ERDMAN: Senator, my understanding is that Dave Dermer reports to Chris Ford. [LB1040]

SENATOR LOUDEN: He's what? [LB1040]

STEVE ERDMAN: Reports to Chris Ford. [LB1040]

SENATOR LOUDEN: I see. [LB1040]

STEVE ERDMAN: That's my understanding. I could be wrong. You'll have to ask...when the Road Department gets up here to testify about the right-of-way and things, you'll have to ask those same questions and see what the answer is. But there are many instances where the farmers try to keep the weeds down in the right-of-way which, be it wrong or not, but they have a lot of places where they've put up, and I didn't include those in the brochure, but I have many more e-mails and pictures I could e-mail you, but the farmers have planted hay in their field and they mow a bit of the right-of-way when they mow their field. And the Road Department has come with a rotary mower and beat up their windrows so they couldn't bale that. And then they put up a no haying sign. So they spend a lot of time putting up signs and I think if they got that much time to put up signs they ought to have a lot of time to do something else and save us some money because basically they're spending my money when they do that. [LB1040]

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SENATOR LOUDEN: Now is this a personnel problem? Because I know in the areas where we are if you hay the roads, why, you have to have a permit for a certain time. But on the other hand, you can cut a certain amount of hay where you have your turnoff or something like that. And usually the personnel from the Department of Roads doesn't seem to have a problem with that. And that's the reason I'm wondering if this is a personnel problem and if this is what we have to be talking about is someplace along there. Because it seemed like when the Attorney General sent his ruling back out that that should have kind of put an end to it I guess was my kind of concern. [LB1040]

STEVE ERDMAN: Yeah. That was an interesting letter. It's the one from The Tarnished Halo. You know... [LB1040]

SENATOR FISCHER: I'm sorry. Which letter was that? Is that in the packet? [LB1040]

STEVE ERDMAN: It says February 1 on the top. It's a three-page letter and it has a picture on the back. [LB1040]

SENATOR FISCHER: Okay. Thank you. [LB1040]

STEVE ERDMAN: And that's basically how I got involved with it. You know, I assume that those people in Bridgeport knew that I'd had an ongoing discussion with the Road Department and so they called to see if there was something I could do, not that they thought I could but at least they had to tell someone. And it's been an interesting situation, and I have visited with some people from the Department of Roads and told them that I was going to do this, and their attitude was it would be good to have some flexibility and to make commonsense decisions. And I said, great, so when I introduce legislation, please come and testify and help us come to a conclusion what we can do cooperatively. And I understand that a bill is not usually at the end what it starts out to be. It's a shell bill and I throw this out for discussion on the snow removal and the other things. And I would hope that the Road Department and you would see fit in moving it on so that we can have that discussion and come to a conclusion what is common sense and how to we apply that. And it just seems to not be there. [LB1040]

SENATOR FISCHER: Thank you, Senator Louden. If I could just follow up, Commissioner, on a comment that Senator Louden made with reference to the Attorney General's Opinion. What I understood from you is you had a phone conversation... [LB1040]

STEVE ERDMAN: I did. [LB1040]

SENATOR FISCHER: ...with the Attorney General and he just made a comment... [LB1040]

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STEVE ERDMAN: Correct. [LB1040]

SENATOR FISCHER: ...saying that the department didn't have to follow the guidelines that the federal government sent down. [LB1040]

STEVE ERDMAN: No, no. He said there are situations where they could make commonsense decisions. He said, you know, there's a law on the books that says you shouldn't spit on the sidewalk and we don't enforce that one. And so... [LB1040]

SENATOR FISCHER: Right. But this was not a formal opinion. [LB1040]

STEVE ERDMAN: No, no, it wasn't. [LB1040]

SENATOR FISCHER: This was just a comment the Attorney General threw out to you. [LB1040]

STEVE ERDMAN: Yeah. And what happened...I'll elaborate on that a little bit. It was on a Saturday when I called him. On Monday, things were still on the sidewalk so I thought everything was fine. On Tuesday, the Road Department came in again and then I called Jon Bruning's office, not Jon himself. And I do not know who contacted the Road Department, but someone from Jon Bruning's office had contacted the Road Department and suggested that they ease up on what they're doing. And they haven't picked that stuff up yet. I don't know whether it was, you know, hey, do us a favor and not do that. I don't know what it was. But anyway, the things are still sitting there today. Whether they will be there tomorrow I can't tell you that. But I know that if we could get to some compromise that would allow them to have a permit for that it would save us all some money and we could make this simple and we could all cohabitate and we'll all get along fine. [LB1040]

SENATOR FISCHER: Okay. Thank you very much. Other questions? I see none. Thank you for coming in today. Appreciate it. I would like to note for the record that we have been joined by Senator Kathy Campbell from Lincoln. [LB1040]

SENATOR CAMPBELL: And I apologize for being late. [LB1040]

SENATOR FISCHER: No problem. No problem, Senator. Are there other proponents for the bill? Any other proponents? Are there opponents to the bill? Good afternoon, Director. [LB1040]

MONTY FREDRICKSON: (Exhibit 3) Good afternoon, Chairwoman Fischer, members of the committee. I am Monty Fredrickson, director-state engineer for the Department of Roads, spelled M-o-n-t-y F-r-e-d-r-i-c-k-s-o-n. I am testifying in opposition to LB1040 as

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written on the green sheet. We were not aware of an amendment or a pending amendment at this point in time so that's what our testimony will reflect. This bill changes provisions for snow removal on state highways and also changes provisions for protecting and marking the state highway. The department has major concerns with both of those aspects. Regarding snow removal, Nebraskans depend on the state highway system for safe and uninterrupted travel and commerce. With that in mind, we at the NDOR strive to keep the highways free of snow and ice to the maximum extent practicable. This includes pretreatments to keep anticipated snows from adhering to the pavement, as well as timely and cost-effective plowing strategies that are built on research and extensive experience. We have found that daytime plowing generally is the most effective because of higher temperatures and sunlight facilitate the breakup and removal of ice and compacted snow. By the same token, daylight traffic increases the compaction and slickness of accumulated snow. This poses a dual threat for the public. Their safety is compromised if they do venture onto the roadway, and their livelihood is compromised if they feel constrained to stay at home or at their place of business. Under LB1040, our crews would be limited to a seven-hour window marked by unfavorable temperatures and poor visibility in order to deliver the same level of service. The public would be confronted with challenging driving conditions, including more highway closures precisely when they need our highways the most. Our fiscal analysis assumes the Legislature intends for us to continue to protect the public and provide the same high level of accessibility, mobility, and safety as we do at present. In order to achieve the same level of service by 4:00 a.m. as we currently offer periodically through the day, we will have to deploy far more equipment during the seven-hour window of nighttime operations. For the most part, we will also have to forgo the use of salt, relying instead on much more expensive deicing materials. Regarding the right-of-way portions of this bill, the second part of LB1040 would greatly restrict our ability to carry out our duties regarding public right-of-way, including accommodating public and private utilities, mowing, clearing brush, removing hazards, and encroachments. In order to properly carry out its responsibilities, the department strives to identify the boundaries between public and private land by placing a reasonable number of markers. LB1040 would not allow these markers. Furthermore, before a federal aid highway project can proceed, the department must certify to the Federal Highway Administration that the right-of-way is clear of encroachments. The changes required by LB1040 could make it virtually impossible to certify that the right-of-way is clear and will be kept clear. Our fiscal note indicates this could involve the loss of our entire \$200 million annual federal aid program. I would be glad to answer any questions. [LB1040]

SENATOR FISCHER: Thank you, Director. Are there questions? Senator Hadley. [LB1040]

SENATOR HADLEY: Senator Fischer. Thank you, Director Fredrickson. The concept of common sense and such as that, is that a concept...you've dealt a lot with the federal

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government in their rules and regulations. Is that a concept that they use frequently or?
[LB1040]

MONTY FREDRICKSON: I think so. However, I think they err on the side of conservatism. And if you're talking about the right-of-way issue, which I think you are, I would state that the existing law that's even referenced in this bill, 39-1359, on page 4, it does give the Department of Roads the ability to permit encroachments. You know, the bill says the highway right-of-way should be kept clear and used only for highway purposes unless the Department of Roads makes the decision that a certain encroachment can stay there, then we can permit it if it's not hazardous or distracting, all those good things. I understand that certain things that are permitted across the state have passed the federal test. So there I would say they have exercised common sense or agreed with us that a particular encroachment can stay there and not cause harm.
[LB1040]

SENATOR HADLEY: Thank you. Thank you, Senator Fischer. [LB1040]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Dubas.
[LB1040]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Director Fredrickson. On that same note, what is the process that someone has to go through to apply for a permit? [LB1040]

MONTY FREDRICKSON: You send a...there's a permit on-line on our Web site for an encroachment permit. Most of the ones we have are signs on the face of buildings in cities and villages where the face of the building is the right-of-way line. And of course, those signs have been there for a long time, canopies, so we wrote a policy if a canopy or an overhang is more than 8 foot high and sets back from the curb so RVs don't run into it, we can permit it, because that's not a real easy thing to change or someone's sign for their hardware store, meeting those regulations can be permitted. [LB1040]

SENATOR DUBAS: So do...is there general knowledge that this permitting process is available that maybe more people would take advantage? It sounds to me like it's a pretty simple, straightforward process and you look at it and you make the determination and go on from there. [LB1040]

MONTY FREDRICKSON: It's not something we market... [LB1040]

SENATOR DUBAS: Okay. [LB1040]

MONTY FREDRICKSON: ...if you can understand what I'm saying. You know, it's there. It's difficult to make decisions on what you permit and what you don't. We do have the

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ability, but where do you stop? And that's the hard part for us is, you know, a sign that's a foot on the right-of-way is probably not going to hurt anything, but what about a watermelon stand for a month out of the year? [LB1040]

SENATOR DUBAS: But you do have...what I think I'm hearing you say is you do have some flexibility when it comes to these. [LB1040]

MONTY FREDRICKSON: We have some flexibility, and it's difficult to be consistent throughout the entire state because of the varied issues that come up. [LB1040]

SENATOR DUBAS: Fair is not always equal, I've found that out, but thank you. [LB1040]

SENATOR FISCHER: Other questions? Senator Louden. [LB1040]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Thank you for being here today, Director Fredrickson. What I'm wondering, the first part of this bill has to do with plowing snow. Now do you have your own regulations or your own guidelines on when and when not to plow snow? I'm sure as many people as you hire you don't just leave it up to the individual when he decides to get in the truck and go plow snow. Somebody must make the decision, and what is that decision? [LB1040]

MONTY FREDRICKSON: Well, it's based on common sense. And the supervisors in the yard, you know, there might be...the eight main districts have a supervisor. And those guys make the call based on temperature, forecast, temperature of the pavement, a lot of factors. Is this a wet condition or is it going to be a dry snow? Is the wind blowing? All those things factor into when do we send out the plows. Is the forecast for a dusting or an inch? You almost have to drive to the location many times to find out how bad is it. If it's freezing on the pavement and it's only a quarter of an inch thick, it's still going to be slick so it needs to be treated. Whereas you have a wet snow like we did this weekend, it plows pretty easy. You don't... [LB1040]

SENATOR LOUDEN: But that's all either your local engineer or somebody like that makes that decision right there in that area. [LB1040]

MONTY FREDRICKSON: Yeah. The district engineer and the district maintenance superintendent are the guys making those decisions. [LB1040]

SENATOR LOUDEN: Okay, thank you. Now the other thing I was getting on to the right-of-way and they put a picture out. I don't...could you give this to Director Fredrickson. And I was looking at some of those pictures there, and I think it's, what, number 5 I think is the one that has those posts across there where from the testimony I understand from Commissioner Erdman that they put those posts so people wouldn't

drive down the old road. Well, in places as long as that's in the right-of-way, that can be used, can't it? There's nothing against the law to use that because the highway right-of-way is a thoroughfare. You can chase cattle or sheep or you can do anything down that road, whether you want to go off of the highway or not. So I'm wondering, you know, what's the problem with some of that? Now if they were tramping across a gully or something where you have some dirt work done to keep it from, I could understand. But is there reasons to put those in there like that just to stop somebody from turning off or driving down the old road, mostly because I use the old road myself. (Laughter) Especially with four-wheelers nowadays they're pretty handy to go down that old road. [LB1040]

MONTY FREDRICKSON: What was your address again? (Laughter) This particular situation I believe Mr. Erdman said was near Angora. And I think there's an elevator there that some of the farmers take grain and stuff for temporary storage. And we believe they were sitting on the right-of-way stacking up and this road doesn't look like a road as I recall if you go out and look at it. It was pretty well broken up. And so we worked with the owner for a while and he said, well, why don't you just sell me this right-of-way, which we do sometimes when we don't need it anymore. Well, that was about the time the four-lane Heartland Expressway came into being and became more viable, especially in this little stretch south of Alliance. So we didn't want to sell off this right-of-way because we will need it when the highway gets widened there eventually. So I think it was a safety and just an encroachment issue on the right-of-way from our district engineer. That's as much as I can recall. [LB1040]

SENATOR LOUDEN: Okay. Well, is there any way that that can be resolved? You tell me grain trucks were backed or parked there while they're waiting to unload grain or something like that? [LB1040]

MONTY FREDRICKSON: Yeah. And I can't remember all the details but we looked at this. I even got involved for a little bit with one of our deputies that, well, is there any way we can work this out? And we couldn't figure a way that was safe. [LB1040]

SENATOR LOUDEN: Okay. Then what about some of that, you see the other marks there where they have those right-of-way orange signs and I said is that to stop the farmers from farming the ditches. And, of course, you know up around I know in Box Butte County, I don't know about other places, but that was kind of common practice that while they were out there with their machinery they went ahead and took the weeds and cleaned the ditches up at the same time. Is that a problem with the Department of Roads? [LB1040]

MONTY FREDRICKSON: That's a hard one. You know, these markers are a lot closer than what you would normally see across the rest of the state. So I don't know if it was similar to your previous comment, is this an issue between that particular landowner

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and our particular maintenance person that takes care of that area? It's again, where do you stop? You know, Mr. Erdman's examples of a little encroachment here and there, we should be using common sense. And I would like to believe most of us are. That's probably not a case where we did, and we can correct that. The question is how much do you allow? If a guy puts two rows of corn on the state highway right-of-way and everything is fine and then next year it's four rows and where do you stop? Are they turning around and getting so close to the highway that they're becoming a hazard? Are they turning around on the highway? All these things have to be considered. [LB1040]

SENATOR LOUDEN: Well, I know turning around on the highway, but if they put four rows on there, you know, it could be at \$6 and some cents a bushel. You could be looking at a return on your money. I know if you would farm the interstate as wide as it is, why, you could probably fund a lot of it because I always used to say there was enough hay along the interstate to feed all the cows in Nebraska. Then we get into this one letter, who's this, what's his name, we see a lot of Dave Dermer for some reason here with the letters we got, seemed to be the...his name shows up a lot. Is he a foreman out there or what's...is this a personnel issue or what's that all about? [LB1040]

MONTY FREDRICKSON: I don't remember what his job title is. [LB1040]

SENATOR LOUDEN: Okay. [LB1040]

MONTY FREDRICKSON: I do know that Mr. Erdman is correct. He reports to Chris Ford, who reports to the district engineer. But I don't know what Dave's title is. I can... [LB1040]

SENATOR LOUDEN: Well, I'd hate to see Chris Ford move because it took us several years to get him trained to work with us, so I'd hate to see we have to start in on another one, as you remember when we talked about mailboxes, which way they point, you know. [LB1040]

MONTY FREDRICKSON: Yes. [LB1040]

SENATOR LOUDEN: So this is what I was wondering if there was some type of personnel problem and if you could work that out for us or tell us... [LB1040]

MONTY FREDRICKSON: I will certainly check into it. [LB1040]

SENATOR LOUDEN: ...tell us where we're at on that. Thank you, Director. [LB1040]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? If I could get back to the policy issue at hand here, Director. In your testimony you were talking about the loss of federal highway funds. And all of us here in the Legislature work with you on that

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because that's a definite issue that we take very seriously. We don't take it lightly at all. In your testimony, you stated before a federal aid project can proceed that you have to make sure that the right-of-way is clear of encroachments. So after a federal project has taken place, can there be encroachments at that time? Is that when you have more flexibility? [LB1040]

MONTY FREDRICKSON: Their regulations say clear the right-of-way at the time of the project and keep it clear. You have an ongoing duty to that. However, they will agree to certain encroachments. [LB1040]

SENATOR FISCHER: Have you ever approved an encroachment and had the feds come back and tell you it had to be moved? [LB1040]

MONTY FREDRICKSON: I can't remember. [LB1040]

SENATOR FISCHER: Okay. If you allow individuals to travel, use the right-of-way for...whether it's a four-wheeler, a combine, whatever, does the state have liability on that? [LB1040]

MONTY FREDRICKSON: Yes. The statute says it should be used only for highway purposes. [LB1040]

SENATOR FISCHER: So if you would give permission, you would be putting the state at risk to be sued if there was any kind of incident whatsoever? [LB1040]

MONTY FREDRICKSON: Yes. [LB1040]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much for coming in. [LB1040]

MONTY FREDRICKSON: Thank you. [LB1040]

SENATOR FISCHER: Other opponents, please. Good afternoon and welcome. [LB1040]

KATIE ZULKOSKI: Good afternoon, Senator Fischer, members of the committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the State Troopers Association. We are testifying and we have talked with Senator Schilz about the first section of the bill that addresses the snow removal. The State Troopers Association has concerns about the dangers that this would cause. We have not seen the amendment and certainly would be willing to look at that if that is something the committee considers. But as Director Fredrickson says, removing snow at only parts of the day and only after specific amounts does create new dangers and compromises the safety of those using our

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roads. [LB1040]

SENATOR FISCHER: Thank you. Are there questions? Senator Louden. [LB1040]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Would you agree then that a state highway is a public thoroughfare? [LB1040]

KATIE ZULKOSKI: I would. [LB1040]

SENATOR LOUDEN: And you can use that thoroughfare to travel anything on it without the right...if you're on the highway part, you have to have permits. If you're on the dirt part you could probably have livestock or whatever. I mean there's...you don't have to have a permit to trail livestock or anything like that down...or ride a horse or anything down the highways. Would you agree? [LB1040]

KATIE ZULKOSKI: I've not gotten a permit the times that I've done that, but I don't know. That's just how you do it in Brown County. (Laugh) [LB1040]

SENATOR FISCHER: They are taking names at the hearing today (laugh). [LB1040]

KATIE ZULKOSKI: I'm nervous to say you need a permit or not. [LB1040]

SENATOR LOUDEN: And you can drive a team and wagon down the highway. [LB1040]

KATIE ZULKOSKI: I'm solely testifying about the snow removal and (inaudible). [LB1040]

SENATOR LOUDEN: Okay. And then if you were driving a team and wagon you wouldn't have to worry about snow removal then. [LB1040]

KATIE ZULKOSKI: I probably wouldn't drive a team and wagon. [LB1040]

SENATOR LOUDEN: Thank you for your testimony. [LB1040]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thanks for coming in today. [LB1040]

KATIE ZULKOSKI: Thank you. [LB1040]

SENATOR FISCHER: Other opponents to the bill. Are there other opponents? Anyone wishing to testify in the neutral capacity? I see none. Senator Schilz, would you like to close? [LB1040]

SENATOR SCHILZ: Briefly, yes. Good afternoon once again. I thank you for your time. You know, as we look through all of these issues and things that we deal with I would...and I know you have the letter from the mayor of Bridgeport, Jack Berg. And as we go down through it, I'd just like to make a couple of points. You know, the NDOR was established in 1895 with the fundamental duties to "enable the development of the economy and increase the quality of life for all Nebraskans." And in a couple of these instances I think that what you're hearing is that we're just not finding the communication we need because at times the farmers are using this right-of-way to make things more safe as they cross roads and things like that. So it's something to consider. And sometimes maybe it's just better, I don't know, not to be there at the times they're crossing. I don't know how you do that. I don't know where that flexibility comes in. But the one issue I do want to touch on is the whole reason why this bill was written and why I'm sitting here in front of you. I've conducted several meetings out in the district talking to the Department of Roads and landowners that have been affected by this. But when I get the call from Mayor Berg about Bridgeport and, of course, obviously the sidewalks are the right-of-way, well, if the federal government is telling people to get those encroachments out and leave them out, if I'm a person that's walking to the post office for my business every day at the same time, is that not an encroachment or is that not clear? It's not. There's an issue there. This sidewalk has been there since, what, 1958, or the right-of-way I guess. The road has been there since 1925. So when we start to look at those issues, that's where the common sense comes in. You know, having a sign there that says Halloween decorations and getting a cease and desist order for that seems a little bit much in my book. So I think we need to be careful because if we take the letter of the federal regs at their word, we would have to basically clear out the main street of Bridgeport if you took it to its inevitable conclusion. I don't think that's what it intends to do, and I don't think that's what the right-of-way intends to do. I think the right-of-way is there to provide a buffer and maintain safety. You know, we talk about poles and, what, frangibility you said? A lot of the utility poles are placed up on the right-of-way. I can tell you what. You hit a utility pole with a car or a plane, you're going to know it. So as we look at this stuff, we've given utilities and other things opportunities to have encroachments on there. We just need to remember who's paying the bills and where that needs to come from as well and find a way to discuss these things, find a way to come to a conclusion. As I look at it, if you've got...and let's just take a fence or a well. Let's say you've got a well there that has been placed upon a right-of-way and maybe that right-of-way wasn't perfected and once it was we found out it was on there. Well, it would seem to me the proper thing to do would be to work with the landowner and say, okay, this is there now. In the future, we have a remedy and that is when that well needs to be replaced, it needs to be moved. So you write a contract between the Department of Roads and that person, and then when that happens, then it's required to be moved. And all of a sudden now it takes care...it probably takes care of the whole issue. The feds will ask, hey, do you have a remedy in place? Yes, we do. It may take 15 years, and I'm not talking something that's sticking 30

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feet into the right-of-way. But on some of these issues, we should be able to do some of those kinds of things. And I can tell you that would make the landowners and the folks that are dealing with right-of-way issues in western Nebraska much more comfortable and they would be...and maybe we wouldn't have to see bills like LB1040 come before us again. Thank you very much. [LB1040]

SENATOR FISCHER: Thank you, Senator Schilz. With that, I will close the hearing on LB1040 and open the hearing on LB...oh, I'm sorry, Senator Schilz. I'm going to reopen your hearing on LB1040. [LB1040]

SENATOR SCHILZ: Round two. [LB1040]

SENATOR FISCHER: Senator Lautenbaugh, did you have a question? [LB1040]

SENATOR LAUTENBAUGH: Yes, I did. [LB1040]

SENATOR FISCHER: I apologize. [LB1040]

SENATOR LAUTENBAUGH: Thank you, Madam Chair Fischer. Thank you, Senator Schilz. There is something about this that bothers me and if this is something that you don't think you're the right person to discuss, that's fine. But this concept of using the right-of-ways for farmers to have access to their land and that creating some kind of an obstruction that could create liability on the part of the state. And I think we're talking about fairly transitory obstructions in the case of the one gentleman here who was accessing his field to check his well, I think it was. I'm not from that part of the state but whatever, you know. [LB1040]

SENATOR SCHILZ: Right, sure. [LB1040]

SENATOR LAUTENBAUGH: I don't know if that kind of use creates an obstruction that creates liability or not. Do you have any particular insight into this or would this be something we could probably talk about, maybe with...I probably should have asked Roads this so I apologize, but I just don't have a clear conception of that. [LB1040]

SENATOR SCHILZ: Well, that...as I look at it, you're right. It's very transitory. These...what happens is a person from, say, the middle of March through the end of October would turn off the highway, cross the...basically I'm guessing he's crossing at a 90-degree angle to get to his pivot road, which is in the middle of the field rather than having to go to one end or the other. And so is it a safety deal? I can't tell you for sure. Is there a liability issue? No. Is it very convenient? Yes. Is there a problem of more than three to four seconds or five seconds as he goes through that? Well, you tell me. If he's on the road, is the same liability not there, driving? [LB1040]

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SENATOR LAUTENBAUGH: Maybe these...would these liability issues maybe be something you'd be willing to perhaps discuss and address via an amendment or otherwise? [LB1040]

SENATOR SCHILZ: Yeah, if we can find some way to exempt the state, absolutely. That sounds like common sense. I'm all over that. Thank you. [LB1040]

SENATOR LAUTENBAUGH: Thank you. [LB1040]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Other questions? I see none. Thank you, Senator Schilz. [LB1040]

SENATOR SCHILZ: Thank you. [LB1040]

SENATOR FISCHER: With that, I will close the hearing on LB1040 and open the hearing on LB1052 and welcome, Senator Christensen. Good afternoon. [LB1040]

SENATOR CHRISTENSEN: Good afternoon. Thank you, Madam Chair and members of the Transportation and Telecommunications Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to introduce LB1052. LB1052 amends Section 39-1802 which gives authority to the county boards to engage in construction and maintenance of county roads and drainage facilities along with authority to go onto private property when necessary to accomplish such construction and maintenance. This section also requires the county to pay for any damages to property outside of the right-of-way. LB1052 seeks to improve the due process in this section to provide proper notification and to better protect property owners and the county when disagreements arise between them regarding necessary entry onto the property and any claimed encroachments into the right-of-way by the county. The bill would require that a 30-day notice be given to the property owner by the county whenever the county has plans to enter onto the property without the right-of-way for purposes authorized in this section or if they plan to modify, relocate, remove, or destroy any encroaching private material in the right-of-way during any construction or maintenance of the drainage facility. It would also require that a record of the condition of the premises be made prior to any work done on the private property outside the right-of-way and evidence presented for any claim of encroachment such as pictures or surveys. In addition, LB1052 would allow with the property owner's written consent that a county to enter onto these premises and commence work prior to the end of the 30-day notice. Finally, the bill provides the emergency exemption to the 30-day notice for the county when eminent risk of public safety exists. The risk of any reasonable form of due process in Section 39-1802 was brought to my attention by a former Nebraska resident who is an absentee landowner of his family farmland, Mr. Ron Klein. I believe he has been in contact with your committee staff and has sent you information about the situation for entry into the record and distribution to the members

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of the committee. Mr. Klein has been in contact with the county board chairman for several years asking them to take care of a drainage problem along his property that would cause flooding onto his farmland. After Mr. Klein wrote a letter to the county board members requesting they clean out the drainage ditch along his property, the county board decided to clean the ditch to address the flooding issue. Without proper notification and in the process of working on the drainage ditch, the county removed 900 foot of Mr. Klein's permanent fence claiming that it was encroaching on a county right-of-way. When Mr. Klein asked for proof that the longstanding permanent fence was in the right-of-way, the county was unable to provide any documentation as evidence to the claim. The county cited Section 39-1802 as their authority to remove the fence and has refused to pay for the replacement of the fence. When looking under the County Drainage Act, which is Nebraska Revised Statute 31-901 through 31-933, proper due process is provided throughout the process outlined in the act. However, when looking at Sections 39-1802 that the county used its authority to remove Mr. Klein's fence, there was no proper due process described. In my office discussion with NACO, they were concerned about the 30 days is too long of a notification period and especially in regards to temporary fences that might be put up along a road for a variety of purposes. Temporary fences are addressed in Section 39-301 along with other obstructions such as felled trees blocking the road and is the statute that NACO offered to amend to address Mr. Klein's situation. Unfortunately, Section 39-301 is not the section that the county claimed authority from and primarily addresses obstructions of the actual road not the whole county right-of-way. It was not my intent to allow for 30 days' notice on a temporary fence that blocks the county road. I think we can find language to address that concern. I believe that both these sections need to be amended to address a lack of proper notification and due process and harmonization. As what sometimes happens in the implementation of law, what is actually being practiced in the 93 counties can sometimes be slightly different and not highlighted until there is a problem. I think that is what is happening here. I believe LB1052 allows proper notice, allowing absentee landowners the proper amount of time to respond to county plans and claims of encroachment when working on construction and maintenance of drainage facilities and roads. Again, it allows for the county and landowners to come to an agreement prior to the end of the 30 days with the written consent of landowners so that these projects are not delayed unnecessarily. Finally, it allows the county to also accomplish their necessary emergency duties to fix and repair infrastructure when an emergency exists. I will be glad to work with the committee and NACO on any amendments to help move us forward in providing better due process for protection of landowners and the county regarding the maintenance of drainage facilities in this section. Thank you for consideration of LB1052. I urge its advancement. [LB1052]

SENATOR FISCHER: Thank you, Senator Christensen. Questions? Senator Hadley. [LB1052]

SENATOR HADLEY: Senator Fischer, thank you. Senator Christensen, thank you. Just

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a couple I guess almost technical issues. What happens if the person doesn't respond in...I mean, what happens during the 30 days? Is there a negotiation or is that a requirement or does the county just have to say wait 30 days and then commence their actions? [LB1052]

SENATOR CHRISTENSEN: It would be 30 days to wait and commence. If they're not objecting, they wouldn't have an ability to object because that would be their notice. [LB1052]

SENATOR HADLEY: But I'm saying so we send them a letter saying we're going to do this in 30 days hence. Does...what rights do the landowner have to keep the county from doing it? None? [LB1052]

SENATOR CHRISTENSEN: Well, if they believe that there was damages, and that's the idea of having the pictures and the obligation. If they claim the fence is on the right-of-way, then they'll have to...they have to notify the farmer to remove it if they're going to stay off the right-of-way. You know, this is to protect the landowner. If they're going to enter his property or remove a fence that the farmer thought was on his property, their claiming it's on their property, then they probably should have a survey and things that way that would prove that or ask them to move it and place it back. There's a number of...we work with the counties all the time on moving fences for cleaning out and putting back. This is just a case that went sour because notice wasn't given other than oral up front that something might be occurring. [LB1052]

SENATOR HADLEY: I guess I'd follow up on that. Is this a unique case that requires a changing in the statute or is it just a unique case that may not happen again? Do we...is it a case that would necessitate changing statutes? [LB1052]

SENATOR CHRISTENSEN: I guess I'd look at it this way: Is it good public policy to give notice to someone if you're going to remove their personal property? I guess that's where I'd come back. I think it's a policy. [LB1052]

SENATOR HADLEY: The last thing, we have certainly heard testimony in this committee and in the Revenue Committee about the lack of people picking up certified mail and such as that. So does the 30 days start from when the person picks up the certified mail or is it from the time the county sends the 30 days because...or sends the mail? Because we had a deal with the DMV where 65 percent of their certified mail is not picked up. So I'm just thinking, you know, you haven't clarified what 30 days, when it starts. [LB1052]

SENATOR CHRISTENSEN: I guess the way I'd look at it would be 30 days from when they...it's in their box. They're going get a slip of notice that this was attempted to be delivered. When you get one of them, on, say, October 1, that would be the start of your

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30 days. But we can clarify that. [LB1052]

SENATOR HADLEY: Thank you. Thank you, Senator Fischer. [LB1052]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Price. [LB1052]

SENATOR PRICE: Thank you, Senator Fischer. A question for you, Senator Christensen: Is there a duty on the part of the landowner to know whether they're doing something off their property? I mean, when I go out and want to do something, I have to pull a permit, and it goes in my county permit office and they'll tell you, no, you can't do that because that's not your property or that's our property, the right-of-way. So is there a duty for the landowner to actually know where their land ends? I thought there was. I thought when I buy a house I have to get an appraisal and I have to have a survey so I know where my property is so I know I'm doing it within the bounds of my property. And I'm looking at this one case, this one situation, and what we seem to have, what tends to...seems to be the central issue is no one is laying claim to whether the fence was off the property or on the property. And I would have thought a landowner, particularly people who make their living off the land, know where their land is and where their land isn't. [LB1052]

SENATOR CHRISTENSEN: Well, there's...any property that's purchased states a survey to where it's going from. But in rural areas, we own the road, we own the land to the middle of the road but we don't have access to that. We only have...we own it to the center but we don't have the rights to use that to the center. There's another clarifying measurement that we have to stay back from, generally given in 66 feet from the center or...and that varies according to different areas and the use of the road. But there's a number of times that people have measured from a known stake over and thought they put the fence on their property. When you measure it again closely, maybe somebody slipped with a tape or whatever, they end up off 6 inches, and that's when you get into a dispute here. They both...the county said it was on their right-of-way. Mr. Klein says it was on his property. But they removed it and no one knows. There was no pictures, no documentation, and that's where your disagreements come in. And if there had been notice given, then he could have come and if they had said, hey, that fence is on our property, he could have then come and measured himself or he could have had a survey if he wanted. He could have done whatever to prove that point. [LB1052]

SENATOR PRICE: So...but there is at least one original survey. [LB1052]

SENATOR CHRISTENSEN: Yes. [LB1052]

SENATOR PRICE: But I get your point. The only other question was we had it in Government Committee, when you send off a letter, finding the right address to deliver it

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to, sometimes is a little tricky. I know that if we can't follow a survey, I don't know if we can follow an address on a property record. [LB1052]

SENATOR CHRISTENSEN: Well, I think if you go into the record, somebody is paying taxes on that, so you're going to have an address that somebody is receiving something or it's not going to be their property very long. [LB1052]

SENATOR PRICE: So a tenant wouldn't put up a fence and then incur a debt, or if someone is a tenant farmer and they put up a fence of some sort, right, but not the landowner, the actual damage would be to the tenant, not to the farmer, right? So who would get notified? [LB1052]

SENATOR CHRISTENSEN: Well, you're going to notify the landowner because he's the person of record and he can take care of his tenant. [LB1052]

SENATOR PRICE: Okay. Thank you. [LB1052]

SENATOR FISCHER: Thank you, Senator Price. Other questions? I see none. Thank you, Senator Christensen. [LB1052]

SENATOR CHRISTENSEN: Thank you. [LB1052]

SENATOR FISCHER: And, committee counsel, would you use the light system, please? Okay. If we could have the first proponent, please, for the bill. Any proponents? Good afternoon. [LB1052]

JUSTIN BRADY: Good afternoon. Senator Fischer and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association and the Nebraska State Home Builders Association in support of this bill. I want to just jump to Senator Hadley's question to say, no, that this is not a single incident. There was about 30, 35 members of the realtors on their government affairs committee where we review bills, three of which raised issues that they had run into this with properties that they actually were selling and that, yes, they were all places where the current landowner had already moved but when the realtor went out to show the property or something, it had been changed by this drainage stuff and whether it was the fence or whether it was the land had been modified. That was a shock to them to then have to call the landowner and say, guess what just happened, but I don't have proof of what happened because of the pictures. I did talk to Senator Christensen. Whether it's the 30-day notice or a less, I mean, that's something if it makes the counties or NACO feel better, we can certainly agree to that. And I don't even know the discussion was how far people need to go. I mean, if there was notice given, I don't know that you necessarily count on or need the county then to have to go out and take pictures before and after unless they want it. I mean, I think

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once the landowner had been notified that something is going to happen, they can have somebody go out and take pictures themselves or do the survey, as you were talking, Senator Price. But with that, I'd try to answer any questions. [LB1052]

SENATOR FISCHER: Thank you, Mr. Brady. Are there questions? I see none. Thank you very much. [LB1052]

JUSTIN BRADY: Thank you. [LB1052]

SENATOR FISCHER: (Exhibit 4) Are there other proponents for the bill? Any other proponents? I do have a letter that was received from Ronald Klein from Colorado, and we will enter that into the record. Are there any opponents to the bill? Any opponents? Anyone wishing to testify in the neutral capacity? Good afternoon. [LB1052]

LARRY DIX: Good afternoon, Senator Fischer, members of the committee. For the record, my name is Larry Dix. I'm the executive director of the Nebraska Association of County Officials, the last name is spelled D-i-x, appearing today in a neutral position on LB1052. Certainly over the course of the last couple of weeks, we've spent numerous discussions with Senator Christensen's office trying to clarify and trying to work through this. We're definitely in agreement that there should be notice. I don't want anybody to walk away thinking that the counties don't believe that there should be notice in any of these situations. We believe absolutely there should be a notice. I think we have a little bit of a difference on how much notice. The way the bill is written, it talks about the county board giving 30 days' notice. And when you get to the rural areas, if you've got...if something is brought to their attention and then you have to give 30 days of county board notice, you can string this out for quite a period of time. We would look at 10 days' notice. When we looked...and even in speaking to Senator Christensen's office, I think there was a comment that somebody had said they sort of like the way Missouri did it. I contacted Missouri. Of course, they're in their session, they're busy too. But we did find one section of statute where they do provide a 10-day notice. And, you know, we want work through that in whatever way that we possibly can. We do agree that in here we have a section of 39-1802 that doesn't ask for or provide for any notice. And then we also know that 39-301, which addresses another sort of drainage issue, we would look to amend that section. And so we're in complete agreement with Senator Christensen that we have to harmonize these two because I think the situation that at least we were made aware of happened in one of the counties where they cited 39-1802, and I think--the county cited that--I think called our office, we would have probably directed them towards 39-301. But, obviously, this was a situation that went on. There was no written notice. It was a verbal...Senator Christensen and I both confirmed that. It was a verbal notice between a board member and a taxpayer of which we probably wouldn't be here today if that would have been a written notice, but it wasn't, therefore, we are here today. From NACO's perspective, we're committed to trying to work this out. I would just tell you I think there's a little bit more work that has to

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be done to make sure that we harmonize these two sections. But if we can come to some agreement about somewhere in the area of a 10-day notice and work to the two sections of statute, I don't think we have much difficulty or heartburn with this. [LB1052]

SENATOR FISCHER: Thank you, Mr. Dix. Are there questions? Senator Campbell. [LB1052]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Dix, in the discussion with the counties that you've had, has there been any question about the issue of certified mail? [LB1052]

LARRY DIX: Yeah. I had that in my testimony but I was running out. We're running into the exact same thing the Department of Motor Vehicles is running into. There are certain requirements that counties have to send certified mail, and somebody sees that, they just simply don't pick it up. We're running into the same problem. In fact, we probably have a better response rate when it's just first-class mail. And so that would be another section that we would want to stipulate that a county could use first class or certified. At least that gives them an option. Many of these situations you know up front if it's volatile or not. So sometimes there may be a time where you want to use certified. But if you have the option of first class or certified, I think that would be sufficient. [LB1052]

SENATOR FISCHER: Thank you, Senator Campbell. Other questions? Senator Louden. [LB1052]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Mr. Dix, does eminent domain figure into any of this, work like this, you know, if they have to do any work for drainage or something like that? I guess, does the county have eminent domain? [LB1052]

LARRY DIX: Yeah. When you get into eminent domain, you know, those types of situations are, for the most part, we view them as major structural changes to the road and the roadway. And then there are always surveys, you know. It's pretty specific. It's pretty laid out in that fashion. So I think whenever you get into eminent domain, I think it's pretty clear-cut because everybody is going to have a survey in that scenario. [LB1052]

SENATOR LOUDEN: Well, the reason I asked that, railroads, you know, they have a train wreck or something alongside your property and they might be all over your place, and I don't know if they have eminent domain or if they have a big checkbook. Which is it they use? [LB1052]

LARRY DIX: I don't know the answer to that. (Laughter) I don't think the counties have a

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big checkbook anymore though. [LB1052]

SENATOR LOUDEN: Well, I know, but I'm wondering if...that's the reason I'm asking. I don't know if the railroad has eminent domain or how they handle that. But I know they can be all over your place in two hours. And I don't know what procedure they use, whether they have eminent domain to do that or not. [LB1052]

LARRY DIX: Right, right. Yeah, I think this was, at least the one that Senator Christensen and I have talked about, it was just sort of an unfortunate situation that brought us to this point. [LB1052]

SENATOR LOUDEN: Okay. Thank you. [LB1052]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you, Mr. Dix. [LB1052]

LARRY DIX: Thanks. [LB1052]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. Senator Christensen, would you like to close? [LB1052]

SENATOR CHRISTENSEN: Briefly. Thank you for your time. I'll continue working with Mr. Dix and my staff and we'll get an agreement on an amendment and bring it to you guys. And if you guys have some input or thoughts you'd like to have on that, we'd be glad to visit with you guys or work with you, however you'd like to have that done. Thank you. [LB1052]

SENATOR FISCHER: Thank you, Senator Christensen. Questions? I see none. Thanks so much. Always good to see you. With that, I will close the hearing on LB1052 and open the hearing on LB1112, and welcome Senator Flood. Welcome to the Transportation and Telecommunications Committee, Mr. Speaker. Always a pleasure. [LB1052]

SENATOR FLOOD: It's a pleasure to be here in front of all of you. Chairman Fischer, members of the committee, my name is Mike Flood, F-l-o-o-d. I'm from Norfolk. I represent District 19 which includes all of Madison County and a portion of Stanton County. This bill is very straightforward. It adds an additional factor for the Department of Roads to consider in establishing secondary priorities for its state highway system plan. As you know, the existing factors listed in Section 39-1365.01 are: current and projected traffic volume; safety requirements; economic development needs; current and projected demographic trends; and the enhancement of the quality of life for all Nebraska citizens. The new language for the department for them to consider is whether local matching funds are available for the project. The term "local matching

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funds" is defined as the funding available for a project from a county, municipality, or joint entity consisting of counties and municipalities. The insertion of this language doesn't mean that a project that has local matching funds would take priority over all other projects, but it does require that the department at least consider whether there is local buy-in. In other words, if several communities are willing to put part of their limited resources toward a highway construction project, it makes sense to me that this local investment and cooperation of the project should be part of the discussion within the department as they set their priorities. My office and I ran this idea past the Department of Roads prior to introducing the bill and we worked with Director Fredrickson to try and find a workable solution. It is my understanding that the department is comfortable with the current status of the green copy of the bill. The reason I bring this forward, as you know, is Kearney came forward with some local money to help that interchange happen on the interstate. I thought that was a very bright idea on their part, and I think it went a long way to two things: (1) underscoring how vital these road projects are to different parts of the state; and (2) that it's important enough that you want to put your own money in that you get from the gas tax or that you raise for economic development funds to take care of your own issues as the highways roll past your community. I just felt that what Kearney did set a model for the state and that it should be acknowledged when they're setting priorities for road construction. That's all the bill does. As you know, we're very vested in northeast Nebraska to see the completion of expressways. And the 1988 plan is what we proudly support and have for 25 years, and we'd like to see, among many other priorities, 275 be completed. Thank you. [LB1112]

SENATOR FISCHER: Thank you, Mr. Speaker. Questions? Senator Louden. [LB1112]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Senator Flood, I agree with you clear up to the point where we jump off the cliff. And the reason I say I agree with you is because we have some, I think, 43 counties now that have over a billion dollars of valuation. I mean, there's some net worth out there. And I agree I think there's times when some of those local entities could probably pony up the bucks and do it because we have a lot of those counties with that high a valuation and their about 26-cent mill levy, and we have counties that don't have near that valuation and they're at 48 or 49. Now the problem I have is when you say the matching funds, I've heard this discussion before and here's what worries me, is the counties then or the cities, Lincoln or whoever, that has the money and they'll apply for the matching funds, then there won't leave any money for these other areas that don't have the wherewithal to match the funds. Is there any way we can work that out? [LB1112]

SENATOR FLOOD: Well, you know as I said before, this is just a consideration by the Department of Roads, one of many that they have. And I think the Department of Roads throughout its history has a pretty good track record of making sure that less populated areas of the state receive not only state maintenance but capital improvement projects as they become necessary. This is simply an encouragement to communities that want

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to help defray the cost that will help free up funds for another project. Quite honestly, this bill pales in comparison to LB84 last year. LB84 was a monumental step forward in road funding in Nebraska. And as rural communities protecting that investment and adding to it in the future has to be a priority. This is another way of looking at getting local buy-in. I don't think it...you know, I think the department's record speaks for itself. They have been very conscientious about helping the rest of us in Nebraska outside of the metro areas. And I don't think that will...hopefully, that never changes. And I don't think under Director Fredrickson it will change. So I feel comfortable adding this as one of many considerations. [LB1112]

SENATOR LOUDEN: Do you have a problem then if matching funds wasn't included in there, that they put up these funds for some of these construction projects? [LB1112]

SENATOR FLOOD: Well, the reality is, you know, this bill by its very introduction I think has value because it calls attention to what the good people of Kearney did. Nothing in the current law prevents the communities in the 275 corridor from doing this today. [LB1112]

SENATOR LOUDEN: I think, didn't Kearney, didn't they put up the matching funds to get the federal funds that were allocated for that? [LB1112]

SENATOR FLOOD: I don't think it's matching so much. I mean, I think they contributed about \$2.5 million on a \$20-plus-million project. So to suggest they matched something, I mean, it would be a very low percentage of the total. But I think it underscored to the state how important that interchange was to Kearney, and they should be complimented for trying to find a solution to accomplish their goal. And I think it will pay great dividends for Kearney. You know, whether you agree with this bill or not, I think that local communities have, as part of this process that we've gone through in the last five years, taken a better ownership interest in the state highway system. And, you know, whether you pass this bill out of committee or not, the reality remains that communities and counties are as much responsible for helping defray costs as the state is to build highways. And we have a role in this, and this recognizes that role without compromising the delicate balance, I think, between the autonomy of the Department of Roads and the executive branch and the Legislature dictating projects. [LB1112]

SENATOR LOUDEN: Okay. Thank you. [LB1112]

SENATOR FISCHER: Thank you, Senator Louden. Senator Lautenbaugh. [LB1112]

SENATOR LAUTENBAUGH: Thank you, Chair Fischer. Thank you, Mr. Speaker, for introducing this bill. I just want to make sure I understand what we're doing here. Does the source of the matching funds or local funds matter at all? [LB1112]

SENATOR FLOOD: No. I mean there are...municipal and county funds are oftentimes restricted to certain purposes. So it's probably not fair to say that, you know, the city of Norfolk couldn't use its general property tax dollars over a ten-year period in some kind of a bond without a vote of the people. So there are restrictions. But Norfolk, like Kearney, like Battle Creek, gets a certain share of the gas tax. And, you know, what I'm envisioning is Norfolk, Madison County, Stanton, Stanton County, Wisner, Beemer, West Point in Cuming County, and Cuming County coming together to build the segment of 275 from Scribner to West Point. I'm not...and my calculations don't suggest that those counties are ever going to be able to come up with enough money to make it attractive to the Department of Roads to finish the existing 51 miles of the 275 corridor. But, you know, just getting a four-lane from Scribner to even the Cuming County line would be a huge improvement and a step forward. [LB1112]

SENATOR LAUTENBAUGH: So, I mean, it could come from any source as long as it's not state funds. I mean, a local... [LB1112]

SENATOR FLOOD: Or restricted. [LB1112]

SENATOR LAUTENBAUGH: Sure. I mean, a local, wealthy citizen could pay the local match and that would be okay. [LB1112]

SENATOR FLOOD: Well, this envisions county and municipal funding. I mean, I don't know if somebody wanted to give the state \$10 million to build a highway. I didn't envision that with this bill. More what I looked at is an interlocal agreement. And we don't need to change the law to let these folks do what I want acknowledged today. You can form an interlocal agreement and you can call the state and you can say we're going to throw in \$8 million on the project. [LB1112]

SENATOR LAUTENBAUGH: And you're not saying that if a locality does that, if your bill passes, that they would then jump to the front of the line. [LB1112]

SENATOR FLOOD: No. [LB1112]

SENATOR LAUTENBAUGH: You're just saying it's a factor they can consider. [LB1112]

SENATOR FLOOD: I originally had proposed that in my first draft and I ran it by the Department of Roads, and to their credit, you know, they said if we start down this path of...and I shouldn't speak for the Director, but I think a point was made if we started down the path of coding certain roads projects with prioritization above another, you tie the hands from the state to respond to the factors that are already there, which obviously the first is safety. And Highway 133 from Blair to Omaha is at the top of the list because of the number of average daily traffic and the safety. And I want to make clear, I am not against projects in Omaha and Lincoln. I know there's a need for the

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south beltway. I know there's a need for Highway 133. I know there's a need at Plattsmouth at the bridge. And the people I represent understand that and we're also very supportive of the fact that Highway 30 from Schuyler to Fremont will be built long before the remaining 51 miles in 275. I just, you know, I'd like to know that some day when I'm in the nursing home van I can ride in a four-lane from Norfolk to Omaha. And unfortunately sometimes it feels like it will take that long. [LB1112]

SENATOR LAUTENBAUGH: Thank you. [LB1112]

SENATOR FISCHER: Other questions? Senator Campbell. [LB1112]

SENATOR CAMPBELL: I just wanted to make a comment, not necessarily as much as a question. But I certainly do support the bill, and it reflects the exact answer that the director gave when we had the joint meeting between the Appropriations Committee and the Transportation Committee because I looked at the list and the south beltway actually was lower on the list. And my question to the director was, if Lincoln and Lancaster came up with some funding, would they consider moving it up on that list because it's a huge...I mean, the dollar figure is large. And he said, we would consider it. So I think that Senator Flood's bill reflects the answer that this committee was given last August. And I appreciate that because that's certainly what we're looking for in Lincoln because of the size of the project that if we could come up with the funds, we'd like them at least to consider it. So thank you. [LB1112]

SENATOR FLOOD: If I may respond briefly. I think we know that the real answer in the next ten years is augmenting LB84, finding additional funding for roads. And that's the truest, most direct route to where I think we all want to go. [LB1112]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Hadley. [LB1112]

SENATOR HADLEY: Senator Fischer. Thank you, Mr. Speaker. Just to make it absolutely clear, this does not mean that something goes to the top of the list just because there is...and I don't even want to use the term "matching" because that sounds like that there's a two for one or something, or let's say local funding to augment state and federal funding. Is that correct? [LB1112]

SENATOR FLOOD: Absolutely not. We've changed it after talking to the department for a good reason. Safety, I think, will always be their priority and as long as...and that should be. [LB1112]

SENATOR HADLEY: Okay. Thank you, Senator Fischer. [LB1112]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Flood, you mentioned there were 51 miles left on the 275 corridor that... [LB1112]

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SENATOR FLOOD: Yeah. [LB1112]

SENATOR FISCHER: ...that you're looking to complete and hopefully through implementation of a bill like this that would recognize the importance of having local political subdivisions or local entities put money into the project themselves. Is that right? [LB1112]

SENATOR FLOOD: Yes, but I don't think this bill alone is going to accomplish that. I mean, it's part if a broader... [LB1112]

SENATOR FISCHER: I was going to ask you, do you know what the cost is for those 51 miles? [LB1112]

SENATOR FLOOD: I did at one time and I think that was before a couple of years of inflation, but I wanted to say it was like \$161 million at one point because you've got bypasses around Fremont...or around West Point, Beemer, and Wisner, and West Point has a lot of bypassing some bridges. [LB1112]

SENATOR FISCHER: And do you know what the allocation dollars are for Madison County or the city of Norfolk from the gas tax? [LB1112]

SENATOR FLOOD: Not off the top of my head I don't. [LB1112]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you for coming in. [LB1112]

SENATOR FLOOD: Thank you. And I'll waive closing too. [LB1112]

SENATOR FISCHER: Okay. Thank you. So the Speaker has waived closing. With that, I would ask for a show of hands on how many proponents are here for the bill? I see three. How many opponents? None. Okay. First proponent, please. Good afternoon and welcome. [LB1112]

MARLENE JOHNSON: Thank you, Senator Fischer, and thank you to the committee for being here and listening to us today and talking about roads again, which is what we do often. My name is Marlene Johnson, M-a-r-l-e-n-e J-o-h-n-s-o-n, and I'm here on behalf of NEED, which is the Nebraska Expressways for Economic Development, and also serve as the mayor of the city of West Point. So it's kind of a dual-type situation. I just wanted to support Senator Flood's bill because we are looking for funding in any way that we can get to get some of this four-lane done. As I have stated from the beginning and our group has stated, none of us are really concerned about who's first. We just want it finished so that we can be closer to a four-lane. And I think we have almost

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reached the point where if we could get the four-lane to our city limits without doing the bypass, we'd be ecstatic because we do have four lanes going through West Point. And so just getting the four-lane to our city limits would be a major, major thing because part of the problem is everybody is coming into West Point and some of the other towns on two lanes. And so when they hit the city limits and see four lanes, it's like a racetrack because they're trying to get around all this slow traffic that they've been following since they left Norfolk or Hooper or wherever. So, you know, if you could get the four lanes to the edge of the city it would be a helpful thing. You know, expressways have always been important to our group and to each of us as a city is concerned. And any type of funding...LB84 was wonderful when that got passed last year and we hope that that will continue to be there and that we can use those funds to move these projects forward. And I think that if we can, as a city, find some funds to help some of these things along, obviously the citizens of our communities would have to support this type of a thing and this is something that you would have to sell to the people of your city to make sure that they understand that this is important and it is a priority. And so that too is part of the equation of this whole thing. And so I think that, you know, if...none of us have a lot of extra money laying around, obviously, but if there is some gas tax or some other method, maybe some sales tax dollars or something like that, that the people would support and let the council and the mayor move forward with this and use this to get these expressways closer to our community, I think this is something that looks like a good addition to LB84. [LB1112]

SENATOR FISCHER: Thank you, Mayor. [LB1112]

MARLENE JOHNSON: Thank you. [LB1112]

SENATOR FISCHER: Are there questions? Senator Louden. [LB1112]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Ms. Johnson, as you...I presume you've read the bill, would you have a problem with taking the word "matching" out of there, which would read then, if local funds were available...local funds were available for the project? [LB1112]

MARLENE JOHNSON: Well, you know, I think matching probably has a lot of different meanings. And, you know, does matching mean we have to come up with the same amount of money that, you know, half of the project or something like that or whatever. I don't know if you necessarily need to call them matching funds. I think it would be like contributions, you know, from the various entities along that corridor that would be willing to furnish some funds, whatever they can come up with, you know, to help this along. [LB1112]

SENATOR LOUDEN: Well, yeah. It would read then, "whether local funds are available for the project." You have no problem with wording like that? [LB1112]

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MARLENE JOHNSON: With the matching? [LB1112]

SENATOR LOUDEN: Taking the matching out. [LB1112]

MARLENE JOHNSON: You think it should be matching in the bill? [LB1112]

SENATOR LOUDEN: No, I think it should be out of there. [LB1112]

MARLENE JOHNSON: It should be out of the bill. Well, you know, there again I'm not a legalese type person, so I'm not sure if there are legal issues that would be involved with that as far as, you know, what the word means to different people or something like that. So I guess I really don't know if I want to...I'm not sure about that. I really don't. I hadn't thought about that. [LB1112]

SENATOR LOUDEN: Well, the reason I mention that, I mean I've been down here ten years now and we've went over this about every other year. And when you get that matching in there, then the rich areas, and that was always Omaha or Lincoln or whoever has tons of money, would suck up all of the highway funds because they were the only ones that could come up with a matching fund. I mean, this was debated years back, and that's the reason I ask. And I think...I agree. I think we've had hearings in Blair several years ago when we mentioned I think the...they were wanting some money to build something down there, and they got a \$2 billion valuation I think for Washington County and about a 2-cent increase in taxes would build a whole lot of roads. And that's the reason...but yet you would let the Department of Roads do the engineering and everything, but the local funds would be available. And that's what I'm wondering about with this bill here. Would you be willing to support something like that by just taking the matching out and just have the local funds available? If they want to come up with their money, why the can do it. [LB1112]

MARLENE JOHNSON: Well, I guess, you know, as long as they're not telling us how much money we have to come up with on any given project, you know, because that could be a problem. I guess if it would be to the funds that are available from the communities or whatever, then the matching probably wouldn't be as important because obviously, as you just stated, small communities can't come up with the amounts of money that, you know, large communities can. And so I think it has to be proportioned as far as what an area can afford to contribute. [LB1112]

SENATOR LOUDEN: Well, yeah, if they have...I'm talking about counties that have a 25-cent or 26-cent mill levy. [LB1112]

MARLENE JOHNSON: Which...yes, I know, a lot of them do. [LB1112]

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SENATOR LOUDEN: Okay. Well, thank you. [LB1112]

MARLENE JOHNSON: Thank you. [LB1112]

SENATOR FISCHER: Thank you, Senator Louden. Senator Lautenbaugh. [LB1112]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. And, ma'am, thank you for coming again today. So as I understand what you're saying is you don't want it to read so that the whole contribution has to come from the locality in order to get some sort of expedited or increased consideration. [LB1112]

MARLENE JOHNSON: Right. [LB1112]

SENATOR LAUTENBAUGH: And you necessarily don't see a value to it being a one to one like a straight dollar-for-dollar match either necessarily. [LB1112]

MARLENE JOHNSON: Well, I see value to that but I'm not sure that...like 275, you know, Scribner, West Point, Beemer, and Wisner are all very small communities. We would not be able to come up probably with a match because we wouldn't have those funds available. So that...you know, an equal amount. I think... [LB1112]

SENATOR LAUTENBAUGH: So maybe a fairer way to word this would be that if there's a local contribution that's available, the Department of Roads could use that in its weighing process. [LB1112]

MARLENE JOHNSON: I would think that to my way of thinking that would be how I'd look at it from the small city perspective. [LB1112]

SENATOR LAUTENBAUGH: But not a 100 percent contribution, not even a 50 percent, just a contribution that can be weighed because different localities are in different circumstances. [LB1112]

MARLENE JOHNSON: Right, right. I think that's true because, you know, we all have the same problems. All cities have the same problems, large or small, but it's just that the dollars involved are less or more. And so to, you know, set a certain figure and say this is what you have to contribute, obviously that probably would leave most of us out in a very, you know, big way... [LB1112]

SENATOR LAUTENBAUGH: Sure. [LB1112]

MARLENE JOHNSON: ...because we couldn't do what Fremont or Norfolk or Omaha or somebody like that does. [LB1112]

SENATOR LAUTENBAUGH: Absolutely. Thank you. [LB1112]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Senator Hadley. [LB1112]

SENATOR HADLEY: Senator Fischer. Mayor, thank you for coming. Just I guess a couple of comments versus a question. One is the term "match" can be anything. You know, we're talking...this morning we were talking about a potential 90 percent federal, 10 percent state. So match doesn't mean it has to be one to one or anything. Secondly, and I guess it's just a plug for LB84, if LB84 goes away there's no reason to have this bill because the department...Director Fredrickson said that the level of funding is strictly not enough to cover maintenance. So if we don't have LB84, there's no reason to...a match isn't...unless the match is 100 percent of the project, it probably isn't going to make a whole lot of difference. [LB1112]

MARLENE JOHNSON: Sadly that's probably true, you know, and I hope that LB84 does not go away because I think that's a real major start in getting some of this moving forward. And so I hope that it does not go away and if we can work this in addition and come up with whatever the match may be, you know, and I don't know if it can be the same match for every community or anything like that. It'd be just whatever. I think it's...you know it's kind of...sadly, it has to be kind of a decision on, okay, who are we dealing with right now and what can these communities afford. Are they willing to put up X number of dollars or something like that? [LB1112]

SENATOR HADLEY: The last thing I would say also is, you know, in defense of the Department of Roads, you know, they do weigh a lot of things in making decisions and obviously a match would be one of them, but it certainly wouldn't be the only priority that they would look at. They look at equity. They look at a lot of things. We're a large state with a lot of roads and they have to make the decisions along that. And as long as we keep the political pressures out of the decision process, I think it helps everybody along the line. So thank you, Mayor. [LB1112]

MARLENE JOHNSON: Well, thank you very much. [LB1112]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Mayor, do you think that this bill would put political pressure into the process? Because you would have community leaders, you would have city councils, you would have county boards pledging money in order to build whatever segment of highway, and I think expressways for 51 miles, it may be over \$5 million a mile. The pressure would be there that these communities would put forward money, but in the great scheme of things is it that much to offset the true cost of the road? And wouldn't it be more of a political statement? [LB1112]

MARLENE JOHNSON: Well, I really don't look at it in that light because you're not trying

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to become first. You're not giving the money so that your section is going to be finished before anyone else's. I just...I'm looking at it from the aspect that if this section is designed and if we can come with some money to help the project along, I guess I don't necessarily look at it as a political thing, more as a giving back to the state and trying to help the project along. I'm sure some people would call it a political thing because that's always the first thing that gets thrown out there with anything that you do is, you know, it's all politics. And I myself would not look at it that way because I don't look at things from political points of view, even though I guess I am a politician. But I don't look at...I tend not to try to look at things from that aspect. I look at what is good for the communities and for the state, you know, and for the people traveling our roads that are only passing through, and for the safety. [LB1112]

SENATOR FISCHER: This can happen now though, correct? I mean the people in Kearney did it already in order to get a... [LB1112]

MARLENE JOHNSON: They did. [LB1112]

SENATOR FISCHER: ...second interchange at their community that was needed, and that also had federal funding involved with it. Why is it so important to have it in statute if not to add another political consideration in where before we were looking at safety, we were looking at volume, traffic numbers, we're looking at in rural areas, we're looking at geometrics, we're looking at surface condition when we're looking at maintenance. So there's a number of things that I think had more of a rational reason to be in the priority system of the department. And now we're saying if a community can pony up some bucks, then that will be factored into. Why is that important? [LB1112]

MARLENE JOHNSON: Well, I'm not really looking at this as changing the priority of things because I think the Department of Roads is still going to look at what areas need the safety issues first, and I think safety is always going to be first and foremost with the Department of Roads no matter what it is. And that would be the same with all of us. And of course we all think our, you know, safety is the most important. But I wouldn't look at it as an aspect of that. I would look at it as when our turn comes along if we can help the process along, you know, then that would be a good thing. I'm not looking at it as pushing a priority. I'm thinking that the Department of Roads would still adhere to their set of rules as to how they designate. I mean since they have designated Highway 30 as being the most unsafe stretch, and so that's what they're going to zero in on first. And so I wouldn't think that those priorities would change in regard to this; at least I would hope that they would not. I wouldn't want anybody to think that we're trying to bribe somebody to do something for us. [LB1112]

SENATOR FISCHER: Okay. Thank you. Good answer. I thank you for your support on LB84. [LB1112]

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MARLENE JOHNSON: You're welcome. [LB1112]

SENATOR FISCHER: You were instrumental in helping me get that done. Thank you very much. [LB1112]

MARLENE JOHNSON: Well, thank you for your help in doing that and thank you all for... [LB1112]

SENATOR FISCHER: Well, it was a collaborative effort among members of this body and members of communities such as yours. So thank you. [LB1112]

MARLENE JOHNSON: Well, thank you very much for all of your effort, and thank all of you for all of the efforts that you put in as being senators. I know it's a long, tiring, thankless job, and I admire all of you. And thank you so much. [LB1112]

SENATOR FISCHER: Thank you. Next proponent please. Good afternoon and welcome. [LB1112]

JERRY JOHNSON: Thank you. Senator Fischer and committee, my name is Jerry Johnson. I'm mayor of the city of Wahoo. I am also a member...our community is a member of NEED, which is the project helping LB84 move forward. As I look at this addition to the funding mechanism, I looked at it as a vehicle or a tool in order for some more money to be put into the system. And I'm troubled a little bit with the word "matching" in it. And I guess I look at it as a way that a community can kind of show buy-in to what the project is, and it's a supplement to it. I would hope, and I don't believe it's intended, that this would ever replace the money that's set aside for roads. It would only, I believe, be a supplement to it. And different communities are going to have different situations. There are some that time is a factor. It might be because their project is a long ways off, but it will give that community, whether it's the county or whether it's the city, time to maybe put together some funds that when their project does come up by the priority system that money will be there of assistance. On the other side, if time is short, in the case of, thank you for Wahoo being on the high priority side of the expressways system, too short of a time period for us to set aside or put any money into it. I do want to speak a little bit about Wahoo's situation. Because of the expressway around Wahoo--we don't call it a bypass, we call it the expressway--that we are spending about probably \$300,000, \$350,000 in order to attach that highway, the new expressway, to downtown and to the new lake. So we are putting money in, in order...and we've been planning on that for a couple three years. Now the project appears to be moving forward. They're talking about letting bids this year. And so that's our contribution and buy-in for the project. I'm also a candidate for Legislative District 23. And as I have gone around to Schuyler especially and talked about the corridor going to Fremont, Schuyler to Fremont, it's important to them, but they have time. And also people in Butler County are wondering when the project is going to be completed.

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So I see this as a win-win. I don't see it necessarily as a match. But I do show buy-in. So thank you. [LB1112]

SENATOR FISCHER: Thank you, Mayor. Are there questions? Senator Hadley. [LB1112]

SENATOR HADLEY: Senator Fischer. Thank you, Mayor Johnson. Just a quick question. And you brought it up about the expressway going around Wahoo, and I know Geneva has had the same concern with I believe it's Highway 83 that's gone around. [LB1112]

JERRY JOHNSON: Highway 81. [LB1112]

SENATOR HADLEY: Highway 81. Yeah. Sometimes these expressways can have a reverse impact from an economic standpoint on towns if they do go around them, and people, instead of going down main street anymore, go around at 60 miles an hour. Is that a fair statement? [LB1112]

JERRY JOHNSON: That is a fair statement. I used to live in Shelby and we had 81 going through, and the expressway or the four-lane between York and Columbus is not completed. And probably those people are not as excited about a bypass because it does go around and it is a negative factor. I would say in those communities, they're probably not going to put money forward, not be as likely to put money forward. We just look at it from the safety standpoint from the Wahoo situation with 90 trucks going through there every day going to the landfill that are congesting and safety and those types of things. So our community has prepared for it and we're willing to put the money forward. [LB1112]

SENATOR HADLEY: Thank you, Mayor. [LB1112]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Campbell. [LB1112]

SENATOR CAMPBELL: Thank you, Senator Fischer. And thank you, Mayor Johnson. I just wanted to comment a little bit on one of your points that I totally agree with. And that is, is that it takes time to sometimes have enough money to get to that project. And if you can shave off even one year of that to get to it quicker, sometimes that's helpful. When I was on the county board, I remember how we, quote, saved in the county and the city and the state in order to four-lane 84th between O Street and Cornhusker. And now you can't imagine not having that. But we did have to save up for that until we were ready to go. So I appreciate your theory there because I think it helps explain what the intent of the bill is. [LB1112]

JERRY JOHNSON: Thank you. [LB1112]

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SENATOR FISCHER: Thank you, Senator Campbell. Other questions? Senator Lautenbaugh. [LB1112]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. Thank you for coming again today, Mayor. Just briefly, I'm hoping if you...I'm pleased that you're developing access to the lake you're building in Wahoo, and I'm hoping if you get here you'll be a little more open-minded to my gigantic lake than you were last time I saw you. (Laughter) Is that possible? [LB1112]

JERRY JOHNSON: We can work on that. (Laugh) [LB1112]

SENATOR LAUTENBAUGH: Okay. On a serious note, I referred to you... [LB1112]

JERRY JOHNSON: No. I know where you're at. Yeah. [LB1112]

SENATOR LAUTENBAUGH: Sure. And I referred to you as Mayor and I don't believe I addressed the mayor of West Point as mayor, so I apologize. I did not mean disrespect. So we thank you, sir. [LB1112]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Other questions? Mayor Johnson, do you know how much the city of Wahoo receives in gas tax from the allocation formula every year? [LB1112]

JERRY JOHNSON: I think it's about close to \$300,000. [LB1112]

SENATOR FISCHER: And what do you use that money for? [LB1112]

JERRY JOHNSON: That is for our street improvement. We are also going to be using that as the vehicle in order to use transportation bonds to fund the project. So we are tying that together, money that we do not use for our street improvement, with the...for a transportation bond. [LB1112]

SENATOR FISCHER: And that money is used by other cities and counties in the same manner, is it not? [LB1112]

JERRY JOHNSON: Yes. [LB1112]

SENATOR FISCHER: It would be difficult if you were going to...say Wahoo wanted to put in some money because you weren't on the list right now. So say you wanted to put in some money to bring your project to your area, and you desperately need it. I've gone through Wahoo. But your gas tax money is already being used, and don't you think it would be difficult to take that money and put it toward another project for a state

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highway? [LB1112]

JERRY JOHNSON: I would say that's probably true if it was not for the lake. The lake, to me, is the new Wahoo. It's the new synergy that's going to help Wahoo grow. And I think most of the people in the community, businesspeople, realize that. There will be some downside to some businesses. But, in general, they've been waiting for this for a long time. I think some of them said let's put some money to it and get it done. So, yeah, there's mixed emotions in every project, and definitely there are some within our community. But as I talk to people that are going through, they said it'll sure be nice. When we want to go to Wahoo we will because we stop there for certain things, but when we want to go to Omaha or Fremont, it'll be nice to go around. And so I think the community looks at it as a win-win and I think they would put money in. [LB1112]

SENATOR FISCHER: Okay. I was very pleased to see your project on the list, because in my travels across the state it was one that was definitely needed. [LB1112]

JERRY JOHNSON: And we could have probably dropped out of NEED. We knew we were up there. But again, it's an effort that we want more communities to have that same opportunity. The priorities fit for us but we want to stay in it. [LB1112]

SENATOR FISCHER: NEED has been a good organization to work with on roads funding because you folks do stick together and you look at the bigger picture and that's helpful. [LB1112]

JERRY JOHNSON: Thank you. [LB1112]

SENATOR FISCHER: So thank you. Other questions? I see none. Thank you very much. [LB1112]

JERRY JOHNSON: Thank you. [LB1112]

SENATOR FISCHER: Are there other proponents for the bill? Good afternoon and welcome. [LB1112]

DENNIS HOUSTON: Good afternoon. My name is Dennis Houston, D-e-n-n-i-s H-o-u-s-t-o-n. I'm the president of the Norfolk Area Chamber of Commerce. I may have one of the shortest testimonies you guys hear today. I'm going to be short and to the point. As we look at our neighborhood in Norfolk, Nebraska, we're a community of 25,000 people but we have a trade area of 125,000 people. That's a trade area coming into the Norfolk community from our surrounding towns as our neighbors north and west of us. As we look at the efforts that have been put in over the years on LB84, and Norfolk has been there along with our neighbors to help make that happen, what we're looking at here is an opportunity to basically raise our hand and say we're willing to help

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take care of ourselves. I would venture to guess that's maybe the only bill before you this year where the people are coming to the state Legislature and saying, you know, we want to try to raise a pile of money at some point in the future, if we can, for the right project and we want to help the cost. You know, we're normally here asking for money from you. In this case, I think those roles are reversed. We're just basically saying let us try to help ourselves, not in a priority standpoint but just if the need is right we need to be able to help pitch in and do what's right. We live in a world where everyone is reaching out at the state level, at the federal level, asking for someone else to take care of them, and we're just simply here today saying let us help take care of ourselves. [LB1112]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thanks for coming in today. [LB1112]

DENNIS HOUSTON: Thank you. [LB1112]

SENATOR FISCHER: Good to see you again. Other proponents please. Good afternoon and welcome. [LB1112]

CURTIS SMITH: Thank you very much, Senator Fischer, members of the committee. My name is Curtis Smith. I'm executive...C-u-r-t-i-s S-m-i-t-h, and I'm executive director of the Associated General Contractors, Nebraska Chapter, and I'm here in support of LB1112. Probably not surprising, we follow pretty closely anything that affects highways and highway funding and so on within the state. You know, I sat here and I'm probably not as articulate perhaps as Speaker Flood was, but I see this the way I read the bill, just literal interpretation would be as a tiebreaker in a case where other priorities were measured up and one community was able to come up with some money, and the other things being equal, perhaps their project would go ahead and get built. And with the backlog of work that the state we know that we have here with the needs of the highway being \$600-and-some million a year and we're spending \$300 million a year, LB84 might hopefully will take care of \$60 million of that a year. And we're going to improve the time line that's involved between the conception of a project and the time it actually goes to construction and one thing, and to letting it on into construction. I think anything we can do in the state to perhaps speed that up, to find some money somehow, somewhere to complement the available monies, were good for the state. So with that in mind, we are in support of this bill and hope everyone else is too. If you have any questions, I'd try to answer them. [LB1112]

SENATOR FISCHER: Thank you, Mr. Smith. Are there questions? I see none. [LB1112]

CURTIS SMITH: Good enough. Thank you. [LB1112]

SENATOR FISCHER: Thank you so much. Other proponents for the bill? Any other

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proponents? Any opponents to the bill? Any opponents? I see none. Anyone wishing to testify in the neutral capacity? I see none. The Speaker waived closing, so I will close the hearing on LB1112 and open the hearing on LB1155. And I see Senator Lathrop is here to open. Good afternoon and welcome. [LB1112]

SENATOR LATHROP: Good afternoon, Madam Chair and members of the Transportation Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, and I represent District 12 in Douglas County which includes Ralston and the Millard areas. I'm here to open on LB1155. Prior to this session, my local police chief, who's here today, talked to me about the problems that he's experienced regarding people who continue to operate motor vehicles despite the operator's license having been revoked or impounded. He asked me to consider introducing legislation to enhance the penalties for these repeat offenders, and that's what LB1155 does. LB1155 would amend statute 60-4,108 in order to change the penalties for these repeat offenders. Currently, the statute provides for a first offense...provides that a first offense, a person is guilty of a Class II misdemeanor. In these cases, the court also orders the person not to operate a motor vehicle for one year. For subsequent offenses, the person is guilty of a Class II misdemeanor but the court orders them not to operate a motor vehicle for two years instead of one. LB1155 would make this the case for only the second and third offenses and would create a new penalty for the fourth and subsequent offense by making it a Class I misdemeanor instead of a Class III misdemeanor. In these cases, the person would still not be able to operate a motor vehicle for two years. The bill would also allow the motor vehicle to be impounded when its operator is arrested and they are found to have had a fourth or subsequent offense. Currently, this is allowed for a number of statutes relating to driving under the influence. I believe LB1155 provides prosecutors with an additional tool to handle these repeat offenders, and I ask for your support. I would just say generally, Marty Conboy is here I saw, and so is my chief from Ralston, and they'd be happy to tell you about the problem from a law enforcement point of view and from a prosecutor's point of view, and maybe share some thoughts and answer some questions regarding right-sizing the penalty. [LB1155]

SENATOR FISCHER: Thank you, Senator Lathrop. Are there questions? Senator Hadley. [LB1155]

SENATOR HADLEY: Senator Fischer. Senator Lathrop, the impoundment for 10 to 30 days. A couple of questions. What if the person is driving my car, is my car impounded if I loan my car to my neighbor and I don't realize that they've got...driving on a suspended license or such as that, is my car then impounded for 10 to 30 days? [LB1155]

SENATOR LATHROP: I think it probably would unless we make some change or a clarification. [LB1155]

SENATOR HADLEY: Okay. The second question is, a lot of cars are jointly owned,

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husband and wife, where the family may depend on the car for transportation for work, school, and such as that. We're penalizing the driver because we've impounded the car, but there could be a significant impact on his or her family also. And is that just part of the rub in the game? [LB1155]

SENATOR LATHROP: Yeah, I think it's part of the consequences. And the difficulty...I wouldn't have thought this was as big a problem as I think you'll hear about. The number of people that are engaged in repeat, like four, five, and many times a lot more convictions for driving under suspension, is so bad that I think we need to do something about it. Now is the impoundment period set in stone or am I committed to the time that we have in the bill? No. If it's impound the car and make them go down there and pick it up the next day, that may provide an additional disincentive to continue to be the repeat offender if they have to go down and get their car out of the impound lot. Or we simply recognize that to some extent if the car is jointly owned, husband and wife own the car and the wife lets the husband drive around on a suspended license, she's in some respects part of the problem. [LB1155]

SENATOR HADLEY: Just one last thing. We actually have heard a bill from Senator Lautenbaugh about the problems with uninsured motorists and not having your driver's license and such as that when you're driving, and impoundment is one of the things we're looking at. But it is just an impoundment until you go down and pick up the car but it's the inconvenience of not being able to drive home from that accident... [LB1155]

SENATOR LATHROP: Right. Sure. [LB1155]

SENATOR HADLEY: ...and having to go down and do it, so. [LB1155]

SENATOR LATHROP: And as you might expect, I'm not in favor of creating a bunch of fees over at the tow lot. (Laughter) But I do think that there's something to be said for taking the car away from somebody who is...you write them a ticket for driving under suspension--they're doing it right in front of you--and you give them a ticket and they drive off. And that seems to be part of the problem that it doesn't appear that we're being serious about that. [LB1155]

SENATOR HADLEY: Well, I just think it's great that you and Senator Lautenbaugh are again on the same issues, just... [LB1155]

SENATOR LATHROP: Yes, it is. [LB1155]

SENATOR HADLEY: Thank you. [LB1155]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Lautenbaugh. [LB1155]

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SENATOR LAUTENBAUGH: Thank you, Chairman Fischer, and thank you, Senator Lathrop. I'm assuming the difference...there's a difference in penalty between a Class II and Class I misdemeanor, is that correct? [LB1155]

SENATOR LATHROP: There is. I'm not sure that the maximum is different, but I think a Class I carries a year and a \$1,000 fine. [LB1155]

SENATOR LAUTENBAUGH: Well, I was going to ask, or are you like me since we both do civil law that you don't know what the difference is either, and that wasn't where I was trying to go. [LB1155]

SENATOR LATHROP: Okay. [LB1155]

SENATOR LAUTENBAUGH: Is the real point of the bill then the impoundment or the increased penalty, in your mind? [LB1155]

SENATOR LATHROP: I think it's both. It's kind of a two-pronged approach to the serial repeater. [LB1155]

SENATOR LAUTENBAUGH: Now we are frequently told in this committee and more so in the other committee we share that just increasing the penalties is not enough, that we're increasing penalties, increasing penalties, and no one knows about it so it's not a deterrent. Do you think this circumstance is different in some way? [LB1155]

SENATOR LATHROP: I think if people that drive under suspension come to understand that their car is going to be towed out from under them and taken to the impound lot, that word will get around. And maybe that may be the most significant part of this is that you're not just going to get a ticket where you go down and you pay a fine and continue to drive, but somebody is going to take your car out from under you. [LB1155]

SENATOR LAUTENBAUGH: Thank you. [LB1155]

SENATOR FISCHER: Thank you, Senator Lautenbaugh. Senator Campbell. [LB1155]

SENATOR CAMPBELL: Thank you, Senator Fischer. Senator Lathrop, is there some case in driving under the influence of alcohol that we arrest the person on the spot? [LB1155]

SENATOR LATHROP: Oh, I'm sure you arrest them on the spot for driving under the influence. [LB1155]

SENATOR CAMPBELL: Have you ever thought about that? I don't know. I mean, some

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of these people don't care, I mean however many times. [LB1155]

SENATOR LATHROP: I think a lot of the people that...DWI is a little bit different, and the people that will testify behind me can certainly address this better than I. But if you get...if somebody pulls you over for driving under the influence and you stumble around and you slur your speech and you fail the preliminary breath test, then they take you downtown. And I'm not sure what they do with your car, honestly. But I know that they take you downtown and then you either have to post bail or you get out on your own recognizance, but you are separated from your car. [LB1155]

SENATOR CAMPBELL: Okay. I'll ask them. Thank you, Senator Lathrop. [LB1155]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Price. [LB1155]

SENATOR PRICE: Thank you, Senator Fischer. Senator Lathrop, my question, we're talking about the impounded license. So, in other words, we're not talking about them being a DUI perhaps. They just for whatever reason when they're pulled over, they don't have the license to drive. That's what we're talking about, right? [LB1155]

SENATOR LATHROP: It's been revoked by some order of the court. I think the language is some order of the court or the DMV. [LB1155]

SENATOR PRICE: Okay. Can you hazard or can the people who come behind you hazard why they lost their license in a preponderance of the cases? [LB1155]

SENATOR LATHROP: It could be...this I think I can talk about, but again, Marty Conboy would probably tell you better. You can get it for a DWI as part of your sentence. You can get it for not having insurance and causing an accident and not paying the judgment. You can get it for points. Those are the things I can think of right now. [LB1155]

SENATOR PRICE: Okay. Because I was just trying to match this with some of the efforts we'd had with interlock on vehicles. You know, all of this would take a lot of different vector approaches, and I didn't know how many more overlap. I'm not against that. I wish that would tow it right there on the spot and then be done with it. But I just wanted to get clarification. Thank you. [LB1155]

SENATOR LATHROP: Okay. [LB1155]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Louden. [LB1155]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Senator Lathrop, this bill

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then actually this isn't a case where someone is picked up for drunk driving. If their license is suspended, this law would affect them, right? Their license could be suspended for a lot of things. [LB1155]

SENATOR LATHROP: Yes. I'll give you...sure. [LB1155]

SENATOR LOUDEN: It could be a felony or something like that. [LB1155]

SENATOR LATHROP: Yeah. I'll give you what may be a classic example. If a person causes an accident and they don't have insurance, they may have a requirement that they file an SR-22 with the Department of Motor Vehicles. That's constant proof that you have insurance. If they fail to do that, they can get a note from the DMV that says you're under suspension or your license is revoked, right? Then they drive through a stoplight and law enforcement pulls them over and they said, you're under suspension, you know. So it's not a DWI. This isn't a DWI situation. This is sort of after you've been punished for some offense or some violation of the privilege and your license has been taken away from you administratively or through the courts and you continue to drive, and then when law enforcement encounters you driving a car, that's the circumstance that we're talking about. [LB1155]

SENATOR LOUDEN: Right. This doesn't...this could be for any infraction or for a safety check if someone goes through a safety check and they're found that their license... [LB1155]

SENATOR LATHROP: Sure. If it... [LB1155]

SENATOR LOUDEN: ...has been revoked, this law would take effect. [LB1155]

SENATOR LATHROP: Yes, any time...and Mr. Murtaugh from Ralston, I think Chief Murtaugh can tell you about his experience with a number...it's mind-boggling how many people have more than four offenses. [LB1155]

SENATOR LOUDEN: Points? [LB1155]

SENATOR LATHROP: Points can...you know, that certainly fits the bill. [LB1155]

SENATOR LOUDEN: Yeah. Okay. Thank you. [LB1155]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? I see none. Thank you, Senator Lathrop. [LB1155]

SENATOR LATHROP: Okay. Thank you. [LB1155]

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SENATOR FISCHER: Could I have a show of hands of the number of proponents for the bill, please? Two. And opponents? None. Okay. Good afternoon and welcome. [LB1155]

MARTIN CONBOY: Thank you, Chairman Fischer, Senators. My name is Marty Conboy, C-o-n-b-o-y. I'm with the city prosecutor's office in Omaha, Nebraska. I'm also here on behalf of the County Attorney's Association of Nebraska to support this bill and to thank Senator Lathrop for bringing this issue forward. It is a monumental issue. To give you an example, in my office we handle about 10,000 suspended license cases a year. And that is a number that has continued to grow. There's...in answer to a question as to where these people come from, there are about 15 different ways you can lose your license in Nebraska. Years ago, it was for bad driving only. If you got arrested it was a 30-day minimum jail sentence. Since that time we've added the collection of tickets. Anybody that doesn't pay a ticket in Nebraska, you're going to have a suspended license. If you don't pay a ticket in another state, your license is suspended. If you don't pay your child support. If you drive as...or if you're guilty of an MIP and you're under 18 years of age. There are about 15 different ways you can lose your license. Some of them actually involve bad driving: drunk driving, points, reckless driving, leaving the scene. Those things still contain a provision for a revocation, which is a little bit different parlance. But the idea is you are not legal to drive in the state of Nebraska. And people go ahead with gusto and drive. And it is a resource strain on local communities, as you can imagine with that many cases on the courts certainly, the jails as well. But it is a frustrating problem, and our current enforcement efforts are not a good deterrent. If you're doing 10,000 cases a year, I just sent my staff...just sort of out of curiosity, I said take a look at the cases we have pending and let me know who's got the most prior convictions out of the current cases. They found a guy with 58 prior convictions. And that is clear evidence that there...and the number of people with dozens of prior convictions is huge. The penalties don't increase with reoffense, and that is one thing that this bill addresses. As Senator Lathrop has called them, serial suspended drivers, and those people would have another tier of penalties to be concerned with. And those worst offenders I would hope would take advantage of the opportunity to start driving legally. And the question about the vehicle impoundment that Senator Hadley had asked, in that regard, if you loan your vehicle to another person, there's a couple things that apply. One, oddly enough, it says if you loan it and you're an innocent third party, you can sue the person you loaned it to for the loss of your vehicle. You can also file a hardship affidavit with the court stating that you need that vehicle for your own work or personal benefit, and that, therefore, the court will release it to you as a third party. Lienholders also are protected in the same way. This is an issue that really deserves considerable study. This is a step I think in the direction of deterrence, specific deterrence, in particular, for those people who reoffend. But with that many offenses going on around the state and the drain there is on law enforcement, the courts, the jails, and the expenses that go along with that in the local counties, I would urge this group to continue to examine this issue perhaps with an interim study or a continued

study of how to best deal with these license revocations and suspensions, and should we be dealing with them the same way. A suspended driver who didn't pay a ticket in Iowa probably should not have the same consequence as somebody who is a multiple offense drunk driver who continues to drive regardless. So we might look at how to distinguish those groups of people in their consequences, as well, because, you know, we...or in some, just collecting money with our revocation process. I hope I've answered the questions that have come up and given you an idea of the gravity of this situation. But we tell people we want them to obey the law or you'll lose your driver's license, but when we take their license and they keep driving, it kind of undermines all those other laws that we attempt to hold them accountable for. So I would urge your continued support of these sorts of things, and thank Senator Lathrop. I'd be glad to answer any questions that you might have. [LB1155]

SENATOR FISCHER: Thank you, Mr. Conboy. Senator Hadley. [LB1155]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Conboy, thank you. As I mentioned earlier, we had heard an earlier bill that dealt with driving without your driver's license and proof of insurance. And one of the concerns we heard was that the significant number which you're alluding to could be a real stress on the impoundment system. Is that a fair statement? [LB1155]

MARTIN CONBOY: It's a huge problem. We did 6,700 no insurance cases last year, and there's a little bit different concern there. Not only are they not safe but there's a public welfare issue involved. If you know a person is driving without insurance and you catch them, and to let them continue to drive on might even expose the jurisdiction to some liability if they plow into a car and hurt somebody and have no insurance. Nevertheless, we don't want them to continue to drive. And you also pointed out another issue, that if you can't get your license, you're revoked, you can't get insurance. And, of course, then you can't get license plates either. So I mean we've created this nexus that really is one of the reasons these people just stay. I had a guy who's 47 years old. I helped him get reinstated, got all his tickets taken care of and all his cases pled and he served his jail. And I asked him how long it's been since you've had a valid license. He said I've never had a valid license. He's been suspended since before he was 16, so over 30 years. So it really is a very difficult situation when you get just behind so far on these things. [LB1155]

SENATOR HADLEY: Well, just as a quick follow-up on that, we've talked a lot about the deterrence of the fine vis-a-vis the impoundment. And I think we've talked a lot that the impoundment generally has a much more dramatic, quick impact. If I'm a wealthy person, you fine me \$1,000 and I write you a check. But if I'm driving a Porsche and you tell me that you're going to put it in the impound lot for 30 days, I'd probably get pretty uptight about it. [LB1155]

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MARTIN CONBOY: You're exactly right, and I think all the research shows that that is a better deterrent, both general and specific. It's kind of ironic that people are more afraid of their car going to jail than them going to jail I guess, but that's where we've gotten. [LB1155]

SENATOR HADLEY: Okay. Thank you. [LB1155]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Campbell. [LB1155]

SENATOR CAMPBELL: Thank you, Senator Fischer. That was sort of my question, is it worse to have your car or to impound the person? You answered that question. As you've looked at some other states, what's the most severe, that you know of, of other states that have tried to attack this problem? [LB1155]

MARTIN CONBOY: Well, to some extent a lot of states have a felony-level driving while suspended or revoked. Some states actually make it a felony to be involved in a collision where someone is injured or killed if your license was revoked. So, for instance in Nebraska, there really is no additional penalty for an unlicensed driver who might cause a fatality as opposed to just a regular driver. So they have distinguished it in that way as well. So increased penalties, that certainly is one way they've dealt with it. The impoundment of vehicles is another way that they've tried to have more immediate impact. But I can tell you this is a problem all over the country. I mean, there are...because of the tie between the economic considerations, it's become a bigger problem all the time. [LB1155]

SENATOR CAMPBELL: Thank you. [LB1155]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Price. [LB1155]

SENATOR PRICE: Thank you, Senator Fischer. Thank you, sir, for coming down and testifying and giving us a sizable understanding of this. My next question then goes on is in looking at the total number between suspended license and people without insurance, and under the bill we're considering, you could easily see 1,000 cars a month being impounded. Do you have the space for that? [LB1155]

MARTIN CONBOY: We don't currently, and I will tell you that that was a concern. And I know with Senator Lautenbaugh's bill as well, you know, I'm very supportive of the concept, it would require obviously a tremendous change in just the physical ability to impound. One of the concerns was the additional tie-up of law enforcement to wait for a tow truck and to secure the vehicle while they're waiting. It takes them off the street and ties them up for a half hour to an hour. So that is something to consider in terms of law enforcement resources, and that has become, you know, a concern. I guess it hasn't been decided yet how to deal with that, but that is still an issue. I guess as a matter of

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priority, if it's important enough to do they'll have to figure out something. [LB1155]

SENATOR PRICE: Well, the first thing that came on the first blush that came to me on that is a boot. In another words, boot the car right there on the spot. It's in a safe location. You can take the time to get it back and do what you have to do to recover it. But I understand. But I didn't know if other localities around the country, if everybody is having this problem, I'm sure in the national meetings, you know, they're finding venues and the ways whether...you know, where to put the car for your chain of custody for that vehicle and things of that nature. So I just wanted to know what your input was on that. [LB1155]

MARTIN CONBOY: Yeah, it is a national-level issue. And I think looking at best practices, again I think, you know, we've got a common problem. As an interim study, that might be something to look at as to what goes on that is working in other jurisdictions, if there are better ideas. Everybody is wrestling with it. [LB1155]

SENATOR PRICE: Thank you. [LB1155]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Mr. Conboy, would you...you've mentioned a couple of times now about an interim study. Do you think the bill should be held and we need to have an interim study? You were talking about maybe the need to distinguish between the groups of violations that would cause your vehicle to be impounded, whether you have tickets in Iowa or you've lost a certain number of points here in Nebraska or...is this bill ready to be passed like it is with the consequences that we're looking at? [LB1155]

MARTIN CONBOY: I think it is. This addresses one facet of the problem, which is the repeat offender, and I think that's something we're always going to be faced with. There are so many related issues. And I bring up that while this solves one of many problems, the others, you know, are exponential. When we talk about something that affects this many citizens, that has this kind of impact on local jurisdictions, this is...that's what brought this forward. I think it solves one problem as a deterrent. But some of the other issues are going to persist for many years and continue to plague at the state and the local level. [LB1155]

SENATOR FISCHER: Are we creating more problems than we're solving? I think it's horrible that people drive on suspended licenses. But you can't hold all their cars right now; you don't have room for them. You're going to impound somebody's car because they have a ticket in Iowa or another state and compare that to someone who committed maybe a greater offense causing their license to be suspended. So we would pass this bill now and deal with the consequences later? I'm always worried about unintended consequences when we pass legislation. [LB1155]

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MARTIN CONBOY: Well, and this would at this point still allow jurisdictions to decide how to prosecute, you know, how to manage the cost of incarceration if they want to do that. The impoundment issue would still be something they could manage. But when we talk about this big of an issue, it is frustrating. I think the public is, in general, and Oliver Wendell Holmes said we punish people who don't obey the law not because they don't follow the law; it's because it cheats those who do. And I think that's really an example of what we've got here. People, those of us who pay taxes and get your plates and your insurance and drive safely, ought to be on a different footing than people who cheat and don't follow the rules and they're driving in the car next to us. And that's the heart of this problem. And unfortunately that frustration is going to continue to grow. [LB1155]

SENATOR FISCHER: Okay. Thank you. Questions? I see none. Thank you very much for coming in. [LB1155]

MARTIN CONBOY: Thank you. [LB1155]

SENATOR FISCHER: Next proponent please. Good afternoon. [LB1155]

RONALD MURTAUGH: Good afternoon, Chairman. My name is Ron Murtaugh, M-u-r-t-a-u-g-h, and I'm the chief of police of the Ralston Police Department. And I just came today to express my support of this bill. Marty Conboy's office actually prosecutes on behalf of the city of Ralston even though he's the Omaha city prosecutor. First of all, I want to convey to the committee that the city of Ralston uses a separate impound lot, so we actually do not receive any financial benefit to impounding any vehicles versus city-owned lots. Secondly, I'm about 95 percent in agreement with the drafting of the bill. My original conversation with Senator Lathrop was to have this as a fourth offense, that it would go up to a felony classification, because once you start engaging people in the rights that they would lose as a felon, it tends to gain their interest as well. Currently, there is a state statute under the driving under the influence that does say that if we stop and arrest somebody that's driving under suspension as a result of a DUI, the wording in the statute says we shall impound the vehicle for no less than 10 days, no more than 30 days. I can tell you that Ralston has taken a proactive stance in that and we have done so. That has quickly spread throughout the metro area that no longer are drivers eager to drive through Ralston with a suspended license. I must also encourage the committee to realize that to understand, as you well know, that this is a state statute that is for the state of Nebraska, just not the Omaha metro area. Therefore, while the statute is there to provide tools and resources that by no means is to legislate policy and procedure at local law enforcement agencies, and I don't profess to discuss what other agencies do or choose to do. So from that perspective it is a very drastic problem that we've seen, and again we're dealing strictly with repeat offenders. So some of the questions I don't want to lose focus as far as, you know, first offense. The impoundment and things like that are for repeat offenders. And I'll answer any questions. [LB1155]

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SENATOR FISCHER: Thank you, Chief. Are there questions? Senator Price. [LB1155]

SENATOR PRICE: Thank you, Senator Fischer. Thank you, Chief Murtaugh, for coming down. I picked up on two things in your statement there. And the first segue, I mean you talked about the word getting out in town, can you give me, even anecdotally, any recidivism rates that you were seeing due to this proactive stance you're taking on an existing statute? [LB1155]

RONALD MURTAUGH: No. Unfortunately with us being surrounded on three sides by Omaha and one side by Sarpy County, a lot, probably over 90 percent of our violators are not Ralston residents. [LB1155]

SENATOR PRICE: Okay. They're playing through. And I will just add the comment, you know, when you said you were being proactive on that shall statute about putting...wouldn't you think that everybody was equally proactive on something that mandates what they're supposed to do? I mean, if they have to, if they're supposed to impound, aren't all authorities impounding vehicles? [LB1155]

RONALD MURTAUGH: I cannot comment on that. All I can comment is the procedures and the focus that my department has. [LB1155]

SENATOR PRICE: All right, I think I understand that. Thank you very much. [LB1155]

SENATOR FISCHER: Thank you, Senator Price. Other questions? I see none. Thank you, Chief, for coming in today. Are there other proponents for the bill? Other proponents? Any opponents? Anyone wishing to testify in the neutral capacity? I see none. Senator Lathrop did waive closing. With that, I will close the hearing on LB1155 and open the hearing on LB1030. And welcome, Senator Tom Hansen. Good afternoon. [LB1155]

SENATOR HANSEN: (Exhibits 5, 6, 7, and 8) Good afternoon. Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Tom Hansen, T-o-m H-a-n-s-e-n, and I represent District 42 and live north of North Platte, Nebraska. I'm here to introduce LB1030 at the request of several individuals in my district that have had serious and even fatal motor vehicle encounters of family members on roadways in my district. When motorized vehicles and persons using alternate mobility energy collide, the result is never good. LB1030 actually puts into our Rules of the Road a statute of common sense and a reasonable distance of three feet of clearance. This is applied to avoid colliding with pedestrian, bicycle, or electric personnel assistive mobility device. The Rules of the Road sections of our statute are clear as to when an audible signal is to be given and when visible signals by a motor vehicle driver of their intention when passing on the left at a safe distance. LB1030 will add to the Rules of the Road, "no less than three feet." I have several

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e-mails from constituents and others that give accounts of accidents or experiences that could have been avoided by more clear attention to the Rules of the Road. I would like at this time to pass these out if the page would come. The first one would be from Dr. John Guethlein. This accident happened just a few miles from where I live. It's on the road that I go to town every day. It was eight years ago and he still has the effects of that accident. He was hit from the back. There was no oncoming traffic. They were riding in single file, training for a marathon or some type of a long road ride on bicycles. Anyway, his bicycle ended up on the top of a Tahoe. The driver stopped. He remained on top of the bicycle somehow. It probably saved his life that he wasn't ran over that way. But he's had a lot of financial problems and a lot of physical problems after that. The next one is from Leah Purdy and she asked that her testimony be included in the record if possible. She's the daughter-in-law of former State Senator Vickie McDonald. She and her husband were out jogging on a gravel road just west of where I live, not that all of these accidents happened just west of where I live or east of where I live. But she was hit by a young 16-year-old driver that passed a car, got back into the road in front of the car and ran and hit her with no visible skid marks. Just the Rules of the Road didn't apply to this young driver and didn't see her and ran into her. The next one would be from a Trudy Merritt that is the aquatics director and recreation director for the city of North Platte and thinks that riding bikes and walking, jogging, anything of this sort is beneficial to fight obesity in our children rather than...well, she didn't say that, but rather than doing it from other respects of taxing soda pop and things like that. But anyway, the next one is a lady in Denton that fears for her children's lives because of just reckless drivers and lack of Rules of the Road. There seems to be one missing here, but there should be one, maybe it was passed out, by a former superintendent of the North Platte Catholic Schools, and he relates a story...pardon? No. Just passed out please. But anyway, of an elderly gentleman that had ridden his bike to work for 40 years and worked at the Catholic schools and a very influential young...or not...an elderly gentleman now. But he's ridden his bike all his life and he was struck and spent five months in intensive care in Denver. So some of these accidents are certainly not minor whatsoever. Twenty other states have a safe passing distance requirement by motor vehicles in their statutes when passing a bicyclist, jogger, or electric personal assistive mobility device. That may be those little scooters that you see advertised on TV and sometimes folks drive on the right-of-way because that's their only mode of transportation. We try in this body of legislators to help make healthy choices for our citizens. Here we have various groups of citizens that have made those choices to use alternative energy modes of travel and/or exercise. There are youth biking to school, elderly biking to the post office or store to save a few dollars and get their exercise at the same time, and it also includes a group that ride and compete in organized events. With the price of gasoline on the rise again by this spring, there will be more and more alternative energy vehicles sharing our roadways. LB1030 in no way is intended to hamper commerce in the state of Nebraska. On the contrary, if Nebraska became a state known as bicycle friendly, our more scenic areas of the Sandhills and highways around Lake McConaughy, the Calamus River, the highways along the Loup Rivers

would even become more desirable for tourism. There will be testifiers that follow me that will give some recent histories of some unfortunate serious accidents and/or experiences of travelling our great state. Thank you. Are there any questions? [LB1030]

SENATOR FISCHER: Thank you, Senator Hansen. Are there questions? Senator Hadley. [LB1030]

SENATOR HADLEY: Senator Fischer, thank you. Senator Hansen, if we're going to do this, should we have any regulations of how many bicyclists can ride abreast or how many joggers can run abreast? Because, you know, I've come across going down 13th Street where there will be three bicyclists riding, you know, abreast, and it becomes very difficult to get around them. I mean, should we have some rules about where the bicyclists should be riding in the street as well as how far the car should be from the bicyclists? [LB1030]

SENATOR HANSEN: I don't have this in this bill. I see what you're saying. Usually if there's multiple bicycles, I would assume that the Rules of the Road for bikes is to ride in single file along the far right side or the shoulder of the road if possible. So I don't know if those Rules of the Road are already there or not. [LB1030]

SENATOR HADLEY: It would be interesting if further people that come up if there are Rules of the Road on how bicyclists and how joggers who are jogging on a street are to do it. Thank you, Senator Hansen. [LB1030]

SENATOR HANSEN: Yes. [LB1030]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Price. [LB1030]

SENATOR PRICE: Thank you, Senator Fischer. Senator Hadley, I deeply appreciate what you're doing here. The one question I have is enforcing. I'm wondering about the enforcement aspect. When we put this in the rules, are you saying this is mainly a guideline? This isn't something someone would get a ticket for, right, if they passed within two feet, or are you looking for there to actually be a citation to be issued if they pass within less than three feet? [LB1030]

SENATOR HANSEN: If this is passed and it goes into the Rules of the Road, and it actually states three feet, it becomes a traffic infraction. [LB1030]

SENATOR PRICE: Okay. The only... [LB1030]

SENATOR HANSEN: But it still has to be observed by a law enforcement officer, which is very hard to do. It goes back to texting and any other distracted driving. But this would be in the statutes as a three-foot space. [LB1030]

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SENATOR PRICE: Great. And I understand that and don't take issue with that, I just I'm always concerned when we levy a requirement on our law enforcement officials to do something and then we don't give them the tool. I mean I read in one of the letters that they had a yardstick to show us how far three feet really is and how far it really isn't, you know. I just, I find that it's going to be a challenge to enforce. That's all. Thank you. [LB1030]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Louden. [LB1030]

SENATOR LOUDEN: Yes, and thank you. Well, thank you, Senator Hansen. But as I read some of your letters I question whether three feet is enough. And the reason for that is out where we are, Highway 2 and 27 and that sort of stuff, and I know my wife is a bicyclist and that, and I finally told her it wasn't safe to ride out there. Three feet when a cattle pod or a semi or something goes by you, because they don't throttle down, I mean, the whoosh will pretty near dump you off your bike. I'm wondering if, you know, if you're passing somebody, you usually miss them by more than three feet I would hope when you're passing another vehicle or something like that. Should that number be raised or something like that? [LB1030]

SENATOR HANSEN: Thank you, Senator Louden. We looked at a lot of statutes and the most we could ever find was three feet. One of them went down to two feet. But I certainly understand what you're talking about when any type of a full big rig passes a bicycle, there's going to be some turbulence there that's certainly going to shape things up. But, you know, three feet is a lot better than zero. [LB1030]

SENATOR LOUDEN: I'm wondering, is that all the further you have to miss another vehicle when you're passing is... [LB1030]

SENATOR HANSEN: Well, if it was two big rigs coming together on a two-lane highway, there might not be more than twice that, three feet on each side, so. [LB1030]

SENATOR LOUDEN: Is that from counting on their mirrors or the side of the vehicle, because if you're not counting the mirrors, they might click mirrors, I was wondering. Okay. Thank you. That was my concern. [LB1030]

SENATOR HANSEN: Yep. [LB1030]

SENATOR FISCHER: Thank you, Senator Louden. Senator Dubas. [LB1030]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Senator Hansen. You know, when I think when I first read this bill I thought, well, surely we already have

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statutes in place whether it's reckless driving or careless or what have you. But as I read through some of your handouts it sounds like law enforcement and attorneys felt like they didn't have the needed guidance through the statutes to bring any charges forward. So is the main reason behind your legislation is to put those parameters in place so that law enforcement and attorneys would have that as a basis for bringing forward charges? [LB1030]

SENATOR HANSEN: Well, it's added to our statutes, so it would have something for law enforcement to stand behind, especially if they observe someone following a group of bicycles within the three-foot limit. So it... [LB1030]

SENATOR DUBAS: But right now they're feeling like they don't have enough of that to... [LB1030]

SENATOR HANSEN: It's only a guideline in the Rules of the Road. [LB1030]

SENATOR DUBAS: Thank you. [LB1030]

SENATOR FISCHER: Thank you, Senator Dubas. Other questions? I see none. Thank you, Senator Hansen. [LB1030]

SENATOR HANSEN: Thank you. [LB1030]

SENATOR FISCHER: Can I have a show of hands at the number of proponents here today for the bill? Okay. Quite a number. Opponents? None. Okay. Let's start with the first proponent then. Good afternoon and welcome. And I would like to thank all of you for your patience today. You've been sitting through the entire hearing schedule, so thank you for waiting. Welcome. [LB1030]

RON SNELL: (Exhibit 12) Chairman Fischer, members of the Transportation Committee, in the last few years my wife and I, or I, have walked 1,000 miles around the state of Nebraska, pulled a boat across the state, and ridden my bicycle 3,100 miles around the state as fund-raising projects for the shelter I direct. In 2011, I rode my bicycle to work every day of the year in 2011. I believe that I could say that I'm among those who have seen as much of Nebraska up close and personal as anybody in this room or elsewhere. [LB1030]

SENATOR FISCHER: Could I have you state your name and spell it please? [LB1030]

RON SNELL: I'm sorry. My name is Ron Snell, R-o-n S-n-e-l-l. That means I've also seen a huge number of vehicles up close and personal. Bicycling, it turns out, is a risky adventure in the state of Nebraska and probably anywhere else. Why? Because we're required by law to ride on the roadways and obey the same laws as other users of the

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road, but many drivers either don't know that or they don't care. I can't tell you the number of times people have shouted at me to get off the road, sometimes accelerating as they pass instead of slowing down just to make a point. Drivers on four-lane roads sometimes can't be bothered to move over, preferring to just whiz by closely. It seems to me that what we need is a cultural shift. We need people in their big pickup trucks and horse trailers, semi drivers, city drivers to worry about the fact that if they get too close they could knock us down, run us over, or kill us. Cultural shifts take time and they require a persistent, consistent, multifaceted message. It's just one piece of a broader picture but laws like this do help, as several states around us are discovering. When we do publicity campaigns, public service notices, or even get T-shirts that say "I've got three feet," it makes a difference if there's actually a law to back that up. So why would and should a rural senator from North Platte, a self-described cowboy senator, care about bicyclists on the roadways? Well, for one thing our local bicycle club in North Platte last year logged 67,000 miles of bicycling on the roads and we were in close competition with the nearest club in Brady. That's 67,000 miles. There are many things that Senator Hansen and all the rest of us want for rural Nebraska, including healthier constituents and more tourism. I sit in on tourism meetings endlessly, as you do, trying to bring more people to enjoy the good life, and long-distance bicycling is a vibrant form of tourism. The scenery, the cattle, the ranches, it's all beautifully appealing on foot, by boat, by bicycle. But let me tell you, it does not work to say to visitors, "please bring your family and your bicycle and experience Nebraska's best," if the next thing someone yells is "get off the road" in more colorful language than that. And you get nowhere if the message people are hearing is, "Get out. Get active. Get run over." None of us believe this law would solve everything. There would still be irresponsible drivers, including those that caused the most tragic accidents in North Platte, the care flights, and the death. However, in the end, we get the culture and level of safety that we consistently promote. If we want the good life and we want others to enjoy the good life in a broad variety of ways, we have to have a culture that promotes that aspect of the good life in laws that put our money where our mouths are. For a bicyclist, Nebraska is a fantastic state to see up close and personal; its vehicles are not. I urge you to support this legislation. Giving us three feet, the width of a desk, to promote healthy, safe, inspired lives throughout our cities and our countryside, both for those of us who live here and for those who visit. Thank you. [LB1030]

SENATOR FISCHER: Thank you so much. Are there questions? I see none. Thank you for coming in today. Next proponent please. Good afternoon and welcome. [LB1030]

DAMON HERSHEY: Good afternoon, and thank you. My name is Damon Hershey, H-e-r-s-h-e-y. As a representative of BicycLincoln, a cyclist, and a concerned father of two native Nebraskans, I'm here in support of LB1030. With the enactment of LB1030 and with wider public recognition of what is safe and appropriate motor vehicle driver's behavior in the presence of bicyclists, everyone can benefit. I consider the three-foot passing bill an appropriate step toward wider recognition that bicyclists have the same

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rights and responsibilities as drivers of motor vehicles. The enactment of this bill and through education, people will be better informed about unsafe passing and encourage more and safe bicycling, providing a cleaner atmosphere, a cleaner environment, safer traffic operations, and healthier Nebraskans. Thank you. [LB1030]

SENATOR FISCHER: Thank you very much, Mr. Hershey. Are there questions? I see none. Thanks for coming in today. Next proponent please. Good afternoon and welcome. [LB1030]

ELISABETH REINKORDT: (Exhibit 13) Good afternoon. Thank you, Senator Fischer, senators of the committee. My name is Elisabeth Reinkordt, spelled E-l-i-s-a-b-e-t-h, last name R-e-i-n-k-o-r-d-t. A nice, good, long German name. I'm here to testify in support of LB1030. This is a minor change in motor vehicle law which will make a really big difference for many Nebraskans. I'm grateful to Senator Hansen for introducing this bill, and I am grateful also that my senator, Senator Avery, supports it. I am an avid cyclist. In fact, I was just recognized by the state employee wellness program for commuting to my state job every day of the year for the last four years, and I logged about 4,400 miles last year. So hopefully this won't turn into a competition of listing miles between cyclists because that's boring. (Laughter) So I could share many reasons that I support this bill, being an avid cyclist. But I'm simply going to illustrate this with a brief story from this past weekend. On Saturday morning, I was making my way to one of my best friend's houses for her birthday brunch. It was snowing. A few minutes into my ride, a car rolled down its window and I braced myself for the worst, being used to hearing all sorts of things shouted out of car windows. Instead I was greeted with a thumbs up like, hey, good job, you're riding your bike in the snow. Congratulations, encouragement. Wonderful. Big smiles. A mile or so later another window rolled down. I get a "You go, girl." Again, not necessarily what I was expecting. Great encouragement on making my way across town to brunch. Just before arriving to my destination, however, crossing a busy intersection where I was actually able to get much better traction than the cars, the car behind me started honking. As the driver squeezed in next to me, she rolled down her window and yelled, exasperated, for me to move over. Over, in this case, meant the snow pile that was left by the plows that had plowed 33rd Street. And while I had already signaled my turn to turn off this main street and onto the side street to my friend's house, she still felt the need to come closer than three feet from my side. So I give you these examples. The saying that while many motor vehicle operators in this state are, in fact, respectful and often even encouraging of cyclists--and I echo the comments of the previous testifier that this is a beautiful state to travel by bike--others are not so considerate, and much of that I believe really simply comes from a lack of clear guidelines and education. Bringing the three-foot standard into law would allow for state and local agencies, as well as bicycle, pedestrian, and wheelchair advocates to provide easy-to-understand driver education materials. If the law is clear in this case, I believe we all will benefit. Thank you. [LB1030]

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SENATOR FISCHER: Thank you, Ms. Reinkordt. Senator Hadley. [LB1030]

SENATOR HADLEY: Senator Fischer. Thank you, Ms. Reinkordt. I'm picking you to ask this question. I could have asked it for anybody. [LB1030]

ELISABETH REINKORDT: Sure. [LB1030]

SENATOR HADLEY: When there are two or more bicyclists, and you're just anecdotal doing a lot of bicycling, do they understand that the law applies to them and that they should be single file on the street? Is that... [LB1030]

ELISABETH REINKORDT: Yes. I meant to actually...I added a note on that as you raised your question earlier. It is, in fact, in the law currently that you are to ride one abreast. Bicycles are to ride one abreast when they're using the road. [LB1030]

SENATOR HADLEY: And do you feel that that is commonly done by bicyclists? [LB1030]

ELISABETH REINKORDT: I would say that the same issues maybe related to driver education, in some cases relate to cyclist education as well. I think among avid cyclists, there is an attempt to educate one another in the Rules of the Road and that we all benefit if we as bicyclists follow the Rules of the Road. Of course, you always have, as with motor vehicles, you have outliers where there are folks who either don't know that that law is in place or choose not to follow it. [LB1030]

SENATOR HADLEY: I did not know that law was in place until today, so at least I'll walk away from the hearing with new knowledge. Thank you. [LB1030]

ELISABETH REINKORDT: There you go. [LB1030]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? I see none. Thank you very much for coming in. [LB1030]

ELISABETH REINKORDT: Thank you for your time. [LB1030]

SENATOR FISCHER: Next proponent, please. Good afternoon and welcome. [LB1030]

JANE REINKORDT: (Exhibit 11) Thank you, Senator Fischer. I am Jane Reinkordt, J-a-n-e R-e-i-n-k-o-r-d-t, which you're getting good at, and I'm also in support of LB1030. And thank you, Senator Hansen. He mentioned my remarks which I had sent by e-mail because I didn't think conditions would permit me getting here, but I'm happy to be here and support my daughter and this bill. I support LB1030 as a mother concerned for my daughter's safety. I'm glad that she has chosen a healthy and

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environmentally responsible lifestyle which includes riding her bicycle to work and to many events around Lincoln on a regular basis, as well as for recreation and sport. As you heard, she has ridden across Nebraska from west to east and she's ridden from Lincoln to Ponca State Park, and I'm very proud of her. However, with the obvious health benefits that this brings, there is also the risk of traffic accidents which I worry about. I believe this bill would enhance her safety and the safety of other cyclists. Bear with me a moment. I'm a former teacher and I like visual aids. With your permission, I brought along a tape measure to show you that three feet is really not very much space. If you imagine that I am my daughter and at the end of this table, in fact--this is 36 inches, my gosh--is a semi truck going fast. I would agree that three feet is really not asking a lot, but it is definitely a very good step towards awareness. And I also, as a longtime automobile driver, would like to present that viewpoint. I think that for many drivers, we need to be clarified on what a safe distance is and we need to be educated about it. This bill would help to establish in drivers' minds that cyclists have rights as well as pedestrians and as well as those using motorized assistive devices to be on the streets and roads. I doubt that many drivers know the extent of these rights, and in this way the bill would be educational and would raise needed awareness. Thank you. [LB1030]

SENATOR FISCHER: Thank you, Mrs. Reinkordt. Are there questions? I see none. Thank you so much for coming in today. [LB1030]

JANE REINKORDT: Thank you. [LB1030]

SENATOR FISCHER: Next proponent, please. We have a page? Good afternoon and welcome. [LB1030]

MARK SIEPKER: (Exhibit 14) Thank you. Good afternoon, Senator Fischer and committee. My name is Mark Siepker, the last name is S-i-e-p-k-e-r. I have some comments and then I'm going to have my son Jeff come up and comment briefly so that he can participate in the legislative process and also represent cyclists with disabilities. [LB1030]

SENATOR FISCHER: Would you like a chair brought up and he can join you now? [LB1030]

MARK SIEPKER: Actually that would be very good. Thank you. [LB1030]

SENATOR FISCHER: Okay. Thank you, Senator Hansen. [LB1030]

MARK SIEPKER: Good afternoon. My name is Mark Siepker. This is my son Jeff. We live in Omaha and have enjoyed bicycling together for about ten years on our semirecumbent adaptive tandem bicycle, and you see a picture of that bicycle on there.

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I wanted you to have that so you could get a visual picture of what that bike is like. I'm also currently president of Omaha Bikes. Omaha Bikes is a community organization that promotes and advocates for improved transportation, utility, recreational, and cycling opportunities for people in Omaha and the surrounding areas. First, let me speak about Omaha Bikes. Omaha Bikes is an organization that promotes a number of things, including the Bicycle Commuter Challenge. As a result of that challenge, in 2012, 1,550 riders logged 3,695 trips and over 44,000 miles. Having a safe passing distance is essential to commuter bicyclists for many of the reasons that were discussed today. Next, I'd like to discuss riders of adaptive bicycles. Bicycling has given Jeff and me a way to share a healthy activity together and to see and appreciate the beauty of Nebraska at the speed of a bicycle. Jeff and I ride on county roads, residential streets, and trails for recreation and to train for longer rides. Our bike is longer and wider than the normal single bike and has a wider turning radius. Having vehicles pass a safe distance is critical. Our bike is less nimble, which makes it more difficult to take evasive measures if we encounter an unexpected hole or crack in the road. A vehicle traveling very close to us significantly limits our options. A crash on our tandem would likely have very serious results. It would be difficult to steer the bike to a soft landing given the design of the bike and two riders aboard. There are a growing number of cyclists who use adaptive cycling equipment. Unique and innovative cycling designs, such as hand-crank bicycles provide ways for many people with varying disabilities to participate in bicycling. Various organizations in Nebraska are working with physically disabled riders to help them take part in bicycling. I brought my son Jeff with me today so that he can give his input. Jeff, can you give everybody your thoughts. [LB1030]

JEFF SIEPKER: Hello. My name is Jeff. I like to ride bikes with my dad. We can ride our bike a long way. My mom rides with us too. Please pass this law to help keep us safe. Thank you. [LB1030]

MARK SIEPKER: Please pass the three-foot passing law to help ensure our family can safely enjoy bicycling in Nebraska. And I hope someday soon I can tell Jeff that the law has been passed. Thank you. [LB1030]

SENATOR FISCHER: Thank you, Mark, and thank you, Jeff, for participating in the process. Are there any questions? I so appreciate you coming in today. [LB1030]

MARK SIEPKER: Thank you. [LB1030]

SENATOR FISCHER: Thanks. Next proponent, please. Good afternoon, Senator. It's so nice to see you again. [LB1030]

VICKIE McDONALD: Well, it's good to be back, always better on different circumstances though. I am Vickie McDonald and I'm here supporting LB1030. Senator Fischer and members of the committee, V-i-c-k-i-e M-c-D-o-n-a-l-d. And as you heard

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Senator Hansen say, it was my daughter-in-law that was out jogging with my son on a country road in the morning. Thank goodness they were not going towards the sun so you would feel that there would be a reason that the driver didn't see them, but was driving...they were jogging away from the sun. He merely just didn't see them and hit my daughter-in-law about 45 miles an hour. And thank goodness she was in a stance when she was jogging that she ended up falling on the hood of his car and then rolled off. If she had been in a different format of a step, he might have just run over her. And, you know, the first thing you think of for a 16-year-old newly-licensed driver is, oh, they've got to be texting or on the phone. But they found no evidence of that. He merely just didn't see her, didn't look, you know, could be anything. But it could have been devastating and then we'd have a homicide, but she was lucky enough to go through some therapy and I think it was more mentally traumatic than anything, but she did have lots of scars and cuts and bruises and, you know, is healthy and will make a full recovery. But, you know, you would think that in a small area, a subdivision country road that those things just don't happen because the only way you go in there is if you live in that area. And it certainly does happen. And so realize that the young man did not get any citation or anything and he just was able to walk away from that accident. Hopefully he learned a lesson, but let's make sure that doesn't happen to someone else without some sort of citation or at least let them know that, you know, we don't want them to be able to be distracted by any means. Thank you. [LB1030]

SENATOR FISCHER: Thank you, Senator McDonald. Are there questions? I see none. Thank you very much. [LB1030]

VICKIE McDONALD: Thank you. [LB1030]

SENATOR FISCHER: Next proponent, please. If we could just pause for a minute. We're having some trouble here with our contraption. We're going to take just a little break while we get our tech guy here. (Pause) Okay. If we could reconvene here please. And the clerk is ready? Okay. Good afternoon and welcome. [LB1030]

SARAH JOHNSON: Hi. Thank you so much. [LB1030]

SENATOR FISCHER: Thank you for your patience. [LB1030]

SARAH JOHNSON: (Exhibit 15) Oh, yeah. Thanks for letting us be here. My name is Sarah Johnson, S-a-r-a-h J-o-h-n-s-o-n. I'm also here from Omaha. I represent Omaha Bikes and I also manage a bicycle shop in downtown Omaha. It's very commuter-focused. So I've handed out ten different letters of support for this bill from my customers and friends and family, which I'm pulling the mom card here, too, because I'm going to read one that my mom wrote. "To whom it may concern: As a concerned parent of a very active cyclist, I strongly encourage the passing of LB1030. Not a day goes by that I don't have concerns for my daughter's safety as she pedals to

work. Making sure that the community is well educated on the rights of cyclists, I believe, is crucial. Enforcing the three-foot passing law is a tremendous safety benefit for all involved, from a motorist knowing how to handle a bike on the road respectfully, to a cyclist expecting to be recognized with safety and respect, as well. All individuals using our streets, be it four-wheeled or two-wheeled, need to have a sense of safety as they make their way to work or play each day. The passing of this legislation will help bring awareness to our community about the need for safety for the cycling community and all street users. The cycling community is growing every day, and with that thought, let's make it a safe ride home." She couldn't finish it without some silly little "make it a safe ride home." Anyway, pretty much everything that's in these is just different cyclists who are saying, "I've had a bad incident; please help me eliminate that." But the reason I wanted to read my mom's is because she doesn't ride a bike. She...you guys are making fun of...I don't know...anyway, she does not. She's not a cyclist. I do lead a weekly ladies ride trying to get women more comfortable riding, and sometimes I can coerce her into joining me. But she's absolutely not one of your Lycra-clad cyclists that some of you may imagine when you think of a cyclist on the road. Talking about mileage, I ride every day, but I don't know how many miles I've ridden. Pretty much everything I was going to say has already been said more eloquently. But as far as the nimble handling, I pull my dog--she's an 80-pound golden retriever--to work in a trailer every day, and we've had some really close calls, and I'm more concerned for my dog's safety than mine a lot of times. But the other thing I wanted to bring up, I used to own a shop in Colorado. And I remember when I first moved to Colorado--they're one of the states that does already have this law--just rolling into the state for the first time and seeing "share the road" signs everywhere was a really powerful thing. And while passing this law isn't going to probably be the end-all, be-all, it's not going to change the world, it is a really important step in just kind of an overall awareness for how cyclists should be handled. And again, coming from a driver rather than a cyclist, the letter from my mom pointing out just kind of that it's an important step in the education process. And I think that that's really important. A lot of accidents are born of ignorance, and anything that we can do to kind of help educate and raise awareness of, you know, the fact that there are cyclists out there and it's not going to go away. As you can see, we all waited for hours to show you our support of safe cycling. And that's pretty much it. Thank you so much for your time. [LB1030]

SENATOR FISCHER: Thank you, Ms. Johnson. Are there questions? I see none. Thank you very much. Appreciate all the letters you brought in too. Next proponent, please. Good afternoon. [LB1030]

WESLEY TROUT: Good afternoon. My name is Wesley Trout, that's W-e-s-l-e-y T-r-o-u-t. I am an avid cyclist. I am also a vehicle owner and a property owner. I pay all the same taxes that everyone else does to go towards our roads. I'm also a farmer. I ride to Waverly every day in the summertime to my job on the farm. Since we're telling mileage, I have about a little over 8,000 miles this last year is what I put on. There's a lot

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of reasons why... [LB1030]

SENATOR FISCHER: But did you bike in the snowstorm? [LB1030]

WESLEY TROUT: I actually have developed a snowplow to plow snow with your bike, so, yes, I do. (Laughter) [LB1030]

SENATOR FISCHER: We need to talk. [LB1030]

WESLEY TROUT: I did not ride today just in the effort of full disclosure, but that's unrelated. Anyway, there's a lot of reasons why I cycle and there's a lot of reasons why I think it's important to support cycling. One of the...I guess the biggest thing that I would like to point out, and it's just an observation I've made that I didn't realize until I became an avid cyclist, is there's kind of an attitude and it's we don't build our roads for people; we build them for cars currently. And I think that's a disservice to everyone. We need to be focused on building transportation sources, not just roads for cars only. This bill would certainly not take away all the problems. It would be an important step in the right direction to acknowledging other forms of transportation and other people's rights to use that infrastructure for their chosen transportation. That's pretty much what I wanted to say, so. [LB1030]

SENATOR FISCHER: Any questions? Senator Campbell. [LB1030]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Trout, what do you think of the bike lanes in Lincoln? [LB1030]

WESLEY TROUT: I think they're another great step. I don't think they're perfect. They (laugh)...that probably wouldn't be how I would have designed them, but I think it's important. Anything we can get I'm happy to get. I guess that's... [LB1030]

SENATOR FISCHER: Thank you, Senator Campbell. To follow up on that, as a motorist I have concerns about the bike lanes in Lincoln. I think they're very dangerous, especially the one on 14th Street. And where I have to cross, I'm truly terrified that someday I will hit someone on a bike when I have to cross over there by the library. [LB1030]

WESLEY TROUT: Yeah. I certainly wouldn't argue that they're perfect or the design is, like I said, exactly what I would suggest. But it's...I still think they're an important step. It's at least giving an exposure to the form of transportation that I prefer and it's adding a step of validity to that. And... [LB1030]

SENATOR FISCHER: Are they more dangerous being down the center of the street like that where you have vehicles on both sides though? [LB1030]

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WESLEY TROUT: They're more dangerous than if they were where they should be... [LB1030]

SENATOR FISCHER: Next to...yeah, yeah. [LB1030]

WESLEY TROUT: ...next to curb with...if I designed them, I would have it next to the sidewalk and then a barrier and then parking and have it completely separated. But it's better than not having anything. [LB1030]

SENATOR FISCHER: You know, with the cyclists sharing the road, and not just in cities but our highways too, should they be required...should you be required to wear a certain type of reflective clothing? Should you have to have a flag in the air on your vehicle like our ATVs have to have? Are there, you know...there's problems. As Senator McDonald said, they believe the driver didn't even see her daughter-in-law. So there's, you know, concerns there when you have more and more people participating in cycling, and you are sharing a road with big vehicles. [LB1030]

WESLEY TROUT: I would answer that by saying, personally, I would fully support a regulation, and I think there is a city regulation that you have to have lights, front and back. I believe that's still the...last I knew that's what the case was. I think that's a smart step. In fact, I'm involved in several cycle advocacy groups and we've often talked about how to get the word out and get more people to use lights and just take simple steps. [LB1030]

SENATOR FISCHER: And have reflective clothing and things like that, correct? [LB1030]

WESLEY TROUT: Yes. It's an excellent...I have no problem with that. Yeah, I don't...flags I don't know. (Laugh) One of the...I think it's important... [LB1030]

SENATOR FISCHER: We require it on ATVs. [LB1030]

WESLEY TROUT: Yeah. Flags might be a little bit harder to make it go on a bike realistically. I think the lights would probably go farther than a flag. I also was a stay-at-home dad for three-and-a-half years and I went everywhere. We biked everywhere with my daughter and had her in a trailer and I always had the flag and lights on that. So, you know, I'm certainly not opposed to that. I think anything you can do to make yourself more visible is a smart thing as a cyclist to do. You know, with... [LB1030]

SENATOR FISCHER: Okay. Thank you. [LB1030]

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WESLEY TROUT: Thank you. [LB1030]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB1030]

WESLEY TROUT: Thank you. [LB1030]

SENATOR FISCHER: Other proponents, please. Any other proponents? Good afternoon. [LB1030]

MATTHEW MARTIN: (Exhibit 16) Good afternoon, Senator Fischer, members of the committee. My name is Matthew Martin, M-a-t-t-h-e-w M-a-r-t-i-n. I am the executive director of the Community Bike Project in Omaha, which is a nonprofit that works to lower barriers to cycling and other forms of multimodal transportation around the city of Omaha. I am also a member of Omaha Bikes and active with that organization and speaking with them today. I don't want to repeat what has already been said or just take undue amounts of time. So rather than read my statement, which you all have copies in front of you, I'd rather just answer some of the questions that I've heard go around the room in this discussion so far. So with that, the question of how many bicyclists abroad. I believe Senator Hadley mentioned it. I know it's already been answered, but just to reinforce the idea that at least in the city of Omaha the regulations are that bicyclists are also entitled, when necessary, to the full use of a lane, that when as much as possible that we should stay as far to the right as practicable, but whether there are obstructions or conditions that otherwise necessitate that we move to the left in the sense that we have the right to the full use of the lane. So certainly that doesn't take anything away from how many bicyclists need to ride abroad, but I also don't want to take away rights that already exist as far the width of the use that we may need to have for whatever reasons as a vehicle on the road. On the question of enforcement and if there's no enforcements provision that I believe Senator Price mentioned, what will the statute or the bill achieve. I think it's important to help establish a clarity of fault. I think in a number of collisions that happen right now, because there is no minimum standard, that it can be an uncertainty for the law enforcement or for later for insurance purposes as to who was at fault. If there's a question of did the cyclist move to the left, did the motor vehicle move to the right, it can be uncertain. And if you put in some sort of a minimum standard in there, I think it makes that determination of fault easier to manage. The question of what the existing statutes are, Senator Dubas I believe asked. I've been...to put my own bona fides in there, I've been a commuting cyclist for over 20 years, both in Omaha and around the country, including Washington, D.C., where I used to live. And I've been fortunate enough not to have ever been in a collision with a motor vehicle. That I don't know exactly what to attribute it to. I'm very thankful of it. But I would say that it does concern me greatly that there aren't more protections for bicyclists and for pedestrians that are out on the road in a lawful fashion today and that there are many cases that you certainly hear about in the media and that friends of mine have told me about where tragic consequences happen that seem to be presumably through no fault

of the cyclist. So I think this helps to address that issue. And then the questions of bike lanes just came up from Senator Campbell. I think that, yes, it's certainly a question as to the way bike lanes are implemented at both Lincoln, Omaha, and otherwise. We are in a state of evolving standards both in the state and nationally as to how to implement bike lanes. If you look to Europe as a more mature system, they certainly do it in different ways and that's something that is evolving. But I would also again say that that doesn't necessarily take away from any of the rights that we have on the streets and on the lanes as they are anyways. And as far as the, Senator Fischer, your question about reflective lights or what night visibility, I think, yes, it's up to certainly you to decide the standards of what is an acceptable level and what is a minimum necessary level. I think there are also safe bicycling practices as far as how the bicyclist rides on the road that can do a great deal towards making safer bicycling conditions regardless and to make much greater visibility, and that's incumbent on all of us to be more educated and aware of that. [LB1030]

SENATOR FISCHER: Thank you, Mr. Martin. Are there questions? Senator Campbell. [LB1030]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Martin, I'd like to address the very last paragraph on the first page of your testimony and what you talk about the fact that there is already language in the Nebraska driver's manual with regard to this. Do you know how that language got in there? Is that a national standard? I mean, how would the driver's manual have picked that up? [LB1030]

MATTHEW MARTIN: Honestly, Senator, I'm not sure how that particular provision came in. I know that there has been an effort nationally to get more language in the DMV manual for bicyclists, exactly expressly for this reason, not just among the three-foot rule but in other instances as well. I do know that that is language that was added in the most recent version of the manual, so it's something that's happened in the last three or four years I would say. [LB1030]

SENATOR CAMPBELL: And we can check on that. Thank you. [LB1030]

MATTHEW MARTIN: Thank you. [LB1030]

SENATOR FISCHER: Yes, I marked it, so we'll check with the director. Yes, Senator Hadley. [LB1030]

SENATOR HADLEY: Senator Fischer, just a quick question. And I probably shouldn't ask it, but if we're going to provide further protections by having a three-foot lane and such as that, should we be looking at some kind of requirement for, especially youth, to wear helmets? [LB1030]

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MATTHEW MARTIN: That's a very good question, Senator. I think that there are...there's a broad palette of options that can be considered as far as what the responsibilities of cyclists are, whether it's helmets or reflective clothing or lights. I think that that is certainly...and if you want to have more stringent standards for youth, I think that's something that is a weighing measure that is always a balance that goes back and forth. I, frankly, in my director position at the Community Bike Project, work with a lot of kids in the Omaha area. We make sure that we hand out to anyone who can't afford them helmets free of charge so that kids can be safe, hopefully. And I would love to encourage and I do encourage helmet use both with kids and adults. I think that if it becomes a question of whether to mandate helmet usage, I think there are a lot of areas in which that could be considered. [LB1030]

SENATOR HADLEY: Okay. Thank you. I just... [LB1030]

MATTHEW MARTIN: Thanks. [LB1030]

SENATOR FISCHER: Thank you, Senator Hadley. Questions? I see none. Thank you, Mr. Martin. [LB1030]

MATTHEW MARTIN: Thank you. [LB1030]

SENATOR FISCHER: Appreciate you coming in. Are there other proponents for the bill? Any other proponents? Any opponents to the bill? Anyone wishing to testify in the neutral capacity? I see none. With that, Senator Hansen, would you like to close? [LB1030]

SENATOR HANSEN: Yes. Thank you, Chairman Fischer, and thank all the testifiers that were here. When we came in the room, we weren't sure what that large group back there was, but it was great to have them stick around for this bill. And the last gentleman's questions about recommendations or laws or what's in the book. Well, I've lost it again but it's on page 61 of the driver's manual. Even though this doesn't look like a manual, it's a manual. But there's...all there is, is a list of bicyclists may, bicyclists are not restricted, and then it comes down here, do not blast a vehicle's horn when approaching a bicyclist. Look for bicyclists before opening car doors. (Laugh) That's a good one. And allow three feet to the left of the bicycle. These are all recommendations in the manual and not necessarily in statute. And that's what I think LB1030 requests to do. I think that a lot of questions have been answered. There's probably some questions about clothing and flags, and that has been brought up and certainly needs to be addressed probably in future legislation if you think that that's appropriate. But the only thing I warn the Transportation Committee to do in the future is certainly not disallow or discourage bicycle riding and jogging and all those things that are healthy for our citizens, so just not to hamper those efforts in fighting obesity and getting the exercise that we all need. Thank you. [LB1030]

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SENATOR FISCHER: Thank you, Senator Hansen. Questions? I see none. [LB1030]

SENATOR HANSEN: There was one more very quick comment if I could. [LB1030]

SENATOR FISCHER: Of course. [LB1030]

SENATOR HANSEN: When you drive through...and I think in Lincoln, too, you'd have to put a Lincoln in here, and I certainly know in North Platte when you see someone with their turn signal indicator on, that it is an indication; it's not a promise. (Laughter) Thank you. [LB1030]

SENATOR FISCHER: (See also Exhibits 9-10) Thank you, Senator Hansen. With that, I will close the hearing on LB1030. Thank you all for coming. And that closes the hearings for the day. [LB1030]