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Transcriber's Office

Transportation and Telecommunications Committee  
February 19, 2013

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[LB158 LB386 LB387 LB623 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 19, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB158, LB386, LB387, LB623, and gubernatorial appointments. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; Beau McCoy; Scott Price; and Dan Watermeier. Senators absent: None.

SENATOR DUBAS: Good afternoon. It is just a little after 1:30, so I think I will call the hearing to order. Have a few housekeeping issues to take care of, and that will give the rest of the committee members, hopefully, time to get here. You are at the Transportation and Telecommunications Committee hearing this afternoon. My name is Senator Annette Dubas from Fullerton, I am Chair of the committee. This afternoon we will be doing three confirmation hearings, and then we will have bills: LB158, LB386, LB387, and LB623. So that will be the order of business for this afternoon. I'll take the time to introduce the committee members now. To my far right, we have Senator Dan Watermeier from Syracuse; Senator Scott Price from Bellevue; Senator Jim Smith from Omaha, or excuse me, Papillion, got to have that right, Papillion; Senator Smith is the Vice Chair of the committee. To my immediate right is Joselyn Luedtke, she is the committee counsel. To my immediate left is Anne Hajek, she is the committee clerk; she's the one who keeps track of all of the proceedings of the hearings, and so it will be very important to her that you do your paperwork and state and spell your name when you come up to the table. Next to Anne is Senator Galen Hadley from Kearney; and then at my very far left is Senator Lydia Brasch from Bancroft. Senator Charlie Janssen from Fremont and Senator Beau McCoy from Omaha will likely be joining us at some point later in the afternoon. Senators may come and go through the course of the afternoon; we're introducing bills in other hearings so please don't feel like they're getting up and leaving because they don't think what you have to say is important; it's just that we have a lot of things going on in the course of an afternoon, so...Every committee is served by at least a couple of pages, and we're very appreciative of the work that they do. They help keep the system running smoothly and, if you need anything, they're here to help you. So if you have handouts, we ask that you have at least 15 copies of your handout. If you don't have enough of those copies, the page can get those taken care of for you. They'll also take your green sheet for you when you come up to testify. So our pages today are Kaitlyn Evanko-Douglas from Montrose, Colorado; she is a senior at UNL studying political science and global studies. And then we have David Postier from York, Nebraska, who is a sophomore at UNL studying secondary education. At the table back there by the door, if you plan on testifying today, we ask that you fill this out with your name and all of the other information. Then when you come forward to the table, if you'll hand that in, that is for the record. If you are here today, you want to be on the record for whether you support or are in opposition, you want to be in the record, pink sheet back there by the door on the table, just go ahead

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and sign your name and the information on that pink sheet, and the clerk will pick that up at the end of the hearing. When you come to the table, if you will again state and spell your name very clearly, even if your name is something very simple like John Doe; it's just to help the transcribers and the clerk should there be any clarification that needs to be made in the future so that we have an accurate record of your testimony here today. I know we're always very inclined to play with the microphones when we're testifying. These microphones are very, very sensitive; they're more for recording than they are actually for amplifying, so we ask that you try not to fiddle with the microphone too much because, as I said, it's very sensitive, and that gets picked up on the tapes and again can cause some problems for the transcriber as they are making the record. Let's see...I ask that you please silence your cell phones or any other electronic devices that you may have with us. Again, it's out of respect for those people who are testifying, as well as interference with the recording materials. So I think that's most of our housekeeping. We do use the lights, but not all of the time, so I'll probably be...as we get into the...into the bills, I'll be asking for a show of hands as far as how many people are here to testify in support or opposition. If there are large numbers, we may use the lights. If we do, five minutes for your testimony. So the green light will come on at the start; when you've reached the four-minute mark, the yellow light will come on; and then, at the end of that five minutes, the red light will come on. Please don't feel like you have to just immediately stop mid-sentence; go ahead and finish your thought, and the committee will more than likely have questions to ask of you to allow you to finish saying anything that you may not have been able to say in your testimony. So with that we will begin with our confirmation hearings for this afternoon. And our first confirmation is Mr. Randy Peters as the director of the Nebraska Department of Roads. So, Mr. Peters, if you'd like to come forward please. Welcome.

RANDALL PETERS: Thank you. Good afternoon, Chairman Dubas, members of the Transportation Telecommunication Committee. I'm honored to be here.  
[CONFIRMATION]

SENATOR DUBAS: If you just want to give us a little bit of background about yourself. I see you're probably handing some things out here, but just a little bit about your experience over at the department. [CONFIRMATION]

RANDALL PETERS: (Exhibit 1) Certainly, I'm handing out my formal resume, but just a word about myself. I grew up in Bloomfield, Nebraska, fifth generation Nebraskan. Came to work for the Department of Roads in 1977, so 36 years ago. This was before I had earned a civil engineering degree or gotten my license. So the first 10 years I spent in the very front lines of the department. Drove a van, taking pictures of the highway, every mile of every highway in every city. It was a good way to learn the geography of Nebraska. In a lot of ways, geography is destiny for the transportation system. Working at the department, I was able to go to school part time and earn a civil engineering degree at University of Nebraska; attained my degree in 1987 and my license that same

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year, my license to practice civil engineering. So after that, I went to work for the roadway design division. In the '80s it was exciting times, we were building expressways left and right, it seemed like, in the '80s and '90s. Did that for 10 years, and then I was promoted to the state traffic engineer in 1997; spent 10 years doing that. That's a lot about traffic studies, speed limits, signs, traffic signals. We also call it the complaint department for the Department of Roads. It was pretty good training. And then in 2007, I spent...I was lateralled to project development division which does a lot of our project preparation and permits acquisition on federal highway projects. I was promoted to deputy in 2009, deputy director for engineering, which oversees the planning, project development, design and permitting, kind of the blue prints development part of our business. And then in August, Governor Heineman tapped me to be the twenty-eighth director for the department. [CONFIRMATION]

SENATOR DUBAS: Very good. Any questions for the director? Senator Hadley.  
[CONFIRMATION]

SENATOR HADLEY: Chairman Dubas, thank you. Mr. Peters, I guess I...looking at your resume, I admire you going back and getting an engineering degree on a part-time basis. That must have been quite a time-consuming process while you were working.  
[CONFIRMATION]

RANDALL PETERS: That was a crash course in time management because my wife and I were also raising two children at the time. But it's been rewarding, very rewarding.  
[CONFIRMATION]

SENATOR HADLEY: Okay. Secondly, I noticed, I got back in to town last night, and I started reading the papers that I'd left piled up at my door, and there was an article about the south Lincoln beltway, I believe, that...I thought it seemed to be a very good article. And I just wanted to check one fact they talked about that, basically, if we did not have the quarter-cent sales tax to...I believe it's the Grow Nebraska Fund, that this project, basically, would not be on the drawing boards, is that a fair statement?  
[CONFIRMATION]

RANDALL PETERS: That is true. It is a needed project, but it's one that we would regard as a capital improvement, an expansion project and not just taking care of the network that we have. And without...without the Build Nebraska Act, our revenues are just short of the mark for just maintaining the network of highways that we have.  
[CONFIRMATION]

SENATOR HADLEY: Thank you, Mr. Peters. Thank you, Madam Chairman.  
[CONFIRMATION]

SENATOR DUBAS: Senator Brasch. [CONFIRMATION]

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SENATOR BRASCH: Thank you, Madam Chairman, and welcome, Mr. Peters. And I congratulate you; I commend you. It is no simple task to sit at the head of the road department, I'm sure. And looking at all your credentials and time well spent on every road and conversations...You can name a road, and you know that road; you've been there, you've done that. What do you see as your greatest challenge moving forward, five years, ten years? [CONFIRMATION]

RANDALL PETERS: Having...have the people in place through succession planning and develop to have these projects for the Build Nebraska Act ready to go. I really think we will earn the trust of the people that entrusted us with this job by delivering the projects we said we would, when we said we would. And I think that will be our challenge. [CONFIRMATION]

SENATOR BRASCH: Very good, and working with you and your staff, I have seen that there are...it's not simple in the sense that you're also tied to federal mandates. And how do you foresee that moving forward? [CONFIRMATION]

RANDALL PETERS: Well, 45 percent of our revenues do come from the federal side. And the decision making and the process to follow there is very stringent and very labor intensive, I will say. And there's room for reasonable people to disagree about whether it's...you can take more risks with that than we currently do. But that's one aspect of it. The other is to have our workforce well-disciplined so that we don't do things over again, so that we...so that we do the federal process once and do it right. [CONFIRMATION]

SENATOR BRASCH: Very good. Thank you. I have no other questions and other than...Your task began as very significant; people are impacted by our roads every day. Thank you. [CONFIRMATION]

RANDALL PETERS: Thank you. [CONFIRMATION]

SENATOR DUBAS: Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Madam Chair. And, Mr. Peters, thank you for your willingness to serve in this role, appreciate it. Is Nebraska at a disadvantage, in your opinion, by not having a department of transportation and being able to have a comprehensive view of transportation throughout the state? [CONFIRMATION]

RANDALL PETERS: Well, we are the only department of roads. I'm asked that a lot at gatherings of state transportation officials. But Nebraska has a department of aeronautics, which does a wonderful job with the state airports and aviation; and we have a department of motor vehicles that operates quite well. We don't have an inland waterway so there's not much ports or navigation for a department of transportation.

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And a lot of the pedestrian, bicycle livability modes from the metro can be administered very well from the city and metropolitan planning organizations. So I really...the question you have to ask, if we needed a department of transportation, is would we gain anything by consolidating the agencies that we have, or would you simply have to add another layer on top of them to have a transportation secretary and still have a director of aviation and director of motor vehicles and head of the State Patrol? And I...to answer your question, I don't think it would be a streamlining step automatically to be a department of transportation. [CONFIRMATION]

SENATOR SMITH: Do you believe that we have that comprehensive plan in that, you know, to where there is a full integration of transportation in the state, or is there anyone looking at that, in your opinion? Or do you see that as your role? [CONFIRMATION]

RANDALL PETERS: I see that as our role in surface transportation. When we develop our long-range transportation plan, it is multi-modal in that it includes transit in the metropolitan areas, and it...there is little rail planning because there is little passenger rail in Nebraska, and the freight planning is private...in hands of the private railroad. So I think we're intermode...very intermodal as a department of roads. [CONFIRMATION]

SENATOR SMITH: Okay, thank you. [CONFIRMATION]

SENATOR DUBAS: Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, Madam Chair. Thank you, sir, for coming in, and again, being willing to serve. My question deals more with what the department is doing with regards to...in acquisitions, large-scale acquisitions, life-cycle costs, total cost of ownership, how much sense of...a bill that was carried a couple of years ago tried to amend the policies and practices of DAS. How much does that impact what you're doing there today in the department when you look at large-scale acquisitions?  
[CONFIRMATION]

RANDALL PETERS: The technical people...parts of the Department of Roads that are assets that are very pricey, pavements and bridges, are subject to the people in those desks, disciplines doing extensive life-cycle analysis on the various alternatives for materials and the trade-offs between initial first costs, those that are less, and those that would last longer. I mean that's the traditional trade-off between asphalt and concrete, or between steel and concrete bridges. So it's incorporated into our decision making.  
[CONFIRMATION]

SENATOR PRICE: Does that result, sometimes, in the actual equipment though if...does the department own large-scale...like the large snow plow equipment that would, you know, go multiple lanes and the costs of that equipment, in other words, you know, that's more my...the subject of my question. If it can't be answered right now, I

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understand. But it's just the idea of, when the department is spending...making large acquisitions of equipment versus materials, life-cycle costs, and total cost of ownership being considered as best value for the state versus quickest turnaround. Sometime less value can be measured different ways than what you need, and I didn't know how robust the department is approaching these acquisitions. [CONFIRMATION]

RANDALL PETERS: We're part-way there. We do have an asset management effort underway, and it's one of our age-strategic initiatives, but I'm aware of programs that are much more extensive than ours. [CONFIRMATION]

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

SENATOR DUBAS: Additional questions for the director? Seeing none, thank you very much for coming forward today... [CONFIRMATION]

RANDALL PETERS: Thank you. [CONFIRMATION]

SENATOR DUBAS: ...and answering our questions. Are there any proponents who would like to come forward and speak regarding Mr. Peters' appointment? Proponents? Are there any opponents? Anyone in the neutral? Seeing none, that will close our hearing for Randy Peters, and we will open the next one for Mr. John (Jack) Hynes for the Board of Public Roads Classifications and Standards. Welcome, Mr. Hynes, if we could have you state and spell your name to get yourself started, that would be appreciated. [CONFIRMATION]

JOHN HYNES: John M. Hynes, H-y-n-e-s. [CONFIRMATION]

SENATOR DUBAS: If you just want to give us a little bit about your background, your appointment to this position, your interest in the position. [CONFIRMATION]

JOHN HYNES: Except for about five months, I've been a lifelong resident of Nebraska, still live in the same county. I graduated from the University of Nebraska in 1967. Worked here in Lincoln for Green Company for three years; they moved me to Des Moines for about five months. I got the chance to come back and farm at that time and took it, and that's where I've been ever since. I have three children, my wife, they're all relatively close to home, Kearney and Gibbon, and seven grandchildren. I've been on the Adams County Board of Supervisors since 2003, I guess it was. I was appointed to fill an unexpired term and been elected twice. And I'm the chairman of the Adams County Board of bridge...road and bridge department. And I guess that's about the extent of my experience. [CONFIRMATION]

SENATOR DUBAS: Very good. Are there questions for Mr. Hynes? Senator Brasch. [CONFIRMATION]

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SENATOR BRASCH: Thank you, Madam Chairman. And I also want to thank you for your willingness to serve, Mr. Hynes. I noticed in your interests, it's agriculture, economic development, and finance and government. How do those three tie together? Do you think one is related to the other? Do you think your role in your new position here will affect any of those? [CONFIRMATION]

JOHN HYNES: Oh, I guess it has been kind of a...maybe a combination of everything. I was business major in college and thought maybe I wanted to be a CPA as such, but I got...that never materialized. I guess I didn't have the interest to do. But I think that and some acquaintances from having worked there got me through the '80s when everything was tough. I had a...happened to have a elevator business, part owner of it with some of the people I used to work with, and that kind of offset the downside of agriculture at that time. And I think it is just, to me, it's my overall perspective of a little here, a little there, maybe help you make the right decision. [CONFIRMATION]

SENATOR BRASCH: Sounds good. And as far as our agriculture and our rural communities, do you feel the road plan moving forward is adequate? [CONFIRMATION]

JOHN HYNES: Well, there isn't the money to go around. But, oh, I guess maybe, baseline, I mean, well, back when I started farming, which would have been '71, you probably were getting a hundred bushel an acre. Now guys are pushing 250 on a lot of the acres, and a lot more of it is irrigated, so those roads are taking a...well not abuse, but certainly being used a lot more than they ever have been, and...But that's progress, I guess. [CONFIRMATION]

SENATOR BRASCH: It's economic development, too. [CONFIRMATION]

JOHN HYNES: Yeah. [CONFIRMATION]

SENATOR BRASCH: I have no other questions. Thank you for being here today. [CONFIRMATION]

SENATOR DUBAS: Other questions? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Madam Chair. And just want to say thank you for your willingness to serve in this capacity. And I see as a resident of Holstein, you're represented by a really fine state senator, sitting there behind you, Les Seiler. [CONFIRMATION]

JOHN HYNES: He almost had to represent me today. [CONFIRMATION]

SENATOR SMITH: Well, thank you again for your willingness to serve.

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[CONFIRMATION]

SENATOR DUBAS: Other questions for Mr. Hynes? Senator Hadley.

[CONFIRMATION]

SENATOR HADLEY: Chairman Dubas, Mr. Hynes, the only question I had on your sheet that you gave us is that I can't imagine why you would leave such a great institution as Kearney State to come down to the University of Nebraska in Lincoln to get a degree. (Laughter) We'll forgive you, you know, in hindsight. Thank you.

[CONFIRMATION]

JOHN HYNES: I wasn't cut out to be a teacher. That was the reason.

[CONFIRMATION]

SENATOR HADLEY: Oh, that was the reason. That's a great answer.

[CONFIRMATION]

SENATOR DUBAS: Senator Hadley has some kind of a bias about Kearney.

[CONFIRMATION]

SENATOR HADLEY: I have some bias toward Kearney State. [CONFIRMATION]

SENATOR DUBAS: I'm not sure exactly what it is. [CONFIRMATION]

JOHN HYNES: I have two children living...grown children living in Kearney and five grandkids and two more in Gibbon. [CONFIRMATION]

SENATOR HADLEY: Good, all in the great district of 37, so I appreciate that.

[CONFIRMATION]

JOHN HYNES: Okay. [CONFIRMATION]

SENATOR DUBAS: Other questions for Mr. Hynes? I would have one for you. I would imagine that your work as a county supervisor, that's mainly your responsibility is dealing with roads and infrastructures, so were there any surprises when you took this position on the board as far as the work that they do, or were you pretty familiar with what those responsibilities were? [CONFIRMATION]

JOHN HYNES: Well, I had an idea of it, but, I mean, as far as, say the background of the people on there, why I don't know that I was aware of all that. But most of them have an engineering degree or a county supervisor...an engineering degree, or a couple cases, I guess, surveyors at least, and that wasn't my background, but I guess that my perspective is maybe more from the layperson's thing, but it's been very interesting.



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[CONFIRMATION]

SENATOR DUBAS: Well, I would see your perspective as being an important part of that board. So if you feel like what you bring forward to that board that they're listening to you, they appreciate that perspective you're bringing into the conversation?

[CONFIRMATION]

JOHN HYNES: Yes. [CONFIRMATION]

SENATOR DUBAS: That's good to hear. All right, any other questions? Well, I, too, would like to thank you for your willingness to serve and also you taking the time out of your day to come down. I mean, we don't ask you a lot of questions, but it is important to be able to put a face with a name and have that opportunity to ask questions, so we do appreciate you taking the time to come and visit with us today. [CONFIRMATION]

JOHN HYNES: Okay. [CONFIRMATION]

SENATOR DUBAS: Thank you so much. [CONFIRMATION]

JOHN HYNES: Thank you. [CONFIRMATION]

SENATOR DUBAS: (Exhibit 2) Are there any proponents for Mr. Hynes? I do have one letter of support from Larry Dix with the Nebraska Association of County Officials. Any opponents? Anyone in the neutral? Seeing none, that will close our confirmation hearings for Mr. Hynes. And we will open up the hearing now for Mick Syslo, also Board of Public Roads Classifications and Standards. [CONFIRMATION]

MICK SYSLO: Good afternoon, Chairman, senators. [CONFIRMATION]

SENATOR DUBAS: Welcome. Have you state and spell your name and then just give us a little bit of background about yourself or anything you'd like to share; we'd appreciate it. [CONFIRMATION]

MICK SYSLO: Okay. My name is Mick Syslo, M-i-c-k S-y-s-l-o. I was born on a farm and raised on a farm from out near Columbus, Nebraska. Loved that lifestyle and still go back to help out with that from time to time. In 1991, I came down to Lincoln to attend the University of Nebraska in which I entered into the civil engineering department. In 1994, I think, I began work with the Nebraska Department of Roads in their co-op intern program, working part-time with them, so I've been with the department now for almost 19 years. Upon graduation in '96, was married, and now I have two children, and I've continued my career with the Department of Roads. My first ten years with that career were in roadway design. Like Randy, I had the opportunity in the '90s to be part of some large capital improvement projects and expressways and some interstates, very exciting

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time and enjoyable. In 2004, I accepted a payment design engineer position over in Materials and Research in which I maintained that position until 2011, October, in which I accepted a position as the materials research engineer for the Nebraska Department of Roads. As that position, now we administer the research program with the University of Nebraska, as well as our inhouse. And we also, with the materials side of it, the division manager, the division engineer, we coordinate, facilitate, and run our materials testing program. [CONFIRMATION]

SENATOR DUBAS: Very good. Questions for Mr. Syslo? Senator Hadley.  
[CONFIRMATION]

SENATOR HADLEY: Senator Dubas, thank you so much. Quickly, Mr. Syslo, tell me what the Board of Public Roads Classifications and Standards does. What are they basically responsible for? [CONFIRMATION]

MICK SYSLO: Sure. It's part of...what we do is there is several facets of that board. One of them is to take into account what we...exceptions are...when they come into meet design standards, they present their findings to the board on...in areas in which they cannot meet, and we call that a relaxation to the standards. We present those findings in which we make a decision, based on our backgrounds and what the engineering presented that...whether we would accept that and document the reasoning for that to make sure that we adhere those. Also, we approve and maintain the one- and six-year programs that each county would bring forth. Another large component of what we take on to account is when the cities...or when the counties come in with...for upgrading minimum maintenance roadways, it's kind of an obligation of the board to maintain it, the fact is that these are minimum roadways. We want to make sure they're maintained safety, but yet we do not want to spend a large expenditure of money on a minimum-maintenance road. And so when they come in with any kind of an improvement to that roadway, they present that to the board for our approval.  
[CONFIRMATION]

SENATOR HADLEY: Thank you. [CONFIRMATION]

SENATOR DUBAS: Other questions? Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Madam Chairman. And I also want to thank you for your willingness to serve and your work ongoing and, with the materials that you are using, and from spending a day with the maintenance crew in the district, I've learned that materials are changing and improving. And some of the maintenance that we're doing, we're looking forward into new and improved materials that sustain weather and conditions in Nebraska, is that correct? [CONFIRMATION]

MICK SYSLO: That's correct. [CONFIRMATION]

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SENATOR BRASCH: And then another is I happened to also go on another tour in our district with Nucor where I see they have quite a bit of...and I always try...is it slag?  
[CONFIRMATION]

MICK SYSLO: Sure, yes, that's correct. It's a by-product. [CONFIRMATION]

SENATOR BRASCH: Yes, that...is that something that your division is looking at incorporating into the materials at any point? Or is that taking place today?  
[CONFIRMATION]

MICK SYSLO: We do a lot...there is actually steel manufacturing...slag is by-product which we...there are several by-products such as fly ash that...from burning coal in which we do incorporate those kinds of materials currently. As with everything, it's an ever-evolving, ever-changing process so there's always efficiencies that are being developed and researched, but yes, we do use slag and currently with that we blend it with our cements to allow blended...with that cement, various...the contractors come in with their different blends to...for economic purpose, as well as some benefits that we get from it from the materials side of it. But yes, we are continuing to always expand those horizons with renewable...or not renewable, but by-products that are better utilized rather than going to landfills. [CONFIRMATION]

SENATOR BRASCH: Very good. Thank you. And thank you for your work ongoing and willingness to serve. [CONFIRMATION]

SENATOR DUBAS: Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, Madam Chair. Thank you, sir. A question for you has to deal with...in your time serving in Department of Roads, about costs. I mean, there's a big driver for everything we do with the input costs of materials. I mean, would you have an opinion, if you wouldn't mind, of those costs? Have those costs been linear in their escalation as opposed to other inflationary-type things that we see? We've seen certain aspects with costs are being driven up in a faster rate for similar materials and other materials, and when we look between inputs for concrete or asphalt, or talk about slag and the...some of the...some of the framework related about when certain projects pierce at a certain level. I know, like, at the federal level when they talk about project size, you have different category sizes with the cost. And that as costs go up, have we adjusted our category ranges appropriately because of what the capability to perform is not necessarily tied directly to what the inflationary costs of some things are today. If I'm making sense there. [CONFIRMATION]

MICK SYSLO: I believe so. [CONFIRMATION]

SENATOR PRICE: Thank you. [CONFIRMATION]

MICK SYSLO: Yes, with all our inflation and becoming, say, global with our markets. Obviously, when China, several years ago, was expanding and growing, a lot of material costs that went into highway construction were globally being used up. And so by that concept, obviously, the price is then...the demand became much more. So yes, we...from the highway perspective, our materials have seen increases. Those markets still continue to fluctuate today which affects our markets here in the United States. When we start looking at how we look at projects, and again it kind of comes into the life-cycle costs that we...when we look at materials and what we expect for...before we come in and have a rehab strategy, we also need to look at constructability, whether it's an existing roadway and how we can rehab it under traffic and maintain it and keep it open each night, those kind of items, also, are a large player in what we decide for material, along with the distress and what the roadway is in need of. That all comes into play, along with, and like you say, the up-front costs, and we constantly are trying to maintain and make sure that we are utilizing those materials in the most economical way possible. You see swings as far as...if the asphalt market is low, then you see, maybe, more asphalt being put on the road versus, as I say, a cement product within the concrete can be a driving force for us. But we look at those at those along large scales, it's...just because it's doing well today or the next year or two doesn't necessarily carry out the whole life cycle. And we look at a life cycle; we have to look at expected traffic, expected impacts with that, and then the maintenance costs that we associate with that as well. [CONFIRMATION]

SENATOR PRICE: And then, if you don't mind, in a follow up to that, when I look at the ability of the new...new capabilities, both in engineering materials and things like...like box culverts; they didn't make those 25 years ago. You couldn't go out to the corner store and get one poured and put it in. Are you seeing changes with that type of...you know, as to change the industry, impacting and helping you get things done in a quicker manner because you can do things differently like that, versus the standard way of doing it, say, 15, 20 years ago, 30 years ago? [CONFIRMATION]

MICK SYSLO: Sure. As a whole yes, I mean, and we look at the transportation industry, obviously, get in and get out as quick as you can, especially in larger, more dense areas. You see that in California where...California-type populations where impacts are tremendous and traffic and the users; and with Nebraska, we still have a benefit of not having those kind of congestion issues in most of the state. With that, relative to how that plays with our products out there, when you look at construction of a box culvert, whether it's the standard formed, I mean build it in the field, versus precast and then ship it out. We have seen some of that progress in the state of Nebraska, but not as much as the rest of the nation because all those quick build a bridge and haul it over and install it do come with costs. And, as we see the technology advance, we're seeing those costs start to come into play, but as far as the state that's a little more rural like

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Nebraska, we haven't seen that...quite the drive or the economic benefit to go to a full-manufactured product to come and replace it versus to build it in place.  
[CONFIRMATION]

SENATOR PRICE: Thank you very much. [CONFIRMATION]

MICK SYSLO: Yeah. [CONFIRMATION]

SENATOR DUBAS: Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you. And I wanted to thank you again. Senator Price's question brought me to another question. That material costs are only one portion of a road cost, that the environmental impact cost... [CONFIRMATION]

MICK SYSLO: That's correct. [CONFIRMATION]

SENATOR BRASCH: ...is perhaps is even greater than materials or equal to? How is that proportionately? [CONFIRMATION]

MICK SYSLO: When we come into costs, it's...I mean, it's not a direct cost, necessarily, I mean in dollars and cents, but it is an impact to the environment. So part of our process, especially on the federal side, is there is a formal process called the NEPA in which the environmental process has to be documented and to minimize those impacts. And so that does play a very large role in all of our projects on scheduling impacts and direction in which we go. [CONFIRMATION]

SENATOR BRASCH: Very good. Thank you. I've no other questions.  
[CONFIRMATION]

SENATOR DUBAS: Other questions? I would have one kind of picking up where Senator Hadley left off. [CONFIRMATION]

MICK SYSLO: Okay. [CONFIRMATION]

SENATOR DUBAS: If we didn't have the Board of Public Roads and Classification and Standards what...what would that do as far as the work that the roads department does, what do you bring to that? [CONFIRMATION]

MICK SYSLO: Yeah, as far as with the boards of classifications, it really standardizes, and that's the main focus is to make sure that as you have a driver using a roadway, they have driver expectations. And we want them to not only have state standards, but have that road meet those expectations. The uniformity that these boards provide across the state provides that level of safety, as well as that uniformity.

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[CONFIRMATION]

SENATOR DUBAS: Very good. Good perspective to understand. Any other questions? Seeing none, I, too, would like to thank you for your willingness to serve and for coming forward today. We appreciate you taking the time out of your day. [CONFIRMATION]

MICK SYSLO: Thank you. [CONFIRMATION]

SENATOR DUBAS: Do we have any proponents? Any opponents? Anyone in the neutral? Seeing none, that will close our confirmation hearing for Mr. Mick Syslo, and we will move on to the bills for today. So first up we have LB158, Senator Seiler. Thank you for your patience. Welcome. [CONFIRMATION]

SENATOR SEILER: Chairman, members of the committee, my name is Les Seiler, S-e-i-l-e-r, first name is Les, L-e-s, and I serve the 33rd District. I bring LB158 for a small change to comply with federal law. On January 10, the...Randall D. Peters, the director and state engineer received a letter from the National Highway Traffic Safety Administration that Nebraska was not in compliance with the mandatory license suspension requirement of Section 164 for the year 2013. The bill that LB158 does, and what I want to do is just give you a bird's-eye view, or a skeleton, and then the witnesses that follow will fill out the flesh on this bill. Basically, our current law, before LB158, simply says that, for multiple offenders, that you would have a 45-day hard-license suspension. Then you could apply for ignition interlock device for one year, but it overlapped. The new federal law says you can't do that. You have to have the 45-day suspension and then attach the one-year interlocking device for your...the rest of your penalty. So, you're actually in a 45 days where you cannot drive, and then you go to a one-year ignition interlock device. This was submitted...LB158 was submitted to the National Highway Traffic Safety and on January 18, 2013, we received an e-mail from the Office of Chief Counsel for the National Highway Safety Administrator saying that LB158, as written, assuming it's confirmed as written, complies with the federal law. What this does is frees up \$6.2 million in annual federal highway program funds. So it's a pretty simple change in the Nebraska law to get into compliance. And with that, I'll answer any questions that you have. [LB158]

SENATOR DUBAS: Very good, Senator Seiler. Questions for Senator Seiler? [LB158]

SENATOR SEILER: That was easy. [LB158]

SENATOR DUBAS: Thank you. [LB158]

SENATOR SEILER: There will be witnesses to fill you in better. [LB158]

SENATOR DUBAS: Very good. We have our first proponent for LB158. Welcome back,

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Director. [LB158]

RANDALL PETERS: (Exhibits 3 and 4) Thank you. Good afternoon, Chairman Dubas and members of the Transportation Committee. My name is Randy Peters, R-a-n-d-y P-e-t-e-r-s, and I am director, state engineer of the Nebraska Department of Roads. I am here to testify in support of LB159 (sic), and I would like to thank Senator Seiler for introducing LB158 on behalf of the NDOR. As the senator said, this legislation is needed to bring Nebraska back into compliance with the federal mandate on Immobilization of Repeat Offenders for Driving Under the Influence. That mandate is found in Title 23, Section 164 of the U.S. Code. Thanks to diligent work by this committee and the Legislature over the past several years, Nebraska's DUI and ignition interlock laws were, in fact, fully compliant with the federal provisions until last fall, when the Federal Highway Administration penalized Nebraska without any notice due to a change in the federal law on October 1, 2012. That legislation was the new federal highway bill, the Moving Ahead for Progress in the 21st Century Act or MAP-21. Two days after the new law took effect, the Federal Highway Administration, without notice, slapped a penalty on core federal funds for federal fiscal year 2013, the current fiscal year which began last October 1. That Section 164 penalty takes \$6.2 million that would have gone to mainline highway projects and reassigns those funds to safety projects. The NDOR has already transferred the first \$2.9 million in that manner, and the department anticipates having to transfer the \$3.3 million balance once Congress makes a full appropriation for federal fiscal year 2013. As I'm sure you know, Congress has only appropriated funding for the federal government through March 27 of this year to date. The handout that you have shows the applicable federal citations and the time sequence that led us to the bill that is before you today. Several points will jump out. First, the state was sanctioned, effective the day it came out of compliance, without any recourse. Second, implementation of the sanction was the first notification that the state received. Third, Nebraska's official notice of noncompliance arrived on January 10 of this year, which is the reason that LB158 is just a starting point of Nebraska's options. Fourth, and most important, Nebraska will be sanctioned for fiscal '14 and every year thereafter unless the state of Nebraska becomes compliant with the new provisions. Returning to compliance with Section 164 is an urgent priority for NDOR. The department will not be able to absorb \$6.2 million in annual core funding reductions going into the future. The strategy for FY '13 is to reassign those funds to projects that improve safety features of a highway at a specific location. Already in fiscal '14, the department will run the risk of not being able to obligate all of those funds for safety projects in time, thereby losing some funds outright. That brings me to the contents of LB158. As introduced, the bill makes pinpoint changes in two of Nebraska's DUI interlock statutes. LB158 simply strikes language, allowing a second offender to use an interlock for the balance of a one-year revocation period. Instead, the bill requires the interlock to be installed for a full year. The current 45-day "no-driving-hard suspension" is left in place, followed by that full year of ignition interlock restricted driving. This has the effect of extending the current combined punishment by 45 days. The National

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Highway Traffic Safety Administration has reviewed LB158, and they have informed us by e-mail that it is compliant with Section 164. Since this is only one of a few policy options, the NHTSA Office of General Counsel has agreed to review any amendments adopted by the committee, so that we have ongoing indications of our compliance with the federal mandate. NHTSA is the compliance overseer, and as I indicated earlier, Federal Highway Administration is the penalty enforcer. Following my testimony, DMV Director Lahm will address administrative issues and broader policy options this committee may want to consider. From the perspective of NDOR and the Highway Program, my hope is you will find a workable way to bring Nebraska into Section 164 compliance for FY '14, which means advancing and passing a bill this session, even if only as an interim step in a broader balancing process. Thank you for the opportunity to testify. And once again, I want to thank Senator Seiler for carrying LB158. This concludes my remarks, and I would be glad to answer any questions you may have. [LB158]

SENATOR DUBAS: Thank you, Director Peters. Are there questions? So, am I understanding that we may need to do more than what this bill is telling us we need to do, or this is a beginning step to get us headed in the right direction? [LB158]

RANDALL PETERS: MAP-21, as I understand it, had...allows for other policy options during the one-year interlock...opens up new destinations you could legally drive to with an interlock device. So, that's what we're talking about. I don't think we have further compliance issues. [LB158]

SENATOR DUBAS: Okay, so we could come back if we wanted to add those things, but as far as compliance, this is what we need to do for compliance. [LB158]

RANDALL PETERS: That's correct. [LB158]

SENATOR DUBAS: Very good. There's no e-clause on this. Would you think that we need to have an e-clause on this legislation? [LB158]

RANDALL PETERS: Well, the...without an e-clause, the law goes into effect in July. [LB158]

SENATOR DUBAS: Ninety days from the date of signing. [LB158]

RANDALL PETERS: And so the next sanction would occur if we were not in compliance by October 1, so... [LB158]

SENATOR DUBAS: So we do have some time. [LB158]

RANDALL PETERS: We have the time. [LB158]



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SENATOR DUBAS: When we passed this interlock legislation in the past, were we...I'm going to assume we thought we were in compliance, is that correct? [LB158]

RANDALL PETERS: We did...and we were in compliance. [LB158]

SENATOR DUBAS: And so, typically, when we are found to be out of compliance, don't they give you a little leeway to get back in compliance? Do you understand or know why there was just this immediate sanction against us? [LB158]

RANDALL PETERS: We're...we're...as you know from my confirmation, this is my first time around the block with this, but we're a little bewildered about why there was this lack of due process. [LB158]

SENATOR DUBAS: I guess you don't have any control over what the feds do to you either, so I certainly understand that. But I appreciate you bringing this to our attention. Senator Price. [LB158]

SENATOR PRICE: Thank you, Madam Chair. So you know of any other states that were similarly treated this way by the federal government? [LB158]

RANDALL PETERS: There were a handful, I can't recite them all, but 10 or 12 other states found themselves in the same position. [LB158]

SENATOR PRICE: And they were all penalized without the due process because of a new law that we didn't have anything to do with came into effect? [LB158]

RANDALL PETERS: That's correct. [LB158]

SENATOR PRICE: Thank you. [LB158]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for coming forward today. [LB158]

RANDALL PETERS: Thank you. [LB158]

SENATOR DUBAS: As our next proponent comes up, I forgot to kind of take a show of hands for the number of people who are here to testify today on LB158. How many here...are here to testify? Proponents? Opponents? Neutral? Okay, very good. Looks like we only have possibly one other testifier, so. Welcome. [LB158]

RHONDA LAHM: (Exhibit 5) Thank you, Chairman Dubas and members of the Transportation and Telecommunications Committee. My name is Rhonda Lahm,

R-h-o-n-d-a L-a-h-m, director of the Department of Motor Vehicles. I'm appearing before you today to offer testimony in support of LB158. As explained by Director Peters, LB158 was introduced to bring Nebraska into compliance with federal law so as not to jeopardize the loss of federal funds for highway road projects. The Moving Ahead for Progress in the 21st Century Act, also known as MAP-21, enacted by Congress in 2012, made three changes in DUI sentencing and ignition interlock requirements for persons convicted of second and subsequent offenses that affect Nebraska's compliance with federal law. The three changes are: (1) allowing an alternative to a one-year license revocation where the offender may have an ignition interlock device installed on his or her vehicle for not less than one year; (2) dropping all federally mandated requirements for a hard no-drive period for repeat offenders; and (3) dropping all federally mandated driving limitations on repeat DUI offenders who have an ignition interlock device and permit. With respect to items 2 and 3 above, the state does not have to eliminate no-drive periods or driving limitations, but a state is no longer federally mandated to impose no-driving periods or driving limitations on repeat DUI offenders. The Department of Motor Vehicles understands that LB158 as drafted adopts minimum requirements of the new law, which would satisfy the federal regulators. Because current Nebraska DUI law was designed to comply with the much different requirements of SAFETEA-LU, the prior federal highway law, LB158 as introduced, when grafted onto existing Nebraska interlock law makes changes which would create accurate tracking of court sentences difficult and potentially create conflict between automatic license revocations and court sentences. A bit of history of the interlock law in Nebraska may help to illuminate the current issues raised by LB158. In 1993, the Legislature passed LB564 which allowed the courts to issue a probation order for a DUI offender, allowing an interlock permit with unrestricted driving privileges, and which also provided that, upon installation of an ignition interlock device, the points received as a result of the DUI conviction would be removed from his or her driver abstract. Since that time, Nebraska's interlock law has been amended many times. In recent years, there have been annual changes: LB736 in 2008, LB497 in 2009, LB924 in 2010, LB667 in 2011, and LB751 in 2012, to the ignition interlock law for many reasons: a desire to increase penalties for DUI offenders, a search for effective alternatives to traditional DUI penalties, and to keep Nebraska in compliance with federal law so as to continue to qualify to receive federal funds for road building. Over the years, Nebraska has moved from limiting interlocks to DUI offenders with probation orders, to the current vision of Nebraska Statute 60-6,197.01 which mandates that the court must order an ignition interlock device be installed for all repeat offenders and which is coupled with a law that allows a driver subject to an administrative license revocation to have the option of having an ignition interlock device while under revocation in lieu of asking for a hearing. For the last several years, the interlock law has required a hard no-driving period before a repeat offender could be issued an ignition interlock permit while under a license revocation order from the court or an administrative license revocation. These hard no-driving periods and driving limitations for repeat offenders were a requirement of SAFETEA-LU and as a result were placed into Nebraska law. LB158, as introduced,

does not change the current no-drive periods required in Nebraska law as a result of SAFETEA-LU. If enacted, that would cause a one-year minimum ignition interlock installation requirement to be incongruent with a court order for a one-year license revocation. The current language of LB158 requires courts to order DUI second offenders to have a one-year license revocation and a minimum one-year ignition interlock installation after a 45-day no-drive period. The DMV would not be able to track the date that a driver has an interlock installed as that is done by private vendors. The DMV tracks the date of court orders the license revocation, and it also tracks the date that a driver is issued an ignition interlock permit through an electronic interface between the justice system and the DMV abstracting system. With the current no-drive period requirement left in the law, the one-year license revocation begins at sentencing and will be over before the ignition interlock installation period is completed because the driver has to wait through the current required no-drive period. Then, at the end of the driver license revocation period, the driver would be eligible to reinstate his or her normal drivers license before he or she has completed the ignition interlock one-year installation requirement. The DMV would have no authority to delay reinstatement of the offender's driving privileges until the ignition interlock installation period required by MAP-21 is complete. Under such circumstances, the DMV could not show compliance with the one-year ignition interlock installation requirement if audited for compliance. When the committee considers LB158, DMV respectfully requests that consideration be given to the policy the Legislature wants to set for repeat DUI offenders while dealing with the changes brought by MAP-21. There are alternatives to the policy presented in LB158 which would still comply with MAP-21 provisions. LB158 could be amended but retain the hard no-drive periods previously required by federal law. The timing incongruity between the license revocation period and the interlock installation requirement could be cured by extending the license revocation period for second offense DUI to one year and six months or the date at which the offender has had an ignition interlock device installed for one year. This would allow offenders to get an ignition interlock device installed and complete the required minimum one-year time period to have an ignition interlock device installed prior to the expiration of the license revocation period. LB158 could also be amended to remove no-drive periods or hard suspensions since these are no longer a federal requirement, and the one-year plus 30- to 45-day driver license revocation and one-year interlock installation requirement would be more congruent, giving offenders time to get an ignition interlock device installed in the 30- to 45-day period after the court sentencing. Both of the above alternatives retain the current Nebraska practice of requiring the court to sentence a repeat DUI offender to both a hard-license revocation period and a period of ignition interlock use. MAP-21, however, makes the hard one-year no-driving sentence an alternative to a minimum one-year ignition interlock installation. It would be a distinct change in Nebraska DUI law, but an amendment could be crafted for LB158 that borrows from ideas pioneered in LB667 in 2011 to create an incentive for repeat offenders to install and keep an ignition interlock device on their vehicle with no-hard suspension. Since MAP-21 allows a state to enact minimum alternatives for sentencing those convicted of a repeat DUI offense,

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Nebraska could give an offender at any level of DUI offense a choice. For example, a second offense DUI there could be a choice of a hard-driver license revocation for a minimum of 18 months or one year of ignition interlock installation to begin on the date the driver applies for and is issued an ignition interlock permit. The shorter period for the interlock could be the offender's choice through a plea bargain or ordered as the court decides is just. It is not exactly a mandatory interlock requirement for all repeat offenders, but it is an alternative that could lead many offenders to opt for the interlock opportunity similar to the provisions of LB667. Whichever policy the committee may recommend, the Department of Motor Vehicles is willing to work with the committee, Senator Seiler, and other interested parties to carry out the recommended policy that meets federal requirements and eliminates conflict with current law. Chairwoman Dubas, thank you for your time this afternoon; I'll be happy to answer any questions that you or the committee may have. [LB158]

SENATOR DUBAS: (Exhibit 6) Thank you, Director Lahm. Are there questions? Seeing none, thank you very much. Additional proponents for LB158? I have one letter of support from Andrea Frazier with MADD. Any other proponents? Opponents? Anyone in the neutral? [LB158]

COLEEN NIELSEN: (Exhibit 7) Good afternoon, Chairman Dubas and members of the Transportation and Telecommunications Committee, my name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. The Nebraska Criminal Defense Attorneys Association has reviewed LB158, and it does not have any desire to interfere in any way for the funding of the state of Nebraska and the Department of Motor Vehicles. However, we have become aware of the fact that NHTSA has again changed their rules. And as Director Lahm has indicated to this committee, they do it quite often. However, we believe that the changes recently made by MAP-21 would make it easier to administer if adopted. LB158 doesn't embrace all the changes in MAP-21, as the director has indicated. And it may be something that this committee would want to consider. The two things that the defense attorneys are concerned about in this particular bill is the 45-day waiting period. Now, as I was listening to the director's testimony, I'm not sure if I clearly understand this, but as I understood the way that MAP works now is that we could eliminate in Nebraska a 45-day waiting period as long as the law was clear that someone was suspended with an interlock device for a full year. The reason that it's not working now is because you get credit for that 45 days within that interlock period. So for the first 45 days, when you're a second offender, you aren't able to drive, and then the way our law reads is that you can have the interlock for the remainder of that year. If we make the law so that someone has that interlock device on for an entire year, then, I believe, that we're in compliance. Secondly, under the law, and what NHTSA had required before is that there had to be certain restrictions on driving if one were placed on probation while they had the interlock device in place. And so those provisions included, and we put that into law to and from work, to and from

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school, an alcohol treatment program, or an ignition interlock service facility. Now the interesting thing about this is that a couple of years ago, one of the things that we had also placed into our law in Nebraska was the fact that you could also drive to and from your probation office. And the feds, the federal government, NHTSA, said, "No, you can't do that, that's too much; you can't drive to and from your probation office." And the state of Nebraska here, the Governor's office, DMV, the committee worked really hard to try to get that exception within the law. And they said absolutely not. So we passed it without the probation office. Now, under MAP-21, none of these restrictions are required in the law. So as long as you have an interlock device on for a full year, as I understand it, we no longer have to monitor where these people go. So they can go to their probation office, or to work. Now one of the reasons that the 45-day waiting period is problematic to the defense attorneys is...what they tell me is that this law adversely affects those individuals who actually have a job because they can't drive to and from work for that 45-day period. And many of them, as a result, lose their jobs. It's our hope that, if we...if we are in compliance and can remove that 45-day waiting period, that we could actually keep people driving within the law and not driving while they are suspended and therefore, you know, in the end saving the state money by not having to prosecute or pursue or administer this aspect of the law. So with that in mind, I do have...I did send up through Senator Seiler's office a draft of what that may look like; and I would like to send that to the committee so that you can review that as you deliberate on what you'd like to do with this particular law. So I'll be doing that shortly. [LB158]

SENATOR DUBAS: Very good. [LB158]

COLEEN NIELSEN: I'd be happy to answer any questions. [LB158]

SENATOR DUBAS: Thank you, Ms. Nielsen. Questions? Senator Hadley. [LB158]

SENATOR HADLEY: Thank you, Senator Dubas. It's just that I...I guess it's more of a comment. Acronyms: Moving Ahead for Progress in the 21st Century Act, MAP-21, would the opposite be moving ahead for "regressivity?" I mean, isn't that...Moving Ahead for Progress, what else would you do if you move ahead? Never mind. They must get somebody above my pay level to figure those things out. [LB158]

SENATOR DUBAS: Other questions? If you will forward that information to... [LB158]

COLEEN NIELSEN: I will. [LB158]

SENATOR DUBAS: If you want to just send it to me, we can make sure that it gets to the rest of the committee members then. [LB158]

COLEEN NIELSEN: I will do that. Thank you. [LB158]

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SENATOR DUBAS: Very good. Thank you so much. Further neutral testimony?  
Welcome. [LB158]

NICK PADEN: Chairman Dubas and members of the committee, my name is Nick Paden, spelled N-i-c-k P-a-d-e-n, representing Life Safer, an ignition interlock company. Wanted to come in today under the neutral capacity. First off, we completely support the bill, and I know it doesn't make sense that I didn't come up to support but more today to offer myself as a resource as you continue to work through this process and put...hopefully advance something to the floor. We thank Senator Seiler for his work and for what he's done with this bill. And we are also working with the defense attorneys, as well; I wanted to make you aware of that and support their ideas that you just heard. But more today I'm here neutrally because I know that sometimes there is questions with ignition interlocks, and I just wanted to offer myself as a resource if there were questions as to what it is, how it works. I've spent time at our location here in Lincoln and tried to familiarize myself with the ignition interlocks. So if there's any questions, I would try to answer. [LB158]

SENATOR DUBAS: Very good. Are there questions for Mr. Paden? Seeing none, thank you for making yourself available. [LB158]

NICK PADEN: All right. Sure. Thank you. [LB158]

SENATOR DUBAS: Further testimony in the neutral? Seeing none, Senator Seiler, would you like to close? [LB158]

SENATOR SEILER: I think they did a good job of filling out the skeleton that I laid out for you. The one thing that I've learned dealing with the federal government and the tax law, which I practice, is that if you've got an agreement with the federal government that they're approving something, you grab it as fast as possible. So what I'd like you to consider is the emergency clause coming out of committee. The quicker we can get it, the better we'll be. Thank you very much. [LB158]

SENATOR DUBAS: Absolutely. Thank you. That will close the hearing for LB158, and we will move on to LB386, Senator Christensen. [LB158]

SENATOR CHRISTENSEN: (Exhibits 8 and 9.) Thank you, Madam Chair and members of the Transportation Committee. My name is Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LB386. LB386 amends Section 39-1802 which gives authority to the county board and road overseers to engage in construction and maintenance of county roads, drainage facilities, along with authority to go onto private property when necessary to accomplish said construction and maintenance. This section also requires the county to pay for any

damages to the property outside the right-of-way. LB386 seeks to improve the due process in this section, to provide proper notification, and to better protect the property owners and the county when disagreements arise between them regarding the necessary entry onto the property and any claim encroachments into the right-of-way by the county road overseer. The bill would require 10-day notice to be given to the record property owner by the county or road overseer whenever the county has plans to enter onto the property of the right-of-way for purposes authorized in this section or if they plan to modify, relocate, remove, or destroy any encroachment private property in the right-of-way during construction or maintenance of drainage facility. We would also require that a record of the condition of the premises, or a record of any claimed encroachment of the road right-of-way be used in the event of damage to private property. In addition, LB386 would allow the record owner five days to respond to the county board and overseers upon notice. The lack 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 his situation for the entry into the record and distribution to the members of the committee. Mr. Klein had 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 decided to clean the ditch to address the flooding issue. Without proper notification and in the process working on the drainage ditch, the county removed 900 foot of Mr. Klein's permanent fence, claiming that it was encroaching the county road 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 their claim. The county cited Section 39-1802 as their authority to remove the fence and has refused to pay for 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 this act. However, when looking into Section 39-1802, that the county uses authority to remove Mr. Klein's fence, there is no proper due process described. I believe that Section 39-1802 does not have proper notification and due process like the County Drainage Act which is why I chose to introduce LB386. As what sometimes happens in implementation of law, what is actually being practiced in the 93 counties can sometimes be slightly different, and it's not highlighted until there is a problem. I think that this is what is happening here. I believe LB386 allows for the proper notice, allowing absentee landowners the proper time, amount of time to respond to county plans and claims of encroachment when working on construction and maintenance of drainage facilities and roads. I've been working with NACO on this legislation and would like to offer an amendment...Has that been handed out, or do I have it in the wrong file? Sorry about that. Okay. The proposed amendment simply adds that in the event of an emergency that notice requirements may be waived. This allows for immediate access if there are safety issues were to arise. I would be glad to work

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with the committee and NACO to help move us forward in providing better due process for protection landowners and county regarding the maintenance of drainage facilities in this section. Thank you for consideration of LB386, and I urge you to pass it to General File. [LB386]

SENATOR DUBAS: Thank you, Senator Christensen. Questions? Senator Price. [LB386]

SENATOR PRICE: Thank you, Madam Chair. Senator Christensen, in following your opening there, I'm glad we got to somewhere at the end, the idea during that emergency...the amendment that you're proposing...emergency access, does that also say that they can go ahead and remove...do things without having to collect any evidence of the condition prior to their taking action? [LB386]

SENATOR CHRISTENSEN: I guess...I got to see the amendment again specifically, but I wouldn't want to remove the requirement of taking proper pictures or... [LB386]

SENATOR PRICE: Good. [LB386]

SENATOR CHRISTENSEN: ...to protect the county as well as the landowner. [LB386]

SENATOR PRICE: Good. Just wanted to make that a matter of record. Thank you. [LB386]

SENATOR DUBAS: Other questions? Seeing none, we'll get the amendment handed out, and there may be questions when you close. [LB386]

SENATOR CHRISTENSEN: Okay. [LB386]

SENATOR DUBAS: Thank you, Senator Christensen. Are there proponents for LB386? [LB386]

LARRY DIX: Senator Dubas, members of the Transportation Committee, my name is Larry Dix; I'm executive director of the Nebraska Association of County Officials here in support of LB386. [LB386]

SENATOR DUBAS: Excuse me, Larry, can we have you spell your name, please. [LB386]

LARRY DIX: Yes, all right. My name is L-a-r-r-y; last name is Dix, D-i-x. The bill that's in front of you...Certainly, Senator Christensen and us have been working on this for actually now, I think, a couple of years. What really is brought forth in this bill is one that we think, probably, makes sense from a government point of view in order to give a



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taxpayer notice when you're going to remove a permanent structure or something that is permanent in nature. And Senator Christensen is right in this occurred in a county. When Senator Christensen first brought it to me, I contacted the county and asked if there was a document, something in writing that said that, okay, we're going to have to remove this fence because it's on right-of-way. And at that point in time, they said, "No, we don't have any document, but we had a conversation." And so I think that caused both Senator Christensen and myself a little bit of concern of just sort of having a conversation and then ending up removing a fence. And so what LB386 now does is set out a plan that counties can give notice. There has to be something in writing; there has to be something that for sure delineates that a fence, or whatever, is in the county right-of-way, and that is the section in here where there has to be a record made of what's going on. And so, then, with the amendment that we worked with Senator Christensen on, in that fashion, we're happy to support this bill if it is amended. And so with that I'll be happy to try to answer any questions anybody has. [LB386]

SENATOR DUBAS: Questions for Mr. Dix? Seeing none, thank you very much. [LB386]

LARRY DIX: Great, thanks. [LB386]

SENATOR DUBAS: Further proponents for LB386? Are there any opponents? Anyone in the neutral? [LB386]

JOHN HYNES: Jack Hynes, H-y-n-e-s. This is kind of a personal experience...involved part of the ground I own, and I don't...I just want to offer it as information. There is a road, one...south mile of it is minimum maintenance, the north mile of it is maintained. But anyway, they surveyed it at the north end...at the north end, the line wasn't too far off, but you get into the middle of the section, the survey put fence line...or the stake was very near the neighbor's fence line, and on my side of the road had a pivot base that when they put the pivot base in there it was in the...inside the existing fence line, long since been removed. Then you get at the south end of the mile, the right-of-way was shown to be out in the neighbor's pasture by maybe 10 feet in the road ditch on my side. And we've got roads out there that been there for ages; fence lines established, but if some...what do you do when new survey shows that which couldn't been the case with that land, don't know. But I just want...maybe I'm out of place, but that's all I wanted to say. [LB386]

SENATOR DUBAS: All right, appreciate that. Questions for Mr. Hynes? Mr. Hynes, could I ask you to fill out a green sheet. [LB386]

JOHN HYNES: This one or a green one? [LB386]

SENATOR DUBAS: That will work; it's a testifier sheet, so if that is a testifier sheet, if you could fill that out and turn it into us as quickly as you can we'd appreciate it. [LB386]

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JOHN HYNES: Okay. Thank you. [LB386]

SENATOR DUBAS: (Exhibits 9 and 10) Thank you for coming forward. Additional neutral testimony? Seeing none, Senator Christensen. I do have two proponents to read into the record, LB386 from Ronald Klein and from Korby Gilbertson for the Nebraska Realtors Association. [LB386]

SENATOR CHRISTENSEN: Okay, just to clarify what Senator Price asked about. It does only exempt the notice requirement, so should be protected, and I appreciate that question. So I have nothing else, unless you guys have questions. [LB386]

SENATOR DUBAS: Any other questions for...Senator Watermeier. [LB386]

SENATOR WATERMEIER: Thank you, Senator Dubas. Mark...Senator Christensen, I'm confused about the 10 day, 5 day. I don't know why you need the 5-day notice, because if you give them 10 days, that shouldn't... [LB386]

SENATOR CHRISTENSEN: Well, the reason that's there, say you're gone on vacation for 8, 9 days. [LB386]

SENATOR WATERMEIER: Yeah. [LB386]

SENATOR CHRISTENSEN: If you don't have any more time than that, you either got to make it 15 total days. [LB386]

SENATOR WATERMEIER: Okay. [LB386]

SENATOR CHRISTENSEN: Or you got to have some response time, and so that's just how NACO and I worked it out...that we would do a notice period and a response period. [LB386]

SENATOR WATERMEIER: Okay. [LB386]

SENATOR CHRISTENSEN: But I don't care if it's changed to a 15-day deal. We're looking at...some people go on a week's vacation, I'd like to do that sometime, but, you know, if they're gone for a week, and you get notice, and you only have 5 days, it could be too late by the time you got back. [LB386]

SENATOR WATERMEIER: Well, I understand that, but I was thinking in my own situation, so many absentee landowners, and there must be a place away, place you could send them certified letter, certified mail, and if it's two weeks, and they still haven't responded, are you going to feel like that's enough? I don't know, you know, that opens

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a door somehow; I just don't know. [LB386]

SENATOR CHRISTENSEN: Well, we have... [LB386]

SENATOR WATERMEIER: I was just thinking...concerned about the language so you won't have to back up and change it some day. [LB386]

SENATOR CHRISTENSEN: I understand the question. I know we had original 15 and 15, or even 20 and 20 in there. In fact, I think one person in our conversation wanted 30-days' notice and 30 responding. My deal was, if you get into late fall, you don't have 60 days. [LB386]

SENATOR WATERMEIER: Yes. Right. [LB386]

SENATOR CHRISTENSEN: You've got to be able to move. And if you put too big a notice in, then they're going to have to declare emergency due to weather and...so we just tried to compromise on something we thought was reasonable notice. [LB386]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much. That will close the hearing on LB386, and we will move on to LB387. Senator Christensen. [LB386]

SENATOR CHRISTENSEN: (Exhibits 11 and 12) Thank you, Madam Chair and members of the Transportation and Telecommunications Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n, represent the 44th Legislative District, here to introduce LB387. LB387 outright repeals Section 39-1802, the one we were just talking amended. This is the same section statute that we've been discussing. I introduced LB387 because I question the necessity of having both the County Drainage Act, which is being handed out to you, Sections 39-901 to 39-933 and Section 39-1802. Are both the County Drainage Act and Section 39-1802 necessary? If there are no good reasons for having both the County Drainage Act and Section 39-1802, I believe we need to seriously think about moving ahead with this bill, LB387, and repeal Section 39-1802. This would prevent confusion amongst the counties and landowners regarding due process. Counties would then refer to Section 39-901 to 39-933, County Drainage Act, when given county board authority to engage in construction and maintenance of county roads and drainage facilities, along with the authority to go on to private property when necessary to accomplish the construction and maintenance. As you look at this section, there is quite a few...and 39-902 under term definitions, front page there, the first one described a ditch and the construction things. And number 4 is a waterway, stream, depressions, and where water is accustomed flow. Six comes into the cleaning and removing of brush and sediment, construction. And when you go through this whole act, it talks about...it gives reasonable notice, it also talks about if there's...it costs less than \$2,000, they don't have to go through this in-depth process that...this is quite an

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in-depth process. And this has been set up, and when I first looked at this, wondered why the counties didn't use this section. Well, they referred me over to the section in the last bill, had no notice and they were able to perform their work. And I'm wondering if the two sections aren't so similar that one of them needs to be removed. And that's why I thought I'd bring it forward to this committee to look at, to look through this area. I've asked two, three different people, reason why; they're both here. I don't think I've come up with a good answer. I know NACO give me one that done some explanation on and I'm sure they'll testify on this. But at the same time, I think if the committee looks at it, we...originally, this was a very detailed process with a subsection put in afterwards that give it a way to bypass the authority that had been set up by the Legislature. Made it very simple to bypass the process. So, I guess my question just comes to the committee is...you guys have time to look through 31-901 and on through the end of this, if this is enough by itself or if we actually need the 1802 part that we just talked about modifying with the notice to it. Thank you. [LB387]

SENATOR DUBAS: Questions for Senator Christensen? So what I understand: you would either want one or the other of these bills? [LB387]

SENATOR CHRISTENSEN: Correct. [LB387]

SENATOR DUBAS: But...okay... [LB387]

SENATOR CHRISTENSEN: Because this one, currently, that we're talking about...or the one I'm referring to, the drainage act has some notification, and public hearings, and everything else involved in unless the project is less than \$2,000. And where the other section just had the rights to go on, and we would be putting notice. If you guys believe both are necessary, I'll defer to the committee for that. Then I'd like to have the other bill, have the notice put in there so we don't have the scenario that I described with Ron Klein. [LB387]

SENATOR DUBAS: Very good. Additional questions? Thank you. Do we have proponents for LB387? Any proponents? Opponents? [LB387]

LARRY DIX: (Exhibit 13) Senator Dubas, my name is Larry Dix, L-a-r-r-y D-i-x; I'm executive director of the Nebraska Association of County Officials, appearing today in opposition to LB387. One of the things, as I start off, certainly from a county government point of view, the only authority that we as counties have is what the Legislature deems appropriate for us to have. And so when we see language, such as we see in LB387, which is repealing a section of statute, we get a little bit concerned about that as we have here. In trying to clarify...and I think Senator Christensen had referred to it as LB (sic--Section) 39-901; I'm thinking it is 39-301, but I could have that mistaken. But in what we're doing, when we look at those two sections, when we look at 39-1802, which is what we...what this bill repeals and what we had just talked about in the previous bill,

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we typically, as counties, look at that for when we're going to look at long-range drainage plans. It's a long-range process as opposed to something that happens immediately. In the other section, we look at that more frequently for immediate concerns, things such as obstruction of a public road, if somebody has a pivot that's coming around putting water on the road, things like that that are more immediate in concern. And so what I handed out to each of you is really sort of our analysis between those two sections. And then, down at the bottom, I think you'll see some of the legislative history that shows...what years...different...these two sections were enacted. And, at least at that point in time, how the Legislature felt and some of the legislative intent in those bills. So that's what you have in front of you for your...for you to take a look at, discuss...If the committee, you know, wants to pursue that and have that discussion, we're happy to enter further into it and certainly bring in highway superintendents, specifically, that will talk about how they implement and enact each and every section of that. So, with that I'll try to answer any questions that you may have. [LB387]

SENATOR DUBAS: Thank you, Mr. Dix. The handout from Senator Christensen, 31-901, 902, deals with the County Drainage Act. And yours, 39-301 deals with... [LB387]

LARRY DIX: Yeah, and we analyzed it...I was thinking he was looking at 39-301, but I am familiar with the drainage act. And there are some similarities in those two sections, as Senator Christensen had talked about. And so, certainly, you know, we're willing to take a look at it. We believe in the previous bill we had solved the issue that is coming forward though. [LB387]

SENATOR DUBAS: Very good. Questions for Mr. Dix? Seeing none, thank you very much. [LB387]

LARRY DIX: Thank you. [LB387]

SENATOR DUBAS: Additional opponents to LB387? Anyone in the neutral? Senator Christensen, would you like to close? [LB387]

SENATOR CHRISTENSEN: (Exhibit 14) Thank you, Senator, and Chairman of the committee. I handed out 39-301, since he mentioned it. This is the Roads: injuring and obstructing; penalties; and exceptions. Basically, it deals with roads, not encroachments, that's the way I read it. And I don't think, necessarily, applies to the situation that I brought this bill for. So, again, I'll just mention I think there's two different processes here. I'm not sure but what we couldn't have one and simplify the law a little bit. I'm might agree with Larry that the one is quite restrictive, and maybe it's too restrictive, and maybe that's...was the determination that led to putting in this other section that...and if you choose to believe that, I hope you'll amend it with LB386 and

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put in that notification language. But I just looked at it as one process right now. I think it is very restrictive; one is too lenient. And so that we just need to get to a set process that everybody understands where they're going to and where they are two different areas there, I think there is sometimes confusion between landowners, between counties, which one they should be using, have to be using, and just...I think it would be better if we set forth a complete process that handled the whole situation is why I offered this bill to remove that section and deal with it. And again, I'll defer to you guys; I hope you'll give me one or the other bills and get it passed out of committee onto the floor so we can deal with the situation that Larry and I agree is a problem. And I just...as I was doing it, studying it, thought there was maybe a little bit of duplication, thought I'd bring it to your attention and defer to you guys. Thank you. [LB387]

SENATOR DUBAS: Thank you. Questions for Senator Christensen? Seeing none, thank you very much. [LB387]

SENATOR CHRISTENSEN: Okay. [LB387]

SENATOR DUBAS: All right, that will close the hearing for LB387, and we will move on to LB623. Senator Price. [LB387]

SENATOR PRICE: (Exhibit 15) Thank you, Madam Chair and members of the committee, I'm coming before you today to present this bill. My name is Scott Price, S-c-o-t-t P-r-i-c-e, and I represent the 3rd Legislative District in the Nebraska Unicameral, and I appear before you today to introduce LB623. Now we just heard a lot of bills and a lot of statutes thrown around so I hope that we can wipe that slate clear here, and I'm going to throw some more numbers at you. Under current statute, all contracts for the erection or repair of county bridges and approaches thereto, or for the building of culverts and improvements on county roads including the purchase of gravel must be let to the lowest responsible bidder if the amount of the project exceeds \$60,000. Current statute also dictate that all contracts for materials for repairing, erecting and constructing county bridges and approaches or culverts, or for the purchase of gravel for roads shall be let to the lowest responsible bidder should the amount of the contract exceed \$10,000. All contracts of such projects shall require individual cost accounting records on each project should such contract exceed \$10,000. Now LB623 strikes all references to the \$60,000 and replaces it with \$150,000. LB623 also strikes all references to \$10,000 and replaces it with \$20,000. Now this bill is brought to me by constituents in Sarpy County who feel that some projects can be completed by the county at a lower cost to the taxpayer. The Sarpy County highway engineer is here to testify and provide such examples. But I'm going to take a little liberty now to touch on the history of what we've been doing here and what this bill did and the law. We had some research done by the legislative research folks, and we'll get that to you. If we don't already having it coming out, we'll have it passed out here now. This section was most recently amended in 1988. And earlier you heard

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me ask questions to the Department of Roads folks about costs, and it was a leading question knowing that this was coming before you today. Now, if we go all the way back to the beginning where we first found this in 1955, the numbers were \$500, and we went from \$500 to \$2,000. So that was a 400 percent increase. Then, in 1969 the dollar amount went from \$2,000 to \$5,000; it's 150 percent increase. Then we went on from \$5,000 and \$10,000. And then again in LB115 in 1975 went from \$5,000 to \$40,000, an 800 percent increase. What I'm trying to establish here is, as time goes by, as we revisit these statutes and the guidelines, we notice the costs have gone up. We're not talking about the actual work being done; it's just the cost to do the work we already authorize them to do; the inputs of costs and those drivers. So we're looking at this, and we went with \$150,000. And that's a big number; we're going from \$60,000 to \$150,000. But that's barely a hundred percent more. And when we looked at it, we did an adjustment over time for just normal inflationary pressures from 1988, the number is \$120,000. So now the proponents had hoped that we would go much higher than that. And I said, no, we need to be prudent here. And here's what we're balancing; here's what we're going to wrestle with here: if a county engineer function has a capability of doing some work, they have the manpower, they have materials, everything is ready to go. But they can't do it because it exceeds a threshold, and they have to go to a formal bid process. That formal bid process will cost the county around \$5,000 just to set the bid up. Then you have to execute the dollars, buy the labor, buy the materials, when they had the labor sitting there in a labor pool, ready to do the job. So is it best practices, is it prudent to hamstringing them and pay for that labor twice? Because we can't have our labor pool sitting in the county doing the engineer work and doing this roads work; they're not that elastic. We can't hire and fire and hire and fire and hire and fire based on all the things we want to do. There is some capacity that is...always going to be there as we smooth it to make sure that we can do the things we need to do. Now I don't want to sit there and advocate that we keep a large staff on the county government just to do these roads. And in talking with the county engineers, they figure it would be only one or two projects a year that they would undertake. The other aspect is that the formal bidding process that I talked about would cost about \$5,000 to put together, to put a bid out; and an informal one, and in the informal one they take three bids, three responsible bidders, and they can award to the most responsible bidder. So it doesn't take the work out of the community that would be doing it. All it is saying is, given that you have the capacity to do the job, that you can do it inhouse and not have to rebid it out through the formal process because of a threshold. Now I did talk with AGC; I talked to them from the beginning. I know they have a letter coming in that says that they are in opposition of this, and I'm willing to work with it. We set this process in motion understanding we want to come to the table to do what is the best, that we weigh the process before us to understand it. But there is a 400 percent, 150 percent, and 800 percent increases over time. And I bring this bill because while I'm very, very, very much pro business and pro small business, I also have to say we're already paying for things, and we should do it. I brought up the idea of a box culvert, because 20 years ago they didn't have that capability; pour one and zip it in and throw it up underneath that road and move forward.

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But now if I want to do that, it could take eight months to get that acquisition done; a good \$5,000. And is that best practice and prudent for us to do so. We brought the bill to have the discussion, and I'd open up for any questions you might have. [LB623]

SENATOR DUBAS: Thank you, Senator Price. Are there questions for Senator Price? Senator Smith. [LB623]

SENATOR SMITH: Thank you, Madam Chair. Senator Price, appreciate you introducing this bill. But I'm trying to process through this in my mind. So there's...you're moving it from \$60,000 to \$150,000. So jobs that are in that range are not going to be competitively bid going forward. So I'm going to lay out for you what my argument against this is, and then tell me what your thoughts are. [LB623]

SENATOR PRICE: Okay. [LB623]

SENATOR SMITH: First of all, we're not going to have competitive bids on those projects, meaning that there is potential for increase to the taxpayer there because...I mean, the potential is that we'll have higher costs for those projects. Then, we supposedly have personnel on hand to fulfill those obligations. Does that mean that there is potential for having too many personnel on hand as opposed to being able to contract out these projects and fulfill these spikes and the work requirements? If not, are we giving a reason for government agencies to go out and hire people in order to fulfill those obligations? So I'm...there is a balance here between having staff on hand to meet these spikes and construction projects and being able to just contract it out and get the best possible price on these...for the taxpayers? So, give me your thoughts. [LB623]

SENATOR PRICE: Absolutely, Senator Smith, I'm glad you articulated it in that manner. Let's deal with the first question about no competitive bid. Again, they're going to informal bid process and a formal. The part you're looking at, the no competitive bid, would be the formal one. They would still...and the engineer could tell you; he'll totally back you up on this and say he can still go out and ask for three bids if it's under the threshold that we created. Like right now today, if it's under the threshold he can go ask for three bids. If he finds one responsible and comes back, meets all the requirements, he can award that bid, does not have to go through the formal part where you go through the legal department, and there's a lot of things that goes on in acquisitions. So the first part is, while there...no competitive bid, it doesn't mean that there isn't a bid. It is still a bid, it's an informal bid process. All right, so, it could still happen same way it does today. Second part, you wouldn't find a person who could be more violently agreed with you on the growth of government. And that was my concern when I took this bill on because I thought, well, we just carte blanche on to grow government, if I already have people laying around in your roads department not doing work, by golly gosh, get rid of them. But that's not really how it works out. If you have a road and a box culvert gets



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broken for whatever reason, you want to stuff one in there, right? The cost for doing that box culvert are such that they would penetrate that \$60,000 threshold. But I can go order one; it's like...so I have to...go to the local "box culvert store." I can go get one and load it in and get it done. I have the capability; I have the manpower and equipment ready to go. But right now we're forced into going through the formal bid process because it pierced that \$60,000. Doesn't mean I'm not going to bid it out. The current work...now also with the county government, they're the ones responsible. We say, well local government is supposed to be responsible for other people they keep on board, and we hold their feet to the fire. I don't believe that this allows for rampant growth. I just think that it gives a tool to sit there and say, let us serve our community better by "if" our roads group can do it. And again, I'll work with the committee...if we go...maybe \$150,000 isn't the right number, you can't always use linear progression when you're doing dollars. Maybe there would be a different number. Maybe there's a way we want to do some other things to ensure that we keep things from getting out of hand. But most important to remember here is: the concept of no competitive bid is actually...I'm not forced into a competitive bid at a threshold. Just like today, right now today they can go and do things up to \$59,000, but once they pierce \$60,000 they have to go out for a bid. But he doesn't do everything; and county engineers don't do everything under...that doesn't mean that they are the only ones who can perform the work. Hope that answered the question to a point. [LB623]

SENATOR SMITH: Thank you. [LB623]

SENATOR PRICE: Thank you. [LB623]

SENATOR DUBAS: Other questions for Senator Price? Seeing none, thank you. [LB623]

SENATOR PRICE: Thank you. [LB623]

SENATOR DUBAS: Have our first proponent. [LB623]

DENNIS WILSON: Chairperson Dubas and members of the Transportation and Telecommunications Committee, I do appreciate you hearing me today. My name is Dennis Wilson, D-e-n-n-i-s W-i-i-l-s-o-n. I'm the Sarpy County engineer, and I'm here representing our county with regard to this legislation. I do appreciate Senator Price putting this forward on our behalf. I'd like to briefly touch on the intent of the bill from our standpoint and, hopefully, clarify some of the points that Senator Smith had as well. Our intent here is to, initially, reduce the time and cost to the taxpayers. One of the issues we've had in the past is it takes, as he had mentioned, 8 to 10 weeks to get a project on the streets bid and then get that contract awarded. With this bill, we would have the ability to do an informal bid; we still have to have three bidders. And we would solicit those from contracts we know are qualified, possibly even prequalified. And then we

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would have to, again, submit our approval with my name on it to our county board in order to take the lowest responsible bidder. So it is not foregoing the process. It is certainly enhancing our ability to do it in a quick manner. And the other aspect is, certainly, that we would allow...this would allow our county forces to do some of the work. Some of the issues we've had in the past with the limit of \$60,000 is if our crews are slow during a year, last year was not a great example of that, but if we had a dead time where we may be doing, you know, polishing our snow equipment; I mean, literally, that's what we get down to; you may have a week or two weeks where there is just not as much work during the summer months as there is during the winter months. We don't have the ability to furlough people and bring them back on in county government. So we have to make the best use of our capacity to do work. And what we would do is allow one of our crews to, perhaps, work on a box culvert; again, one, maybe two projects a year. It's very easy to exceed the cap of \$60,000 because it counts our design time, it counts our construction, and then it also counts our construction management staff. So subsequently, we're looking at three different factors in that \$60,000, whereas we're asking for that \$150,000 cost. Subsequently, it is pretty easy for us to go over \$60,000 limit. The other point I was going to make is that we have 27 people on our staff. Last year during the heat of the summer, those crews were all busy doing mowing, digging out our culverts, working on drainage ditches; weed control is our responsibility, and, of course, we have patching and repairing. Last year we had joints blowing up all over the county. We maintain 1,165 miles of road and 250 square miles. That really taxes our 27 people. We don't hire people, and we haven't added a staff member since 2001. And I doubt at least from my standpoint and the county board's standpoint that we would look to hire anybody in the near future. Again, unless it's warranted for some of the other aspects of our particular government entity. So, subsequently, we're looking at increasing this amount just to make it more effective for taxpayers, to reduce our costs when we can. And again, to help get the contracts out to some of the small contracting firms in a much easier fashion. That's all I have to offer. [LB623]

SENATOR DUBAS: Thank you, Mr. Wilson. Are there questions? Senator Watermeier. [LB623]

SENATOR WATERMEIER: Thank you, Chairman Dubas. I appreciate the last comment you said, it's quicker for you to get it out to some of your small contractors, you mean so giving them the opportunity to do this informal bidding process? [LB623]

DENNIS WILSON: Correct. [LB623]

SENATOR WATERMEIER: The informal bidding process is in your statute? [LB623]

DENNIS WILSON: It's in our process. I don't have the exact legislative issue, but yeah. [LB623]

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SENATOR WATERMEIER: But would it be specific to Sarpy County and not to every other county in the state? [LB623]

DENNIS WILSON: I don't know the answer to that. [LB623]

SENATOR WATERMEIER: Well then there may be other counties that would...may or may not be doing this informal process? [LB623]

DENNIS WILSON: That could be. I'm not sure of that...again, I'm basing my experience on the finance fiscal administrator. [LB623]

SENATOR WATERMEIER: You see where I'm asking... [LB623]

DENNIS WILSON: Sure, sure. [LB623]

SENATOR WATERMEIER: ...heading toward a statewide statute here that's... [LB623]

DENNIS WILSON: Certainly. [LB623]

SENATOR WATERMEIER: ...not specific for Sarpy County. [LB623]

DENNIS WILSON: Yeah, I'm not sure about that. [LB623]

SENATOR DUBAS: Other questions? Can you clarify for me the difference between an informal and a formal bidding process? [LB623]

DENNIS WILSON: Certainly, on our formal bidding process what we do is have to advertise for three weeks. And if there is a holiday during that time, then of course, that pushes it back to four weeks. We also have to...actually, I should have started with: we have to solicit the approval of our commissioners to do the advertisement. Then we have to take the three bids; we bring it to an opening at the county board. That opening is when they would approve it. It takes up to 30 days to have the contractor put together the contracts for that. They have to then resubmit to the board and have those contracts approved. So that's why that...again, 8 to 10 weeks, depending on the holidays, depending on how many board members happen to be present and those kind of things. [LB623]

SENATOR DUBAS: Then what is an informal process? You just... [LB623]

DENNIS WILSON: With an information process we can contact, perhaps, maybe three or even four people we know are capable of doing the work. Say, we have this project; here is the plan set that we've designed for it, and we'd like you to give us a bid for this project. The responsible aspect of that comes from: these are contractors we've worked

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with in the past. [LB623]

SENATOR DUBAS: Does it still run through the county board then for final approval? [LB623]

DENNIS WILSON: Yes. Yes, once we have that...those bids, we would submit to the county board indicating we've taken three bids on this, here is the lowest responsible bidder; we're recommending the contract be awarded to them. [LB623]

SENATOR DUBAS: Very good. [LB623]

DENNIS WILSON: So again, even that process would probably take two to three weeks. [LB623]

SENATOR DUBAS: Senator Watermeier. [LB623]

SENATOR WATERMEIER: Thank you, Chairman. Going back to the statement you had said earlier that the cost of the project would include, one, the engineering that the county provided, and two, the construction management of the project, that would all be included in the project as far as the overall limit. But if you bid it out, you're going to bid out just the part of the construction. [LB623]

DENNIS WILSON: Correct. [LB623]

SENATOR WATERMEIER: So I'm confused how you look at that as far as the other two added costs being involved in the... [LB623]

DENNIS WILSON: What I was saying is if our crews did the work,... [LB623]

SENATOR WATERMEIER: Yeah. [LB623]

DENNIS WILSON: ...then we have to count our design time plus our crew's construction time plus our project management time on that project. So we have to look at all three of those elements. If we were doing just a contracted bid, we still have to stay under that \$60,000 limit for our design time and our construction management time. [LB623]

SENATOR WATERMEIER: Okay. [LB623]

DENNIS WILSON: So as an example, in our construction time frame we generally consider about, oh, probably 10 percent to 20 percent of the construction cost. So, you know, doing the math if we were looking at a \$600,000 or \$700,000 project, we could easily burn through that on our construction management person; we would have to then have that taken out to a consultant. We couldn't do that work either. [LB623]

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SENATOR WATERMEIER: Okay. [LB623]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much, Mr. Wilson, for coming forward. [LB623]

DENNIS WILSON: Okay, pleasure, thank you. [LB623]

LARRY DIX: Good afternoon, Senator Dubas, members of the Transportation and Telecommunications Committee. My name is Larry Dix. I'm here as executive director of Nebraska Association of County Officials in support of LB623. Certainly, we want to thank Senator Price for bringing this. I know Sarpy County had approached him with this, but this is something that certainly does reach out across the whole state, and we have a number of highway departments that certainly are interested in doing this. It is interesting, as we talk about the formal and informal bidding process, when we start to reach out into some of the rural communities, there isn't, necessarily, always a pool of contractors that you have that can respond to this. But we do know that, in some of those rural communities, that some of the smaller contractors like the informal bidding process much more than the formal bidding process just because, on their side, the amount of time that it takes them to reply in a formal manner much more so than an informal. So, we think it is something of an efficiency issue as we look at county government. Whenever we put a threshold in statute that's a dollar amount, and many committees have heard me testify about this, usually it's in reference to a fee or something like that because once those fees are in statute, the thing of it is, the only way for us to ever change that is to come back before the Legislature, get the bill out of committee, get 25 votes on the floor, get a governor's signature in order to advance that. So it is sort of a high standard any time we want to raise that. And typically, no matter if it's a threshold like this or a fee, it usually comes down to a situation of inflation over the years. And these things just...they just don't get changed every year, and they're not indexed for inflation. And so that's why we're looking at this. And, typically, we have bills like this from time to time simply so we can raise that threshold as we go through time, and inflation catches up with us. So we certainly appreciate what Senator Price is bringing. I'd be happy to try to answer any questions anybody would have. [LB623]

SENATOR DUBAS: Very good. Questions for Mr. Dix? Senator Watermeier. [LB623]

SENATOR WATERMEIER: I guess all kinds of things come up to mind in this bidding process that I've seen over the years is that bonding requirements. Is it...if it's a formal bidding process, those still may not be high enough to require a bond. [LB623]

LARRY DIX: That's correct. [LB623]

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SENATOR WATERMEIER: I mean, those are much higher, typically. [LB623]

LARRY DIX: Those are much, much higher projects, yes. [LB623]

SENATOR WATERMEIER: Okay, well those are the projects that I'm used to working with, I guess. Well, I lost my train of thought; the other question, I should have asked it right away. I'll probably ask you later. [LB623]

LARRY DIX: Well, you'll see me around, and you can ask me at any point in time. [LB623]

SENATOR DUBAS: (Exhibit 16) Other questions? Thank you, Mr. Dix. Further proponents for LB623? Are there any opponents? Anyone in the neutral? Seeing none, oh, I do have...thank you. I have one letter of opposition for LB623 from Curtis Smith with the Associated General Contractors. [LB623]

SENATOR PRICE: Madam Chair, committee members, you've heard the deafening roar out there on the interest of this bill. I think more came from the other side of the table than from this side of the table. Important though to reiterate there, you know when I dropped this bill, when I...even before I dropped it, I considered, I went to Curtis Smith at AGC because I thought, well, this is going to have an impact on them. They were...to quote the proverbial, they were like a goose on a June bug. They were like, yeah, that's good. And then today I got the letter that say, hey, you know, we're not with it. And that's fine; that's what we do. We have people read things; they take interpretations, and they come back to it. I would bring, again, if it hasn't been made perfectly clear already, that this is a bidding process that happens statewide for all counties. So if you have a small county, they still have an informal bid process and a formal bid process. And that's what happened...and if you look in your package of information, in 1975 that part of what happened, and they also took out the size limits. It used to be in 1975 they had a different...counties of over a certain size could do this, and smaller ones couldn't. And then, of course, smaller counties said, why can't we do an informal bid process also, things of that nature. So it's been iterative over time. Again, the idea being to provide the best use of our resources over time. You know, if we have a roads crew that can do something, and they can't do it because their hands are tied by our thresholds, then we visit those thresholds, and historically those thresholds have gone and been increased by 800 percent, and we've no cost...hard to say, but a car doesn't cost the same today as it did in 1988, nor does a home, nor does almost anything you buy or use today. Very few things, are at 1988 prices. And that's where we are today in looking at this, and I'll work with the committee, and I'll work with the interested parties to come to the best solution we can for them. But it does seem...it would be a pity if we hamstrung our county governments, and we made our people pay twice for the same services. And with that I'd answer any questions. [LB623]

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SENATOR DUBAS: Any questions for Senator Price? Seeing none, that closes the hearing for LB623 and our hearings for today. [LB623]