

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

Transportation and Telecommunications Committee
February 04, 2013

[LB117 LB174 LB398 LB548]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 4, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB174, LB117, LB398, and LB548. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; Scott Price; and Dan Watermeier. Senators absent: Beau McCoy.

SENATOR DUBAS: I'm going to call the hearing to order. Welcome to the Transportation and Telecommunications Committee. My name is Senator Annette Dubas, and today we will be hearing four bills: LB174, LB117, LB398, and LB548. I will introduce the committee members that are here. We've received a call from...we've got one introducing, one probably going to be late, and one who may not be here at all. So there may be committee members popping in and out, but I will introduce those who are here with us at the start of the hearing. To my far left is Senator Lydia Brasch from Bancroft. And seated next to her will be Senator Beau McCoy and then Senator Galen Hadley. To my immediate left is the committee clerk, Anne Hajek, and she's the one that needs your green sheets of paper and needs you to spell...state and spell your name for the record. It helps her with her transcribing. Along with the microphone that is at your...at the testifier's table, that is more for recording rather than amplification. So we ask that you not fiddle around with the microphone a lot or make...you know, rustle papers or tap your fingers on the table, those types of things, because that gets picked up in the recording and makes it a little bit more difficult for the transcribers to hear the actual words that you're saying. So to continue on with the introductions, to my immediate right is Joselyn Luedtke. She is the committee counsel for the Transportation and Telecommunications Committee. Next to her will be...Senator Jim Smith will be absent today, but that's where he would be sitting. Next will be Senator Scott Price from Bellevue and Senator Dan Watermeier from Syracuse and then Senator Charlie Janssen will be at the end of the table. We have two pages today, and we really do appreciate all of the help that our pages provide to the committees as well as to the Legislature as a whole. They really are an important part of keeping things running smoothly. So with us today we have Kaitlyn Evanko-Douglas from Montrose, Colorado. She is a senior at UNL, political science and global studies. And David Postier from York, Nebraska, who is a sophomore at UNL studying secondary education. So, as you come forward, if you want to hand your testifier sheet or any other things that you would like handed out to the committee to one of the pages, they will make sure that they get distributed. If you need additional copies made or any other help throughout the hearing, the pages can assist you with that. I did point out the testifier's sheet so, back there on the table by the door, if you plan on testifying today, if you could fill this out completely and have it ready before you come up to testify, that will be helpful. And there are the pink sheets back there on the table that if you want to be a part of the record, your name and your position on the bill, go ahead and fill...put your name and

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

Transportation and Telecommunications Committee
February 04, 2013

information on this pink sheet, and then that will be picked up by the clerk and go into the record. I ask that you please silence either your cell phone or any other electronic equipment that you may have with us. Again, that can cause some problems with transcribing and what have you, so if you will just silence that, that will be very helpful. With that, I think that's the end of our housekeeping, and we will begin with our first hearing today from Senator Mello, LB174. Welcome, Senator Mello.

SENATOR MELLO: (Exhibit 1) Good afternoon, Chairwoman Dubas and members of the Transportation and Telecommunications Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB174 is legislation devised to address an ongoing problem in my legislative district: manure spills by trucks carrying cattle and other livestock to the various meat packing plants in south Omaha. These spills are not only a potential public health hazard, but also have a tendency to cause numerous traffic accidents on the off-ramps of Highway 75, the Kennedy Freeway, and the L Street and Q Street intersections. Data collected by the city of Omaha and presented to the South Omaha Environmental Task Force shows that in a 14-month period from August 2009 to October 2010 there were over 42 documented manure spills on roadways in the south Omaha area. The South Omaha Environmental Task Force, an organization that seeks to address environmental concerns surrounding the south Omaha meat packing plants and industrial corridor, has been working with industry groups like the Nebraska Truckers Association and the Nebraska Cattlemen's Association to try to address this problem for much of the last decade. While these manure spills fall under the existing load spillage statute at 60-6,304, current practice has been that most violations of the load spillage statute result in a minimum fine of \$100. By contrast, if the same spill were to take place on the premises of the meat packing plants, those businesses assess a fine of \$500, actually resulting in an incentive for truckers to spill manure on Nebraska roads instead of on private property. LB174 would amend the existing load spillage statute to provide a separate subsection that applies to only manure spills which take place within the boundaries of a city of the metropolitan class. A violation under this new subsection would still be a Class IV misdemeanor but would also carry a mandatory minimum penalty of \$250. While this is a fairly modest increase that doesn't bring the current fine levels in line with the private sector, it is my hope and the hope of south Omaha area businesses that an increase in the level of fines will serve as a deterrent for the few bad actors with whom education and ongoing advocacy by the South Omaha Environmental Task Force have been ineffective. As some of the committee members may recall, I introduced a similar bill last year, LB922. Following the hearing on last year's bill, my office worked extensively with the Nebraska Trucking Association, the Nebraska Cattlemen's Association, and the Nebraska Farm Bureau to craft an amendment...language ensuring that the bill only applies to our very unique situation in south Omaha. The language in LB174 is that same amendment language that was worked out but that failed to move forward out of this committee because we were already past the priority deadline last session. At the committee hearing last year,

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

Transportation and Telecommunications Committee
February 04, 2013

several senators asked why it was necessary to amend state statute rather than allowing the city of Omaha to address this issue through city ordinance. The underlying problem is that a vast majority of the manure spills are taking place on state highways, the Kennedy Freeway, which is Highway 75, and L Street, which is Highway 275. In addition, the primary law enforcement agency which has been ticketing for current violations is the Nebraska State Patrol, meaning that, even if the current city ordinance was amended to include a fine increase, most drivers would still be ticketed under the state statute and not the city of Omaha ordinance. Without this change in state statute, the small handful of problem drivers who spill manure in south Omaha on a regular basis will continue to take advantage of the very low fine amount. I appreciate your time and would be happy to answer any questions you may have. [LB174]

SENATOR DUBAS: Thank you very much, Senator Mello. Are there questions? Senator Price. [LB174]

SENATOR PRICE: Senator Dubas, thank you. Yes, Senator Mello, I do recall the bill from the last iteration. But you open your testimony with about 45-plus-or-minus instances since 2009 till now, right? [LB174]

SENATOR MELLO: It was a 14-month period, 2009...August 2009 through October 2010. [LB174]

SENATOR PRICE: Okay. Just so we understand, and we can scope it out, how many of those type of trucks travel those roads to the meat packing plants in any given period of time? [LB174]

SENATOR MELLO: That would be...I probably couldn't give you an accurate estimate. I think maybe a better person to ask that question would be someone representing...maybe the truckers association would be able to give you more information. [LB174]

SENATOR PRICE: But you see why...you probably can see already why we're looking at not...I don't want to cast that the issue isn't real, it doesn't occur, or that it needs to be addressed, but it is less than a certain percentage out of certain segment; a certain amount of time: I begin to wonder are we using a bazooka to get a fly or, you know. So I just want to make sure we had that, and that hadn't come out in testimony before, so we understand so thank you very much. And I'll look forward to future testimony on that. Thank you. [LB174]

SENATOR DUBAS: Other questions? Seeing none, thank you. Will you stay to close or... [LB174]

SENATOR MELLO: I'd like to waive closing, but I will...my legislative aide will be left

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

Transportation and Telecommunications Committee
February 04, 2013

here in case there's any questions that he can answer on closing if members have anything. [LB174]

SENATOR DUBAS: Very good. Thank you, Senator Mello. [LB174]

SENATOR MELLO: Thank you. [LB174]

SENATOR DUBAS: Could I have a show of hands of the number of people who are here to testify in support of LB174? Okay. Opposition. Neutral. Okay. So we won't be using the lights today since there aren't very many testifiers. Typically if there were a lot of people testifying, we would go to the light system. We just ask you to try to keep your comments within that five-minute period so we can move along...and to assure you that committee members will likely have questions so you'll be able to continue your line of thought. So with that, can we have the first supporter for LB174 to come forward, please? Welcome. If I can have you state and spell your name to start out, we'll get started on the right foot here. [LB174]

DUANE BROOKS: My name is Duane Brooks, D-u-a-n-e B-r-o-o-k-s. Senator Price, that was approximately 100 trucks a day come into Omaha. [LB174]

SENATOR PRICE: Thank you. [LB174]

DUANE BROOKS: Five minutes, huh? I can do that. Chairman Dubas and members of the Transportation Committee, thank you for your service to the people of Nebraska and for the opportunity to present our testimony in support of LB174. We thank Senator Mello for his work on this issue and the bill itself. My testimony is on behalf of the South Omaha Environmental Task Force. And for the record, we do have a few members that have remained neutral. I am the new chair of the South Omaha Environmental Task Force. We are an organization that is over 40 years old. We are business leaders from the packing industry, the government, and residents from south Omaha, formed to mitigate problems associated with the packing business--problems such as rodents, strong odors, and manure spills on the streets...manure spills on the streets are what brought us together. And these problems needed to be stopped because of the negative impact they have on our community and on the image of our city. With a lot of cooperation, we have greatly reduced these problems. Now it's rare to get a rodent complaint, and odors and manure spills have been vastly diminished. As I said, the spills from cattle haulers are down. Yet despite our combined efforts, they still remain a daily occurrence. This is partly due to the volume of trucks entering our area. Approximately 100 semitruck loads of beef visit us every day, and we know that 95 to 98 percent of these truckers are conscientious in maintaining their trucks and their loads. It's the remaining 2 to 5 percent that have caused serious problems in our community, problems such as the resources needed by the city to clean up these spills...to the health hazards of the manure itself and all the way down to causing

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

Transportation and Telecommunications Committee
February 04, 2013

accidents. In other words, it's just a nasty, serious problem, and we need your help. Our focus has remained on preventing spills through education. The Nebraska Truckers Association, the Nebraska Cattlemen, packers, State Patrol, Department of Roads, and our other members have all helped. And I really have to commend our business partners for their sincere effort to prevent these problems, efforts such as letters given out by the haulers to the packers to articles written by the Nebraska Truckers Association magazine, and we can't forget the carrier enforcement people and the Roads Department efforts, all have helped. So as you can see, we're doing all we can, and now it's your turn to...and now I turn to the Legislature for one additional tool. The present fine is \$100, and it hasn't been much of a deterrent for these persistent violators. It's easier for them to chance a fine than to pay the \$105 to legally dump their loads at a semi wash. Right now many of the packers post and enforce a \$500 fine for truckers spilling on their properties. When they did this, the spills stopped. However, packers only have authority on their own property. What we need is to extend that reach by increasing the current fine to 250 bucks. I guess I should say dollars. The responsible drivers will never be affected by this. It's the last few irresponsible drivers that we are attempting to change their habits by this legislation. Yet if you think of it, they will not even be impacted if they drive and operate their vehicles properly. And actually, that's exactly what we want. LB174 would address this issue. Thank you very much. I will attempt to answer any questions that you might have. [LB174]

SENATOR DUBAS: Very good. Thank you very much, Mr. Brooks. Are there questions? Senator Brasch. [LB174]

SENATOR BRASCH: Thank you and thank you, Mr. Brooks, for your testimony today. I'm curious when you say the spills are causing health problems. What problems are you looking at? [LB174]

DUANE BROOKS: From what I've read, and you forgive me--as I said, I'm the new environmental task force, so there's some things that I don't know. But I have read a little bit about this because we...as I've sat in at their meetings before, and I was curious to what kind of health problems there were. There are things such as...when the stuff dries on the roads, it goes up into the air. The...I can't think of the right word to use. Help me, somebody? The one where meat gets spoiled from, that type of thing. Those are the type of things that up into the air. That's where the health hazards come from. I don't imagine that people actually are walking on these things or anything like that because it's on the highway. [LB174]

SENATOR BRASCH: And as I look at pictures of the history of Omaha and the meat packing history and the commerce they've brought and the growth they've brought, I don't recall any epidemics in health is what cause...there is nothing. [LB174]

DUANE BROOKS: No, there has been no epidemic itself, but there's always the

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

Transportation and Telecommunications Committee
February 04, 2013

possibility. And given the environment today where they're all watching for health problems, these are some of the things that could happen... [LB174]

SENATOR BRASCH: Okay. [LB174]

DUANE BROOKS: ...that we may not know about. [LB174]

SENATOR BRASCH: But you don't have any particular instances... [LB174]

DUANE BROOKS: I have no specifics whatsoever. [LB174]

SENATOR BRASCH: ...or documentation that people are being admitted over...okay. [LB174]

DUANE BROOKS: Nope, just what I've read. And I'm sure that there is someplace, somewhere that there's something about it. The stuff that I have read, and I'll be quite honest with you, the stuff that I have read has been mostly in the area of runoff from feeder yards and places like that. [LB174]

SENATOR BRASCH: One of my...in my district is Cuming County, the largest cattle feeding operation, and I feel great, actually. And so I was curious when you had... [LB174]

DUANE BROOKS: And I've lived in south Omaha all my life, and I feel great too. [LB174]

SENATOR BRASCH: Okay, you'll feel great as well. Okay. [LB174]

DUANE BROOKS: Other than for a slight nose bug. [LB174]

SENATOR BRASCH: Well, when you say "health," that's a big issue so I thought if there was documentation I would like to see that so... [LB174]

DUANE BROOKS: Right. No, I have no documentation so I'll have to pass on that. [LB174]

SENATOR BRASCH: You have none. Okay. All right. But I do thank you for coming forward today. [LB174]

DUANE BROOKS: Right. [LB174]

SENATOR BRASCH: I have no other questions. Thank you. [LB174]

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

Transportation and Telecommunications Committee
February 04, 2013

SENATOR DUBAS: Any other questions? We do thank you very much for coming forward today, Mr. Brooks. We'll make it easy on you. [LB174]

DUANE BROOKS: (Exhibit 2) Well, you're easier than what they were last year with me. I also have a letter here from the South Omaha Neighborhood Alliance that I would like to have given to you folks in support of LB174. [LB174]

SENATOR DUBAS: Very good. We will make sure that that gets into the record then. [LB174]

DUANE BROOKS: Thank you for your time. [LB174]

SENATOR DUBAS: Thank you so much. Next proponent for LB174. [LB174]

JACK CHELOHA: Good afternoon, Senator Dubas and members of the Transportation and Telecommunications Committee. My name is Jack Cheloha, first name spelled J-a-c-k, last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I want to testify in support of LB174 today and thank Senator Mello for introducing it. As you've read this bill, it's specific to cities of metropolitan class, which would be...the city of Omaha is the only one in that category right now; therefore, it would obviously make sense for me to support the bill. As Senator Brasch stated, we've had a long history in the city of Omaha relative to packing plants and animal slaughter, etcetera. I had many relatives that grew up in south Omaha. And as we would go to visit them, we would...as younger kids, we didn't realize what it was, but we'd smell the air and say, "What is that?" And our Omaha relatives would joke, well, that's the smell of money. And so we realized how important it was to the state and the industry. But as the previous witness pointed out, every now and then we have problems that surface where we have leakage and drainage and manure falling off onto our city streets and our state highways which lead up to the plants in the city of Omaha. The letter that you were given earlier, I think by Senator Mello, came from councilmember Garry Gernandt. He represents south Omaha where the packing plants are currently located within the city limits. Garry obviously...Mr. Gernandt has been very active with the South Omaha Environmental Task Force and the neighborhood associations, etcetera, looking at this problem and hearing the neighbors and their concerns and trying to come to a solution to it. We think that this bill provides a small step for assistance to raise that fine. As you heard before, there's only a few that are bad actors, but we need to have some tools available to deal with them. And for various reasons offered here today, we would support this bill and ask for your support as well. I'll try to answer any questions. [LB174]

SENATOR DUBAS: Thank you. Are there questions? I would have one question for you, Mr. Cheloha. Do you know, have there been any accidents that have occurred directly related to spillage on the highway? [LB174]

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

Transportation and Telecommunications Committee
February 04, 2013

JACK CHELOHA: I cannot state with certainty as I don't have any police statistics. But as we, you know, have that spillage, you do have slicker surfaces. The other concerns that we might have, thanks for asking, is you do get...as this fecal matter and urine builds up on the surfaces, we frequently have to street sweep those surfaces and clean them up. Sometimes it takes even washes, etcetera. We've called out our fire department on some occasions just to have the sheer force to wash it away. And you worry about it because, as it builds up, you have flies attracted to it, rodents, etcetera. So those are the concerns. [LB174]

SENATOR DUBAS: You know, if you could get us a little bit more specific information as far as what the city has actually had to do in response to whether it's through accidents... [LB174]

JACK CHELOHA: Sure. [LB174]

SENATOR DUBAS: ...or through cleanups, that might be helpful for the committee... [LB174]

JACK CHELOHA: Okay, absolutely. Great. [LB174]

SENATOR DUBAS: ...to have that information. Senator Price. [LB174]

SENATOR PRICE: Thank you, Senator Dubas. Just to follow up on that, I think part of the discussion we had last year when we dealt with this bill was the animals in transit will sometimes be forced to evacuate. And so those types of things are different than when someone purposely does not clean out their vehicle at a station that provides it and does it elsewhere. So just after lunch, bear with me, but the idea being is that it's difficult to parse betwixt the origination, or how this happened, you know, the incident... [LB174]

JACK CHELOHA: Oh, absolutely. [LB174]

SENATOR PRICE: So that was some of the concern last year so thank you. I just thought to add that. [LB174]

JACK CHELOHA: Absolutely. Thank you. Okay. [LB174]

SENATOR DUBAS: Thank you. Any other questions? Thank you very much. [LB174]

JACK CHELOHA: Thank you again. [LB174]

SENATOR DUBAS: Additional testifiers in support? Welcome. [LB174]

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

Transportation and Telecommunications Committee
February 04, 2013

NANCE HARRIS: Thank you. Senator Dubas, members of the committee, my name is Nance Harris. It's spelled N-a-n-c-e H-a-r-r-i-s, and I'm here today representing the members of the Nebraska Trucking Association in support of this bill. Those of us in the association have worked for many years with the South Omaha Environmental Task Force to address the issue of manure spills in the area. It just doesn't make sense from our vantage point to keep the fine for the offense at the same level as the cost of a truck washout. So in order to encourage people to be more responsible, we think that Senator Mello's proposal to increase the fine is a tool in the tool kit of law enforcement and the South Omaha Environmental Task Force to continue to address the few people who continue to offend by allowing the spills to happen. I had the good fortune of having a former, as they call them "bull hauler," in my office this morning, and I mentioned that we'd be testifying about this bill. He is from the Grand Island area, and he said he thought it was absolutely sensible to increase the fine. He also said, "Why do you think it makes a difference that it's in south Omaha? Why isn't this going to be a statewide law?" And I said, "I think it's a difference in the environment in that, in south Omaha, it's an interstate interchange. It's a state highway interchange. And it has curves, and vehicles are traveling at high speeds." And we compared it to the Swift plant in Grand Island where it's a two-lane road, relatively low speed, and it's completely flat, and it's pretty far away from any businesses or neighborhoods. So it's probably tolerated a little more to have the occasional spill at the Swift plant than it is in the Omaha area. So those are the two reasons that we can offer in addition to testimony already presented. [LB174]

SENATOR DUBAS: Thank you very much, Ms. Harris. Are there questions? Seeing none, thank you very much. [LB174]

NANCE HARRIS: Yeah. You're welcome. [LB174]

SENATOR DUBAS: Further testimony in support? Anyone in opposition? Anyone in the neutral? Welcome. [LB174]

PETE McClymont: Chairman Dubas, members of the committee, for the record my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I am vice president of legislative affairs for the Nebraska Cattlemen. My membership voted last week to testify in the neutral capacity. Last year, when the bill was introduced by Senator Mello, and saw our conversations with Senator Mello and his staff, my membership was initially opposed. And so Senator Mello was fair enough to say, "what would it take to put your position in the neutral capacity?" And so the bill was amended to cities of the metropolitan class and reduced the fine from \$500 to \$250. And that is obviously the way the bill is reflected here. Some facts I would like to point out for the committee to consider, and some of the previous testifiers have suggested the same things, as well as Senator Price, just the sheer physics of it; when you're exiting Interstate 80 onto the South Kennedy Expressway, just by the fact you're traveling at a speed 50 miles an hour,

there's a likelihood that a spill could happen. Whereas if you're on the premises, obviously you're going to be backing up really slow, and the possibility for a spill to exist is minimal at that. So, you know, that was part of the reason that we suggested to Senator Mello if the fine could be reduced from \$500 to \$250, that would be acceptable to us. And, as the lady stated previously, obviously, take, for instance, Lexington or Dakota City, those plants are located in such a manner away from neighborhoods that the likelihood of spills in there is less likely, whereas obviously, in that part of Omaha, you're right in the middle of residential, if not businesses. So that's important to remember. Also, to just...point of information to Senator Price's questions...typically just the two plants, Nebraska Beef and Greater Omaha, they'll typically harvest 20,000 to 25,000 head a week. So you're looking at anywhere from 600 to 750 loads a week going in so that would be important to keep in mind. That doesn't even account for XL Four Star Beef, which is a cow kill plant too. So that wouldn't, you know, take into account those loads going in there. So as the first testifier suggested, we've been happy to have participated, and we were glad that Senator Preister included us in the South Omaha Environmental Task Force from two or three years ago at least, and so we've been a regular attendee at those meetings because we don't like it either. The industry, let alone the packers, don't want this black eye. So that's important. And what I've done is...we, too, have had articles in our magazine to try to inform our members of the sensitivity. And I've also reached out to the Iowa Cattlemen Association because, obviously, those plants located in that part of Omaha would have a lot of loads coming in from Iowa and maybe Kansas and Missouri as well, possibly South Dakota. So we've tried to do our best to inform people to mind the law. And obviously we don't want to support people that are breaking the law. But nonetheless, when you're on site, and you back up to unload your load, the likelihood to spill is less than when you're traveling at a high rate of speed on the interstate. So with that, we...like I said, we don't want to support people that are breaking the law or don't do their job in cleaning out their loads prior to picking up some animals to be delivered. So we appreciate Senator Mello's effort to reach out to us and include our opinion in how he brought this legislation this year. With that, I'll conclude my testimony. [LB174]

SENATOR DUBAS: Very good. Thank you, Mr. McClymont. Are there questions?
Senator Janssen. [LB174]

SENATOR JANSSEN: Thank you, Pete, excuse me, Mr. McClymont. That said, though, there are current fines in place right now. I don't think you're supporting lawbreakers because there's a fine in place right now. And I understand you're in the neutral capacity. It almost seems like a semiassault on the ag community, doing this, and we've heard this bill previously. Do you think that's fair, to single out the haulers on this? I live in Fremont, and we're not in the metropolitan class. We're a city of the first class. We have Hormel Industries there. I've grown up and learned to understand that sometimes, if you get behind certain vehicles, you should probably move to a different lane. But I also understand that ag kind of pays a lot of property taxes that...on the same road I'm

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

Transportation and Telecommunications Committee
February 04, 2013

driving on. So I'm a little bit concerned with the neutrality here, and how did that come about? [LB174]

PETE McCLYMONT: Basically, last year, like I said, my board opposed it. And so in our dealings and attending those meetings at the South Omaha Environmental Task Force, we heard how, you know, frustrated people were and tried to educate them on issues that our guys have when they're delivering loads. So from that standpoint, I don't know if this is a unique situation, but obviously being, basically, kind of in the middle of the city, it puts those businesses and the industry in an odd position. And so we were definitely opposed to it because last year we did not hear from our members a significant concern that this was going on if you were delivering animals, say, to a sale barn, which would really be no different than this, or a packing facility: Lexington, Grand Island, Dakota City, Omaha, Schuyler. So from that standpoint, that was the primary reason we were opposed to it. And then, when Senator Mello agreed to lower the fine to \$250, and given the fact that truck washouts, as was stated earlier, now are at a level that are equal to or less than a truck washout, so...again, I guess the biggest challenge for me here to answer your question is I don't in any way want to, you know, give the inference that my association would be supportive of people breaking the law. So I recognize and, to a degree, agree with your opinion. [LB174]

SENATOR JANSSEN: But wouldn't you say a lot of business and industry from those areas actually spawn from the fact that those cattle, pork, whatever, haulers were there? [LB174]

PETE McCLYMONT: Absolutely. [LB174]

SENATOR JANSSEN: And so the increased fine, you think, would...I'm not putting you on the spot, but...the increased fine would decrease people doing this or...I don't think so. If you're going to break the law, you're going to break the law. [LB174]

PETE McCLYMONT: And to your point, one of the challenges that we've had is we've tried to inform people on this. Let's just take...for instance, there's some trucking firms in the state that have made this a full-time endeavor. And with that, they don't want to pull into a feedyard and have a dirty trailer because that owner doesn't like that. [LB174]

SENATOR JANSSEN: Right. [LB174]

PETE McCLYMONT: They don't want their animals being shipped in a load that's already got, you know, six, eight inches of manure in it. So those people that are professional address those issues so that when they pull onto your place, my place, they know what's important. So if you have, say, somebody that's a small operator, owns their own operation, they may not have the same commitment to cleanliness that somebody that's doing it for a full-time business opportunity; they might not be as

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

Transportation and Telecommunications Committee
February 04, 2013

diligent in cleaning out their truck. So is that maybe then, you know, creating a higher fine for those people? Obviously, that's what this bill attempts to do. But, you know, as we've tried to reach out to people, you know, the common theme we've heard back is that: well, it's not me; it's that little guy that's not doing his job in cleaning out the trailer. [LB174]

SENATOR JANSSEN: I share your concern with that, understandably, because nobody likes to even be driving behind or even drive over that, and I certainly understand that. What I'm concerned about with this particular legislation is an overreach from the person that's trying to play by the rules. We've got several truck washes in Fremont, due to Hormel, and a lot of times there's spillage after the car wash. And, you know, how would that be defined? Would there be somebody there, a little overreaching, that would say if that's too much or not? Is that a concern of your organization? [LB174]

PETE McCLYMONT: Absolutely. And I think that's where you would hope that the State Patrol or whomever would be citing somebody could take that into consideration because one of the challenges we've heard in this part of Omaha is that just because the...you know, the congestion of the city and businesses that one of the things that would help this was if there were truck washouts in close proximity to the plants so somebody could go and address it right away so that they're not creating more problem as they exit the plant in Omaha. So I know DEQ has told us in the past, in the recent past, that this is an ongoing issue throughout the state because essentially the same DEQ demands for, say, a hog operation or a feedlot operation for cattle is no different than a truck washout. So to try to place one of those in the city of Omaha is pretty tough proposition, given the cost of acquisition, you know, getting part of the sewer system, maybe you have to actually dry it. So, you know, it's a unique situation and that's why we were hopeful and thankful that Senator Mello, you know, refined it to the cities of the metropolitan class. [LB174]

SENATOR JANSSEN: Yeah. And obviously you understand my concern with... [LB174]

PETE McCLYMONT: Yep. [LB174]

SENATOR JANSSEN: ...not living in a city of the metropolitan class but still has quite a bit of, you know, obviously, hog haulers coming through our town. So I appreciate it. Thank you. [LB174]

PETE McCLYMONT: Thank you. [LB174]

SENATOR DUBAS: Senator Price. [LB174]

SENATOR PRICE: Thank you, Senator Dubas, and Senator Janssen helped to spark this. Question comes down, and we can find this information later, but if the testimony

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

Transportation and Telecommunications Committee
February 04, 2013

has been that 2 to 5 percent of the infamous bad actors who are repeat offenders, my question becomes are they being cited? Because if I have someone who is willing to not abide by the law, and there's already a penalty, increasing the penalty does not increase their likelihood to participate if they're not going to be cited. So I'd be interested...or Senator Mello's office and where they come back and let us know how these citations are being issued. If I have 100 trucks a day and 2 to 5 percent of the bad actors, I'm getting five spills a day; I'm beginning to wonder: are we not just enforcing a law we already have? And not that I'm going to try to derail it or do anything like that, it's good to have that information. Because if we do increase this, or we do, or we don't write any more citations, it becomes a self-defeating proposal there. So I just didn't know if you had any idea from your industry how many of these bad actors are being actually cited. [LB174]

PETE McClymont: That I couldn't, you know, give you a good answer, Senator Price. And obviously, you know, the resources that I've used are the members that do...who, you know, haul full time. And like I said, those are the ones that are doing it right. And so, you know, but by the same token, they don't want to have an increase in their cost of doing business if there is a spill. One other bit of information as per Senator Mello's opening statements, I did call Paul Kratz; he is the city attorney for the city of Omaha. Mr. Cheloha asked that I call him, and so we visited. And so, the biggest issue my members had was that, if this is a problem, their hope would be it could be resolved by city ordinance. And so...and I shared that with Senator Mello on Friday, that I would be talking to Mr. Kratz. And so he called me back today, finally, and so...he said this isn't a huge issue, but obviously it's been brought two years in a row by Senator Mello. So I guess the only thing, if the committee could check into it because Senator Mello's comments to me were--what he's been consistent with--that it's a U.S. highway so, hence, it's got to be statute. And so...but, you know, there's other laws being broken on city highways in Omaha that are state and U.S. highways. So, you know, that's not for me to determine. I've made the call to Mr. Kratz and so, you know, if that's something that the committee would wish to look into, you know, I would offer that up for your consideration. [LB174]

SENATOR PRICE: Thank you. [LB174]

SENATOR DUBAS: Additional questions? Seeing none, thank you. [LB174]

PETE McClymont: Thanks. [LB174]

SENATOR DUBAS: Further testimony in the neutral? Seeing none, that will close the hearing on LB174... [LB174]

TREVOR FITZGERALD: Senator, I'd like to answer one of the questions, actually. Very briefly, Senator Dubas, thank you. And for the record, my name is Trevor Fitzgerald,

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

Transportation and Telecommunications Committee
February 04, 2013

T-r-e-v-o-r F-i-t-z-g-e-r-a-l-d, legislative aide for Senator Mello. Kind of to answer Senator Price's question about whether there was some documented accidents, we have at least...we can get some statistics with the city and the State Patrol, but the South Omaha Environmental Task Force did cite there was a story that, I think, made Omaha World-Herald as well as the area radio stations. July 17, 2009, animal waste spilled from a cattle truck was the cause of a motorcycle crash that left a 41-year-old Omaha man hospitalized with serious injuries. Shortly after 8:00 p.m. Thursday, Mick Goslin lost control of his motorcycle on the Interstate 80 ramp on the northbound lanes of the JFK. The bike started a 150-foot slide after losing traction on the manure spill. Goslin was rushed to Creighton University Medical Center with injuries to his head, ribs, and legs, and it was unknown whether he was wearing a helmet. But that's just one example, among many, of the serious nature of the...just the combination of high speed and the danger of the manure there so...but again, we'll work with the city and the State Patrol to get some more concrete numbers. [LB174]

SENATOR PRICE: Thank you. [LB174]

TREVOR FITZGERALD: So...and real briefly on the point that was just discussed, as far as whether city ordinance is an issue, our office did confer with the legal counsel for the Urban Affairs Committee as to whether it is something could be addressed through city ordinance. And they seemed to reach the same conclusion that we did, that because it is a situation that's taking place on state highways, Highway 75, Highway 275, that it would have to be addressed via state statute. [LB174]

SENATOR DUBAS: Okay. Senator Janssen. [LB174]

SENATOR JANSSEN: Thank you, Chairman. Sorry, I called you Chairman. That's what Deb always made me do. Thank you, Mr. Fitzgerald, for showing up. Rarely I would ask a question of staff, but since you are closing... [LB174]

TREVOR FITZGERALD: I wouldn't come up if I wasn't expecting questions, Senator. [LB174]

SENATOR JANSSEN: On that same note, there's a lot of muddy vehicles out on the roads right now. Should we increase the fines, and I'm not asking you to speculate; I'm basically making a statement. Should we increase the fines? My vehicle right now is very muddy because I take dirt roads down here. And it could drop mud; a lot of farm vehicles get a lot of mud on them. They throw off mud. And driving a motorcycle is a very dangerous activity in certain circumstances, of course. And most motorcycle drivers are really responsible about it. So is there any data on how many motorcycle or other accidents are created by dirty vehicles, mud out there that you've brought forward today? Or are we certain it was manure that caused this? And if so, then what are the...because I'm certain there are accidents that have happened because of mud or

dirty road conditions or poor vehicle maintenance, somebody dropping a tire. I see that more often than I see, you know, animal waste on the roads. I see tires that are left out there for extended periods of time. So is this...the question is, is this Senator Mello's catalyst, is this one incident or does he follow other incidents with tires, other stuff? I mean, I've seen everything on the... [LB174]

TREVOR FITZGERALD: This is, to answer your question, Senator Janssen, this is an issue that was brought to Senator Mello by the South Omaha Environmental Task Force. They've been operating in the Omaha area for, I hate to put an exact number of years, it's an organization formed by former Senator Don Preister, who is the recent president of it. And it's been a long-documented problem that they've been trying to address through a number of means. This is not, by any means, the first try at addressing the problem. They've worked with the truckers; they've worked with the cattlemen to try and address it through other means. This is really, kind of the...almost want to say last resort. All the other means that could possibly be out there to try and address this situation have been put forward already. As for the spilling of mud or other things, I don't know of any statistics. But this is something that was specifically brought to Senator Mello by this organization that's been very active in south Omaha. [LB174]

SENATOR JANSSEN: Okay, so no real data on the other stuff, of fenders falling off, tires, or anything like that. [LB174]

TREVOR FITZGERALD: No, not that I'm aware of. [LB174]

SENATOR JANSSEN: This group hasn't followed that... [LB174]

TREVOR FITZGERALD: I wouldn't... [LB174]

SENATOR JANSSEN: ...this group in south Omaha environmental group hasn't followed any other...? [LB174]

TREVOR FITZGERALD: I know they've followed quite a number of other... [LB174]

SENATOR JANSSEN: Can you give me an example of like two, three? [LB174]

TREVOR FITZGERALD: ...environment. They've done a lot of work on air quality issues in the south Omaha area. [LB174]

SENATOR JANSSEN: What are some... [LB174]

TREVOR FITZGERALD: I don't know if they've done any other thing as far as other items on the roadway, to my knowledge. [LB174]

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

Transportation and Telecommunications Committee
February 04, 2013

SENATOR JANSSEN: What have they done in the area of air quality? [LB174]

TREVOR FITZGERALD: They've...over a number of years, they'll monitor the air quality reports that are put together by the Douglas County Department of Health and work with area businesses to try and find commonsense ways that there can be improvements to air quality in the south Omaha area. Also, they've done a number of...done a lot of work with meat packing plants and other businesses in south Omaha to address noxious odors. [LB174]

SENATOR JANSSEN: Are they aware that south Omaha was built by the cattle industry? [LB174]

TREVOR FITZGERALD: They are, and the cattle industry has been a long...as Mr. McClymont testified, the cattle industry has been a longtime participant with SOETH in these efforts. [LB174]

SENATOR JANSSEN: Of course, they're a good neighbor. I'm just...it seems like it's almost an assault. [LB174]

TREVOR FITZGERALD: They're a great neighbor, and they've done a lot of work to help us with this bill. [LB174]

SENATOR JANSSEN: Thanks. Thank you, Mr. Fitzgerald. [LB174]

SENATOR DUBAS: Other questions? Well, I think we've outlined some information that would be helpful for the committee, one way or the other, so if you can get that to us, I can make sure that the committee members have that available to them. [LB174]

TREVOR FITZGERALD: Excellent. Thank you, Senator. [LB174]

SENATOR DUBAS: All right. Thank you. With that, we will close LB174 and open the hearing on LB117. Senator Harms. Welcome. [LB174]

SENATOR HARMS: Senator Dubas, thank you very much, and colleagues. My name is John N. Harms, H-a-r-m-s. I represent the 48th District, and today I'm here to introduce LB117 to you. And, first of all, thank you for allowing me to come in and visit with you in regard to this particular legislation. This is not a new topic for us. In fact, this is the third cycle we've been back, but I think we finally have got it fixed now, permanently. LB117 would permit a long-range accommodation vehicle permit for seasonal harvest agricultural projects to be issued up to 150 days. This legislation brings us up-to-date with the current, now federal, regulations. In May 2012, at the request of the Nebraska Department of Roads, the federal rules, and that federal rule is federal rule 23 CFR part 658 Appendix C, were revised to allow permits to be issued up to 150 days. Legislation

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

Transportation and Telecommunications Committee
February 04, 2013

is needed to change the state law to reflect this change in the maximum permit lengths. Current state law that only allows us to go 120 days is a restriction that is a product of the 1991 freeze instituted by the Federal Highway Administration, under the Intermodal Surface Transportation Efficiency Act of 1991, highway authorization bill along with ensuing regulations. Senator Dubas, I have been here now for the third time with this. I can give you just a quick history of how I got where we are...how we got to where we are today, and where we're headed in the future. And I'll do that just quickly for you, just to refresh your memories of this. In 2010, I came before here and introduced LB35, and you were kind enough to bring it out, and the Legislature was kind enough to pass it to assist our sugar beet industry in Nebraska. The sugar beet harvesting season can sometimes run a lot longer than 120 days. And that's currently listed on...for the LCV permits in our own state statutes. The industry and our truckers need and request a 30-day time extension in order to complete the harvest, if it's a little bit longer than 120 days. At this very same time, when we introduced LB35, we found that the 30-day extensions were no longer going to be accepted. And the Nebraska Department of Transportation permit office in Lincoln, right at the beginning of a harvest time, said, "We're not going to do this anymore." And this was quite a shock to the industry because, under a 120-day period without these extensions, there was concern that this industry would financially be in some serious trouble, and millions of dollars would not be able to be brought into the harvest for us. And this is a major issue for where I live. This is a big industry and pumps a lot of money into our economy. And there are a lot of things that change what happens in regard to the beet harvest. It can be crop size. It can be, you know, a change in the weather. It can be factory performances. There's all kinds of variety of things that come up. It can hinder this and cause us some difficulties. So when this happened, the Governor intervened--we were thankful for that--and said, "You know, these crops are going to freeze in the field, they're going to rot in the fields. They need to be get to...we need to get those to the factory so they can...the production can be completed, and authorize this, and then we'll have to deal with the feds later." And so that's what took place. And so in order to resolve this, my bill, which came forward, which is LB35, extended the maximum time period from 120 to 200 days, if you remember, for those of you who were here. The beet industry said, "You know, it's not going to be too much longer in the future, it could be ten years that we're probably going to be pushing 200 days." The committee amended the adjustment, adjusted it to 210 days, which merely kept the renewal period in increments of 30 days to provide ease in the Department of Roads electronic system so it can get out of that whole cycle electronically for them. Unfortunately, it was not in compliance with the federal rules. And without compliance, Nebraska was at risk of losing 10 percent of its federal dollars, of which would be a total of about \$24 million annually--a large sum of money to lose. So to ensure the federal compliance and retain these critical federal funds for Nebraska, last year I brought back LB841 in the 2012 legislative session to return us back to the time period from 210 days back to 120 days. And then I talked to the Department of Roads and said, "Is there something we can do to resolve this?" They said they would pursue it for us, and I had them come out to Scottsbluff and met with the sugar factory

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

Transportation and Telecommunications Committee
February 04, 2013

companies and all the farmers, as many farmers as could come, and they pursued this very actively. And they were successful in getting this federal rule changed back to a 150-day maximum. And on July 2, 2012, the federal final rule authorizing the 150-day maximum took effect. So once again, this legislation, LB117, simply, merely brings the 120 days cited in the current state statutes of Nebraska to 150 days in order to be in federal compliance. The extension of time from 120 to 150 days gives Nebraska a great deal more flexibility in its transportation of beets during the harvest season, as well as preserving the production and the economic growth of the industry. I'd be happy, Senator Dubas, to answer any questions. Andy Cunningham is here today from the...as a government affairs...for the Department of Roads to answer maybe some of the more specific technical things that I probably don't know about or don't even probably understand in regard to this particular industry. So I'd be happy to answer any questions, if I can. [LB117]

SENATOR DUBAS: Thank you, Senator Harms. Senator Janssen. [LB117]

SENATOR JANSSEN: Thank you. This should be...this hearing should have been two days ago. Since I've been on this committee for five years, I've heard this three times now... [LB117]

SENATOR HARMS: Yeah, you're right. Should be able to repeat it in verbatim. [LB117]

SENATOR JANSSEN: ...because it's Groundhog's Day all over, and I recall the hearing in 2010. That's the first time I actually held a sugar beet. [LB117]

SENATOR HARMS: Right. [LB117]

SENATOR JANSSEN: Somebody brought one. Are we certain that everything is buttoned up right now so we're not...I know you're here for a couple more years, so we don't want to bring back another bill and... [LB117]

SENATOR HARMS: I don't happen to want to come back again and talk to you about this particular topic. [LB117]

SENATOR JANSSEN: I'm certain. [LB117]

SENATOR HARMS: And, Senator Janssen, I think we are. And one of the things about the 1999 freeze...'91 freeze...according to the Roads Department and the people I've spoken to, the feds have really been reluctant. They haven't moved off of that at all historically. And when we brought this up, I think Andy probably can share a little more, there was some real doubts whether or not we would be able to accomplish this, but they did. I think not only Nebraska but Oregon also came at the same time with a similar type of issue. And I think with both states coming forward saying, "We need to fix this for

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

Transportation and Telecommunications Committee
February 04, 2013

the economy." And so they were. They reviewed it very carefully, and I didn't, to be honest with you, didn't have any hope in it. But they did authorize it and have approved it, and I'm thankful for that, and I know the people in western Nebraska are thankful for it. And I hope I never come back to talk to you again about the topic. [LB117]

SENATOR JANSSEN: Well, I'm hopeful you're not before us next year trying to kill this bill. [LB117]

SENATOR HARMS: That's right because I term out after next year. [LB117]

SENATOR JANSSEN: Okay. Thank you, Senator Harms. [LB117]

SENATOR HARMS: Yeah. Thank you very much for the question, Senator Janssen. [LB117]

SENATOR DUBAS: Other questions? Seeing none... [LB117]

SENATOR HARMS: Senator Dubas, I...because of where we are in our appropriations and trying to just keep people in our committee, I'm probably going to waiver my final comments about this. I think it's to the point; it's pretty simple, and it's now going to be up to you. I think Andy will be able to provide more information. But we're at a point now in that budget where we have people in the room to be able to deal with it. So thank you for your kindness, and I appreciate it. Thank you very much. [LB117]

SENATOR DUBAS: Very good. Thank you, Senator Harms. [LB117]

SENATOR HARMS: Thank you. [LB117]

SENATOR DUBAS: I'll take a moment to introduce the two committee members that have joined us: Senator Hadley and Senator Smith. So thank you for joining us. How many people are here to testify in support of LB117? Two? Any opposition? Any neutral? Okay. We'll have...first proponent for LB117. Welcome, Director. [LB117]

RANDY PETERS: (Exhibit 3) Thank you. Good afternoon, Chairwoman Dubas, members of the Transportation and Telecommunications Committee. My name is Randy Peters, R-a-n-d-y P-e-t-e-r-s. I am the Director State Engineer for the Nebraska Department of Roads, NDOR. I'm here today to provide testimony in support of LB117. And I would like to thank Senator Harms for introducing LB117 on behalf of the Nebraska Department of Roads. As the senator recounted, you may recall in 2012 the NDOR discovered there were some anomalies in Nebraska statutes compared to the federal freeze language included in the Intermodal Surface Transportation Efficiency Act of 1991 regarding the movement of seasonally-harvested products. At the time of the federal freeze of '91, Nebraska statutes provided that permits issued for seasonally

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

Transportation and Telecommunications Committee
February 04, 2013

harvested products would be valid for 30 days and shall be renewable four times per year. LB841 of 2012 provided that permits for seasonally harvested products were valid for 30 days and renewable up to a maximum of 120 days per year. The provisions of LB841 mirrored the federal regulations, at that time, to ensure that Nebraska would remain in compliance with federal regulations. In February of 2012, the NDOR discovered that the Federal Highway Administration had misinterpreted Nebraska statutes in 1991 and requested that the Federal Highway Administrator, Victor Mendez, revise the federal regulations. Specifically, federal regulations provided that permits were valid for 30 days and renewable four times per year, which the department believes allows permits to be renewed up to a maximum of 150 days per year. Mr. Mendez responded on March 27, 2012, indicating that FHWA agreed with the NDOR's assessment and that the federal regulations would be revised. The final rule allowing Nebraska's seasonally-harvested product permits to be valid for 30 days up to a maximum of 150 days per year was finalized in May of last year. Simply, LB117 would bring Nebraska statute into conformance with federal regulations, which would allow permits for seasonally harvested products to be valid up to 150 days per calendar year. Thank you for the opportunity to testify, and I will be glad to answer any questions that you may have. [LB117]

SENATOR DUBAS: Thank you, Director Peters. Are there questions? Senator Hadley. [LB117]

SENATOR HADLEY: Thank you, Chairman Dubas. Mr. Peters, thank you for coming. I was looking at the fees to do this. Are the fees primarily just to cover the cost of the paperwork and issuing the permit? [LB117]

RANDY PETERS: Indeed, just to recoup the costs of staff time for issuing the permits. [LB117]

SENATOR HADLEY: Okay. Just...I guess I ask that question only from the standpoint that I've heard the comment that overweight trucks are one of the biggest problems with damaging of highways. Should...would it make any sense to have an additional fee to basic...cover potential damages in the long-term, too, to highways of overweight...? [LB117]

RANDY PETERS: You could make a policy argument on that case. I don't think that was the...our intent with LB117. But definitely the use of a highway is proportional to the amount of weight on the axle. It does take a proportionate... [LB117]

SENATOR HADLEY: And I'm certainly not suggesting we do that, but it just...sometime...it might be something down the line to look at it if we have...especially if we have more requests for overweight type of situations. Thank you. [LB117]

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

Transportation and Telecommunications Committee
February 04, 2013

RANDY PETERS: Understood. [LB117]

SENATOR DUBAS: Other questions? Thank you for your work on this and for your testimony today. [LB117]

RANDY PETERS: Thank you, Chair. [LB117]

SENATOR DUBAS: Further proponents for LB117? [LB117]

PETE McClymont: Chairman Dubas, members of the committee, for the record, my name is Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t, vice president of legislative affairs for the Nebraska Cattlemen. My board met last week and voted to support this. We have a few members that this affects. So for the...all the reasons that Senator Harms said, we would support the bill. Thank you. [LB117]

SENATOR DUBAS: Thank you. Questions for Mr. McClymont? Seeing none, thank you. [LB117]

PETE McClymont: Thanks. [LB117]

SENATOR DUBAS: Further testimony in support? Opposition? Any in the neutral? Seeing none, that will close the hearing on LB117. And we will now open the hearing, Senator Brasch, LB398. Welcome. [LB398]

SENATOR BRASCH: Thank you. Thank you, Chairman Dubas, and good afternoon, members of the Transportation and Telecommunications Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. I am here to introduce LB398, which I have brought at the request of the Nebraska State Patrol to clarify what enforcement action the State Patrol may assess against violators of our state's overweight capacity plate registration statute. This legislation is in part a response to a 2011 Nebraska Supreme Court case, State v. Halverstadt, which held that the operator of a truck, truck-tractor, or trailer could not be held in violation of a 60-6,300 because current law only provided for enforcement for the owner. Historically, the State Patrol has ticketed the operator as the agent or representative of the owner for violation of the overweight registration provision. Halverstadt ended this practice after holding that current statute did not give law enforcement the explicit authority to take enforcement action against the operators. Current statute provides for a penalty for the owner of a vehicle which violates the overweight registration statute. Therefore, following the Halverstadt case, owners have only been ticketed when they are actually operating the vehicle at the time of the violation. Please note that while current law provides for a penalty when the owner permits operation of the vehicle in violation. But in practice, this makes roadside ticketing virtually impossible in most cases because the owner is not present at the time

the violation occurs. LB398 has a dual purpose. First, it clarifies the statutory authority of the State Patrol and allows for the operator of a truck, truck-tractor, or a trailer in violation of the overweight capacity plate statute to be held responsible as has been the historical practice of the State Patrol prior to State v. Halverstadt. This provision would allow the State Patrol to resume the roadside ticketing of operators in violation that had been their practice up until Halverstadt. Second, it also establishes a provision in lieu of placing responsibility on the operator and allows the superintendent of law enforcement to assess the owner a civil penalty for each violation of the state's overweight capacity plate statute equal to \$25 for each 1,000 pounds or fraction of 1,000 pounds. This is the same penalty previously provided in current statute for the owner of the vehicle. This provision would allow law enforcement to pursue owners who have condoned, encouraged, or by practice have built a business model which violates the vehicle registration provisions required by law. This provides for cases when the owner of the vehicle is not present at the time the violation is discovered. If a penalty is deemed inappropriate, the State Patrol will be authorized to assess a civil penalty against the registered owner. This process is initiated utilizing the postal system. Allowing the State Patrol the latitude to hold bad actors accountable is important. Historically, operators who may have been pressured to carry an overweight load by the owner or may not even know the exact weight of the load on their vehicle, they have been held liable. LB398 will ensure that vehicle owners and operators take necessary precautions to ensure that their trucks and trailers stay within the gross rate for the paid registration on the vehicle it allows and gives law enforcement the recourse needed to take action against either the owner or operator when necessary. I will briefly point out that this legislation carries no fiscal note. As I conclude, I want to thank you for your time. And I believe that Captain Gerry Krolikowski of the Nebraska State Patrol is here behind me today, and he would be happy to answer any of your questions from his agency's perspective after he has shared his testimony with the committee. Again, I want to thank you for your time, and I'll be happy to answer any questions. [LB398]

SENATOR DUBAS: Thank you, Senator Brasch. Questions? Senator Price. [LB398]

SENATOR PRICE: Thank you, Senator Dubas. Senator Brasch, appreciate you bringing the bill. The question I have which may, like you said, be answered by people following you, but I'm wondering now if we're leaving a lot of discretion in the parts or the hands of the patrolmen because we're saying here the owner, the driver can be cited and the owner may be cited. So someone has to make a differentiation at some point in time of that, and I'll be curious to figure out how they do that because as you have said sometimes, maybe, I can't really see it on the CDL and hauling licensure, that you know...that you knowingly or unknowingly are carrying an illegal load, so to speak, to do...to weigh your...I do believe I have a duty to understand what it is you're hauling and not to haul something. But I just didn't know...were you conversant or had you talked about this latitude that's going to be given and laid upon a Patrol officer? [LB398]

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

Transportation and Telecommunications Committee
February 04, 2013

SENATOR BRASCH: Yes. [LB398]

SENATOR PRICE: This discretion, oh, maybe I will, maybe I won't. [LB398]

SENATOR BRASCH: There are...thank you, Senator Price, for your question. That is a great question. There are cases where the operator could also be the owner. It's one and the same person. So that is identifiable, and that owner/operator does take their load to a weigh station. They know the weight before they head out to market to deliver their produce. There are times, however, when it is a driver, the operator, he may not know that the owner or someone has overloaded; he or she may not know that it's an overload weight. And, therefore, the officer that believes that they are in violation, we have our weigh stations, they will be able to see that the operator or driver was not aware of the overweight situation. And it will now let the owner have the liability for that load. And they can elaborate more on this situation. [LB398]

SENATOR PRICE: Okay. Thank you. [LB398]

SENATOR BRASCH: Thank you. [LB398]

SENATOR DUBAS: Other questions? I would have a question for you, Senator Brasch. And maybe someone behind you can answer it if you can't. The fines that will be collected as...under the civil penalty, will that be distributed in the same manner as other fines have as far as 75 percent/25 percent, you know, Department of Roads versus county? I'm not seeing in the bill where it talks about how those fines would be distributed. [LB398]

SENATOR BRASCH: We have not had a discussion on the distribution of fines. Perhaps that would be better for them to elaborate. [LB398]

SENATOR DUBAS: Very good. All right. Thank you. Senator Hadley. [LB398]

SENATOR HADLEY: Thank you, Chairman Dubas. Senator Brasch, just a quick...I guess I was kind of surprised when I looked at the fiscal note, that there wouldn't have been a positive fiscal note on this because aren't we going to be able to fine people more now than we're able to do under this bill? [LB398]

SENATOR BRASCH: There is a possibility of that, yes, there is. [LB398]

SENATOR HADLEY: Okay. I was just curious as to why...maybe it isn't much, but obviously, as you now have the ability to fine the driver, that somebody didn't put a positive fiscal note in. [LB398]

SENATOR BRASCH: After enforcement, should this pass, then we would be able to

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

Transportation and Telecommunications Committee
February 04, 2013

see that. There's a lot of discussion along that line, yes, but good point. [LB398]

SENATOR HADLEY: Not that it would make any difference, but I'm just...we all have our little questions on fiscal notes. [LB398]

SENATOR BRASCH: I appreciate your asking. [LB398]

SENATOR DUBAS: Other questions? Seeing none, thank you. Can I have a show of hands as to the number who are testifying in support of LB398? Okay. Any opposition? Okay. This won't take very long then. Can we have the proponent for LB398 come forward, please? [LB398]

GERALD KROLIKOWSKI: (Exhibit 4) Good afternoon. Chair Dubas, members of Transportation, Telecommunications Committee, my name is Gerald, G-e-r-a-l-d, Krolikowski, K-r-o-l-i-k-o-w-s-k-i. As commander of the carrier enforcement division, I am here today on behalf of the Nebraska State Patrol to testify in support of LB398. I would like to express our appreciation to Senator Brasch for introducing this bill. This proposal clarifies the statutory authority for a person operating a truck, truck-tractor, or trailer in violation of the overweight capacity plate registration statute to be responsible for such violation. It also establishes a provision that, in lieu of the operator being legally responsible, the owner, on sporadic occasions, may have a civil penalty assessed in the same manner as provided for in state statute 75-369.04. Prior to November 2011, the general accepted practice of enforcing 60-6,300 was to cite the driver as an agent for the motor carrier or owner of a vehicle. With the Nebraska Supreme Court case of State v. Halverstadt, such enforcement practice ceased. The court's ruling stipulates that current statutory language only allows the owner of the vehicle to be cited. As the trucking industry's model of conducting business is reviewed, one can certainly understand the difficulties in trying to assure this law is enforced uniformly. Adoption of LB398 will allow enforcement personnel to take action when such violations occur without the need to determine what position the operator of such vehicle holds within a company. This language will inevitably level the playing field, helping to assure those owners or companies that consistently abide by the law that their competitor is being held to the same standard, with ramifications being applied if they don't. Prior to the Halverstadt ruling in 2011, during a six-month period, a monthly average of 120 overweight registration violations were cited by the State Patrol. In a similar six-month period following the statutory clarification, enforcement action was reduced to an average of 43 times per month--a 64 percent decrease. As mentioned, the bill includes an "in lieu of" provision which would authorize Nebraska State Patrol to assess civil penalties to the owner of such vehicles in lieu of citing the operator. It is projected such action would be uncommon and used in those cases, rare cases, where an owner condones, encourages, or by practice has incorporated a business model, if you will, whereupon such unlawful actions are observed more frequently. I want to thank you for the opportunity to testify in support of this bill and will be happy to answer any questions

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

Transportation and Telecommunications Committee
February 04, 2013

you may have. [LB398]

SENATOR DUBAS: Thank you very much. Are there questions? Senator Price. [LB398]

SENATOR PRICE: Thank you, Senator Dubas. Just a follow up I asked earlier. Is there a time when an operator of a vehicle is not responsible for abiding by the laws? [LB398]

GERALD KROLIKOWSKI: This was the only law that I was aware of in the ruling that was worded as such, otherwise you would...I'm not aware of any law, while you're operating a vehicle, that the operator shouldn't be held responsible. [LB398]

SENATOR PRICE: So this law is trying to fix or...before you could only cite the...I mean, the conundrum we're in now is, the only individual that can be cited according to statute now is whom? [LB398]

GERALD KROLIKOWSKI: The owner of the vehicle. [LB398]

SENATOR PRICE: So why aren't owners cited? [LB398]

GERALD KROLIKOWSKI: Well, like I mentioned the business model, sir. Typically the owner is not operating the vehicle. And we're talking about vehicles not just owned by Nebraska residents or Nebraska companies; we're talking about vehicles that operate border to border, I mean coast to coast. So, typically, the owner is not the one operating the vehicle; it's a driver or employee. [LB398]

SENATOR PRICE: Right, except for right now our law allows to cite them...right now, we could cite the owner. [LB398]

GERALD KROLIKOWSKI: Certainly, if I could track them down and have some manner of enforcing that. [LB398]

SENATOR PRICE: Okay. So really what this does, then, when we look at those, say, transcontinental operators or the interstate operators, is we're not really trying to get at those individuals. We can, but we still have the same...we still face the same hurdles collecting if you were to fine someone. If you can't fine them now, I don't see how this helps you fine them and collect. But we for sure now could get the operator in the state. [LB398]

GERALD KROLIKOWSKI: That is correct. [LB398]

SENATOR PRICE: Okay. I just want to make sure I understood where we were actually going to go with this. [LB398]

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

Transportation and Telecommunications Committee
February 04, 2013

GERALD KROLIKOWSKI: Just so I'm correct on that, that this will allow us to collect fines now, where...and the use of...a...efficient use of resources by citing a driver on the spot rather than trying to find out who the owner is, take up the resources to investigate that, and cite the owner who may be 15 states away. [LB398]

SENATOR PRICE: Does this mean that when you cite an operator, that goes into a national database or registry so that it's a...I know my private...my driver's license, I get points awarded and ticketed and things tend to follow me. Is that what really...that also happens here too? Any driver comes through, because if they drive...do they have to pay on the spot or can they drive off and not pay anyway? [LB398]

GERALD KROLIKOWSKI: Typically if it's an out-of-state driver, because this is not a compactible offense, meaning that it's not a moving violation, and therefore doesn't usually lend us to suspensions unless they go through the whole process of failure to appear, there's no points for this, a registration violation. It may go on a person's driver's license, but there's no points. So there's no real recourse for enforcement or the courts to take if the fine is not collected at the spot. And if they're an out-of-state driver, they are subject to paying the fine at the time. [LB398]

SENATOR PRICE: If they don't pay the fine, what happens then? [LB398]

GERALD KROLIKOWSKI: If they elect not to pay the fine? They could post bond and come back for court. [LB398]

SENATOR PRICE: Okay. All right. Great. I just wanted to make sure I understood and that we all understood because we all don't drive commercial vehicles. [LB398]

GERALD KROLIKOWSKI: Sure. [LB398]

SENATOR PRICE: We're trying to do this. Just make sure we understand it. Thank you. [LB398]

SENATOR DUBAS: Other questions? Seeing none, thank you very much, Commander. Additional proponents for LB398? Anyone in opposition? Neutral? Senator Brasch, would you like to close? Senator Brasch waives her closing. That will close the hearing on LB398. And we will open the final hearing of the day. Senator Schilz, LB548. [LB398]

SENATOR SCHILZ: Thank you, Senator Dubas,... [LB548]

SENATOR DUBAS: Welcome. [LB548]

SENATOR SCHILZ: ...members of the committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I represent the 47th Legislative District. Today I bring LB548

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

Transportation and Telecommunications Committee
February 04, 2013

before you which would change a length exception for semitrailers transporting baled livestock forage. Last year, I introduced legislation in response to...or I introduced this legislation in response to correspondence I received last year after the passage of LB740, which the committee worked very hard on, and I appreciate that as well as all the other folks that were involved. LB740 would allow semitrailers transporting baled livestock forage to haul up to 59.5-foot loads. The correspondence I received from my constituent was in regard to them being in violation of the law, having an empty trailer that was 59.5 feet long. LB548 attempts to protect that against the...that violation so that haulers do not have to worry about travelling to load hay or travelling back to where the trailer needs to go after unloading the hay. It has recently been brought to my attention that the Nebraska Department of Roads does have an empty trailer permit known as a continuous statewide empty semitrailer permit. Nebraska Revised Statute Sections 60-6,298 authorizes continuous statewide permits for overweight or oversized vehicles under certain circumstances up to 60 feet long. This permit costs \$25 for 90 days or \$100 for a year. In LB740 last year, we were able to allow for the exception to haul hay at the extended length, without the permitting process, and it seems a bit onerous for these folks to have to purchase a permit to commute empty. However, if this cannot be achieved by a statute change, I will defer to the current empty semitrailer permit. It's my intention to make sure that our hay haulers can get to and from their loading and unloading destinations without being in violation of any law. And I guess I just...put it this way, it...when we introduced the bill last year, and I know the committee made some changes on it, there was a special permit to start out with, and I believe that was taken out. And, unfortunately, some of the constituents or people in the state of Nebraska weren't aware, then, that you needed a permit to run around empty. So it's one of those things where it's either an education piece that needs to happen or we need to figure out a way to make it more consistent across the board. But thank you very much, and I'd be happy to try to answer any questions you might have. [LB548]

SENATOR DUBAS: Thank you, Senator Schilz. Questions? Senator Janssen. [LB548]

SENATOR JANSSEN: Thank you, Chairman Dubas. Thank you, Senator Schilz. The bill you introduced to pass this, did that bill pass or did... [LB548]

SENATOR SCHILZ: No, actually that bill did not pass in its form that it was, no. [LB548]

SENATOR JANSSEN: How did it get through, then, the legislative process? [LB548]

SENATOR SCHILZ: Well, Senator Janssen, I think you know this. It got grafted onto one of your bills that was passed, so. [LB548]

SENATOR JANSSEN: Oh! Just wanted to clarify that. Thank you, Senator Schilz. [LB548]

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

Transportation and Telecommunications Committee
February 04, 2013

SENATOR SCHILZ: Thank you, Senator Janssen. [LB548]

SENATOR DUBAS: Additional questions? Seeing none, thank you. [LB548]

SENATOR SCHILZ: Thank you very much. [LB548]

SENATOR DUBAS: Do we have proponents for LB548? Welcome, Mr. Aerts. [LB548]

ANTHONY AERTS: Good afternoon. Thank you. Good afternoon, Senator Dubas and other members of the committee. My name is Anthony Aerts, that's A-e...A-n-t-h-o-n-y, Aerts, A-e-r-t-s. I'm here today testifying in support of LB4...548 on behalf of the Nebraska Farm Bureau Federation where I currently serve as the assistant director of state affairs. Our member-driven policy currently supports state laws that reflect the needs of modern agriculture in regards to farm vehicle dimensions and weight requirements. It also supports modifying regulations to facilitate the transportation of farm products across state lines. In this spirit, during the 2012 session, we strongly supported Senator Schilz bill LB740, which granted a length extension from 53 to 59.5 feet for trailers used in the transport of baled livestock forage. This length extension made...the length extension made by this bill results in Nebraska's length restriction for these trailers to become more comparable to that of the neighboring states, thus facilitating interstate commerce opportunities for Nebraska farmers and ranchers, especially those located near the borders. Furthermore, it is our understanding that haulers of livestock forage are increasingly transporting lighter-weight products such as corn stalk or wheat stalk bales and, therefore, the added length was intended to allow them to become more efficient in their hauling activities without exceeding weight, width, or height restrictions which were left unchanged by last year's bill. This potential for increased efficiency reduces the number of trips required, fuel consumed, and the general wear and tear on both the equipment and the roads. Therefore, Farm Bureau strongly supports the clarification made through LB485 (sic LB548) or any other clarification which could potentially result from discussion which might ensue and believes that it provides a reasonable consistency respecting how trailers used to haul livestock forage are regulated in this state. In turn, this ensures that Nebraska farmers and ranchers are able to take full advantage of the potential for added economic efficiency and interstate commerce opportunities which the length extension passed into law ostensibly intended in the first place. Thank you, and I'd be happy to take any questions that you guys might have. [LB548]

SENATOR DUBAS: Thank you, Mr. Aerts. Are there questions? Seeing none, thank you. Further proponents for LB548? Anyone in opposition? Any neutral? [LB548]

GERALD KROLIKOWSKI: (Exhibit 5) Chair Dubas and members of Transportation, Telecommunications, Committee, my name is Gerald, G-e-r-a-l-d, Krolikowski, K-r-o-l-i-k-o-w-s-k-i. As commander of the carrier enforcement division, I am here today

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

Transportation and Telecommunications Committee
February 04, 2013

on behalf of the Nebraska State Patrol to testify in a neutral capacity regarding LB548. The proposed changes, which LB548 applies to Section 60-6,290, would make it very difficult for law enforcement personnel to enforce the length limitations on empty semitrailers, especially flatbed or drop-deck trailers. When encountering an empty trailer, it is unknown to the officer what commodity or equipment the trailer was previously loaded with or when it was loaded. An alternative remedy for this type of situation is the availability of a continuous statewide empty trailer permit, which can be obtained to operate an empty semitrailer exceeding the legal length of 53 feet up to a maximum of 60 feet. These permits are issued by the Nebraska Department of Roads at the cost of \$25 for each 90-day increment, with the option to purchase up to a year's worth of permits at a time for \$100. Thank you for your consideration of these two items and the opportunity to appear before you today. I'd be happy to address any questions you may have. [LB548]

SENATOR DUBAS: Thank you, Commander. Are there questions? Senator Hadley. [LB548]

SENATOR HADLEY: Chairman Dubas. Thank you, Captain. Would you think it would be...make a requirement to have the continuous statewide empty semitrailer permit, would that, rather than at the choice of the trucker, would that help the Patrol, if it was mandatory to have this permit if they were having empty... [LB548]

GERALD KROLIKOWSKI: Mandatory? [LB548]

SENATOR HADLEY: I mean, would they...requiring people to buy this continuous statewide empty semitrailer permit. [LB548]

GERALD KROLIKOWSKI: We see that as a remedy to answer the concerns that we have, sir, in regards to enforceability. That permit, as you know, wasn't developed just for hay haulers. It was developed for, my understanding, for the construction industry, those people that haul the big pieces of...one piece of construction equipment, the D Cats, excavators, and so forth, that needed the length because they needed to add axles onto trailer for the weight purpose. So in other words, that permit was generated or made or built for those individuals so they could get their empty trailer to a location to pick up that equipment and haul it from one site to another. So it would certainly apply and could be used by somebody with hay. [LB548]

SENATOR HADLEY: And that...but that's not mandatory for this heavy equipment haulers, to have that, right? [LB548]

GERALD KROLIKOWSKI: The public has a right to whether, by that permit, to be legal or to transport the trailer or... [LB548]

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

Transportation and Telecommunications Committee
February 04, 2013

SENATOR HADLEY: Then does NSP have the same problems knowing whether or not that empty flatbed is actually going to pick up...do you have the same problem with that, that you do with the hay haulers? [LB548]

GERALD KROLIKOWSKI: Absolutely, sir. Exactly. [LB548]

SENATOR HADLEY: Okay. Thank you. [LB548]

SENATOR DUBAS: Commander, Senator Schilz brought up maybe the need for education. So is there widespread knowledge about this empty trailer permit? Is that something that most truckers would be aware of or is this something that is kind of off of everybody's radar screen? [LB548]

GERALD KROLIKOWSKI: I have to admit probably not. We could certainly add something like that into our truck information guidebook. It...before now, I...I want to say, don't quote me on this, but I believe I heard from the Department of Roads that said that...general year, on an average year, they issue 400 of these single, I mean, these empty trailer permits. So they weren't issuing that many compared to the other type of permits. So we weren't seeing a big, big extent of that. So certainly if we're going to have other industries start using this or looking at this, we should probably advertise it, and we'll do so in our truck information guidebook. [LB548]

SENATOR DUBAS: Very good. Thank you. Additional questions? Seeing none, thank you very much. [LB548]

GERALD KROLIKOWSKI: Yep. [LB548]

SENATOR DUBAS: Additional testifiers in the neutral? Seeing none, Senator Schilz, would you like to close? Senator Schilz waives his closing. And that will close our hearings for the day. [LB548]