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Transportation and Telecommunications Committee
February 02, 2010

[LB819 LB838 LR286CA]

The Committee on Transportation and Telecommunications met at 1:30 p.m., Tuesday, February 2, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB819 and LB838 and LR286CA. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Kathy Campbell; Tim Gay; Galen Hadley; Charlie Janssen; Scott Lautenbaugh; and LeRoy Louden. Senators absent: None. []

SENATOR STUTHMAN: Good afternoon and welcome to the Transportation and Telecommunications Committee hearings. First of all, Senator Deb Fischer, Chairman of the committee is not able to be with us at the present time because she is introducing bills in other committees. First of all I would like to introduce the senators that we have here. On my immediate right, Senator Kathy Campbell from Lincoln; Senator Tim Gay from Papillion. I'm Senator Arnie Stuthman from Platte Center, Vice Chairman of the committee. And to my immediate left, Dusty Vaughan, he's the committee clerk (sic). Then we have Laurie Vollertsen, she is the committee clerk. The counsel staff was Dusty Vaughan. Also, we have Senator Lautenbaugh from Blair. []

SENATOR LAUTENBAUGH: Thereabouts, Omaha-Blair. []

SENATOR STUTHMAN: Omaha-Blair, okay. And we have from Kearney, we have Senator Hadley. So several of the other senators will be joining us probably later and I'll introduce them at that time. We will be hearing...and first of all, the pages that we have here with us today are Lisa Cook from Omaha, she's with us; and we have Antonio Pastrana from Fort Collins, Colorado, and they will be here to help you distribute any materials that you have. We will be hearing the bills in the order that they are listed on the agenda and those wishing to testify on a bill should come to the front of the room, be ready to testify and to testify as soon as someone finishes their testimony in order to keep the hearings moving. Please complete the yellow sign-in sheet on the on-deck table and be ready to hand it in. Please hand it in to Laurie over there and any material that you have to hand out, please alert the pages and they will hand that material out. A computerized transcription program is being used so it is very important that the directions on the sign-in sheet are followed. You will need to hand the sign-in sheet, like I stated before, to the clerk before you testify. For the record, you know, at the beginning of your testimony, please spell your last name and also your first name if it is one that can be spelled in different ways. Please keep your testimony concise and try not to repeat what someone else has already covered. If there's a large number of testifiers, you know, we may have to use the light system, but I hope that we don't have to use that today. So one other thing that I do want to mention is the fact that if you have testimony or comments that you want to submit in writing, please hand those to the committee clerk. We do not allow cell phones at this hearing; please turn the cell phones off, but if a cell phone happens to ring during the testimony, I will have one of

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the pages completely remove the cell phone and the individual from the room. That didn't go over very good. So with that, we will have the opening of the first bill, LB819 from the Transportation Committee and, Mr. Vaughan, would you like to open on this bill? [LB819]

DUSTY VAUGHAN: Thank you, Senator Stuthman, and members of the committee. For the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. This bill is brought to the committee by Nebraska Department of Roads and clears up a gap in the Rules of the Road. Currently there is no provision in the rules that addresses the correct procedure for a malfunctioning traffic control signal. The bill adds a new subsection so that it is clear that an intersection which has control signals that are malfunctioning or have a power failure shall be treated as a multi-way stop. This provision does not apply if the control signal is not in service as evidenced by the signal being turned away from traffic or being covered by opaque material. The bill also strikes the requirement that the speed limit of a highway may only be increased at 20-mile-per-hour increments. This provision in statute was added to guard against speed traps; however, obviously, there's no concern regarding the speed trap when you're increasing the speed limit of a highway. The bill does not change the 20-mile increments for decreasing speed limits. And with that, Senator Stuthman, I will end my testimony. [LB819]

SENATOR STUTHMAN: Thank you, Mr. Vaughan. Does the committee have any questions? Seeing none, thank you. First of all, how many people plan to testify in the proponent position? We have one. How many in the opposition? Any in the neutral? Please come forward. Good afternoon, Director. [LB819]

MONTY FREDRICKSON: (Exhibit 1) Good afternoon, Senator Stuthman, members of the committee. My name is Monty Fredrickson, director/state engineer of the Department of Roads; M-o-n-t-y F-r-e-d-r-i-c-k-s-o-n. I am appearing before you today to offer testimony in support of LB819 and I would like to thank Senator Fischer and the committee for introducing this bill on behalf of the Department of Roads. LB819 proposes two changes to state statute that the Department of Roads feels would be a benefit to the state. The first change concerns traffic signals not operating due to a power outage or dark signals. Currently state statute does not address what a driver is required to do when they come upon a dark signal. When an existing traffic signal is in full operation and loses power, the purpose of the signal, to assign the right-of-way to drivers, is lost. While we encourage all drivers to stop at dark traffic signals, it is not expressly addressed in statute. Without this revision, one might assume that vehicular right-of-way would fall back to an uncontrolled intersection in which case each driver must yield to the driver on the right. However, a stop is not currently required at an uncontrolled intersection. This leads to confusion that we hope to mitigate with LB819. The second proposed change relates to speed limits. Current state statute limits the difference between adjacent speed limits to more than 20...to no more than 20 miles an

hour. The desire to limit the maximum change from one speed limit to the next speed limit is very understandable as we enter into reductions in speed limits. LB819 would not change that 20-mile-an-hour limit. However, it would be beneficial to the department to be able to increase the speed limit in increments greater than 20 miles an hour. I'll give a couple of examples where the traveling public may benefit from this change. In many of our construction zones we need to reduce the speed limit for a bridge project or a flagging operation. When traffic exits the work area, it would be beneficial to the traveling public to allow a return to the 60- or 65-mile-an-hour speed limit without the limiting 20-mile-an-hour increment restriction. Generally the traveling public is aware that they have left the work zone and assumes a return to the existing speed limit. Another example can be found here in Lincoln as we transition from north bound on 10th Street to north bound on Interstate I-180. Currently, the city of Lincoln has a 25-mile-an-hour speed limit on 10th Street; the department has a 45-mile-an-hour transition speed limit on I-180 for just over a third of a mile before we begin the 60-mile-an-hour speed limit. If you travel this roadway often, you will quickly see that many drivers feel this 45-mile-an-hour transition speed is unnecessary. Thank you for the opportunity to speak today and I would be happy to answer any questions. [LB819]

SENATOR STUTHMAN: Thank you, Director Fredrickson. Are there any questions? Senator Hadley. [LB819]

SENATOR HADLEY: Senator Stuthman, thank you. A quick question; on the new Section B, it says: if a traffic control signal is not in service and the signal heads are turned away from traffic or covered with an opaque material, subdivision (a) of this subdivision shall not apply. I guess in English what does that...what would apply then? [LB819]

MONTY FREDRICKSON: It would be no control whatsoever. This is a unique situation, usually when we put together a new signal and we don't have power to it yet, the signal mast arms will be up there and then we'll put a brown bag over the signal head so that you can see the arm extending across the roadway, but it's not in service and we don't want people stopping when the signal is not in service in that condition; only when it's been in operation and then goes dark because of a power failure. [LB819]

SENATOR HADLEY: Then how would...at this...when we're waiting to put it in service, how would we handle two cars coming to the intersection at the same time? [LB819]

MONTY FREDRICKSON: They would have to recognize that it's bagged. [LB819]

SENATOR HADLEY: They'd have to recognized it's bagged, but either one could go or...I just... [LB819]

MONTY FREDRICKSON: The through road would have the right-of-way without

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stopping and the cross road would have to stop and there would be a stop sign at that point. [LB819]

SENATOR HADLEY: Oh that's a key point there...there would be... [LB819]

MONTY FREDRICKSON: On the cross road. [LB819]

SENATOR HADLEY: There would be a stop sign. I was thinking there... [LB819]

MONTY FREDRICKSON: Yes. [LB819]

SENATOR HADLEY: ...there might be no stop signs there and people trying to figure out. [LB819]

SENATOR STUTHMAN: Senator Gay [LB819]

SENATOR GAY: Thank you, Senator Stuthman. Monty, I've got a...you talked about this stop, the four-way stop, if they're malfunctioning, this happens quite a bit unfortunately, and where I'm at, 5:00 in the afternoon, from 4:00 to 6:00 is busy as can be, we got flashing lights or they're just flat-out, but you said this leads to confusion that we hope to mitigate with this bill, exactly how would we mitigate that, because a bad driver is a bad driver? I think you're...you have the person to the right, you're supposed to keep letting people in, then you get somebody comes up, of course they blow the whole thing, and they're...they got go; how is this going to mitigate that? That's the Rules of the Road right now on your drivers test, isn't it? [LB819]

MONTY FREDRICKSON: Well I don't think we're going to mitigate the interaction between drivers of the human behavior, but... [LB819]

SENATOR GAY: You can ticket them now, is what you're saying. [LB819]

MONTY FREDRICKSON: Pardon. [LB819]

SENATOR GAY: Could you give them a ticket now then? [LB819]

MONTY FREDRICKSON: Yes. [LB819]

SENATOR GAY: And now we can't, but this... [LB819]

MONTY FREDRICKSON: This would make it clear in statute who has the right-of-way and if you didn't stop, you could be issued a ticket. It could be a benefit in a court case. You know, I think people recognize the 4-way flash, you better stop. That's clear for most people and it just...they're used to having a signal at this location and all of a

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sudden the power is out, what do they do? This would help everybody recognize, that's still a 4-way stop. That's what you got to do when the power is out. [LB819]

SENATOR GAY: But you still haven't...how's it going to help them? Are you going to advertise this or what? I mean right now... [LB819]

MONTY FREDRICKSON: Sure. [LB819]

SENATOR GAY: ...the power light...if it goes out, it goes out, people just start stopping, why do we need a law to just...give a ticket if somebody sees them doing it or what's the... [LB819]

MONTY FREDRICKSON: That or it establishes clear right and wrong for court cases. [LB819]

SENATOR GAY: For liability maybe, yeah. [LB819]

MONTY FREDRICKSON: Yes. I mean, it's in the driver's manual right now that you're supposed to treat a dark signal like a 4-way stop, but it's just not in statute. [LB819]

SENATOR GAY: Okay. [LB819]

SENATOR STUTHMAN: Thank you, Senator Gay. Senator Lautenbaugh. [LB819]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Monty, just so I understand this, we're not trying to address the circumstance that Senator Hadley was talking about where the new lights aren't in place yet. [LB819]

MONTY FREDRICKSON: No. [LB819]

SENATOR LAUTENBAUGH: What we would do in that circumstance is what we do now; hopefully there would be temporary stop signs; hopefully there might be other existing lights, whatever the Rules of the Road would apply to that now. [LB819]

MONTY FREDRICKSON: Yes. [LB819]

SENATOR LAUTENBAUGH: You're just saying this clarifies that when there are existing signals that go dark, it's a 4-way stop; likely because you don't want to back to the normal Rules of the Road because people aren't used to the Rules of the Road providing...applying to that signaled intersection. [LB819]

MONTY FREDRICKSON: Exactly. [LB819]

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SENATOR LAUTENBAUGH: Okay. That wasn't much of a question, but I...that was...
[LB819]

MONTY FREDRICKSON: It was a good clarification. [LB819]

SENATOR LAUTENBAUGH: Thank you. [LB819]

SENATOR STUTHMAN: Thank you. Director Fredrickson, I do have one question. The fact then, this has been asked of me a lot of times, when an individual is going from the 25 into the 45 into the 65 or 75, at what point...what point could you get picked up for speeding? You have to be past the 65 one or do you...when you see the 65 one?
[LB819]

MONTY FREDRICKSON: You got me on that one. I don't know. All I can give you is the common sense answer that it would be at the sign; but I don't know what a law enforcement officer would determine. We have our traffic engineer here. I don't know. You want me to bring him up here and see if he's got an answer to that one? [LB819]

SENATOR STUTHMAN: Well if he would want to enter into the debate, we could, but...
[LB819]

SENATOR LAUTENBAUGH: While he's coming up, could you also put people at the bottom of entrance ramps to Dodge Street and the interstate just sort of alerting people that the speed limit is higher at the bottom of the ramp, so you should be accelerating down that ramp and make a passing attempt at merging into traffic I guess anyway.
[LB819]

SENATOR STUTHMAN: Okay. I would ask that he state your name. [LB819]

DAN WADDLE: My name is Dan Waddle, W-a-d-d-l-e, traffic engineer for the Department of Roads. And the way we position our signs at the start and changes of the speed limits is the sign is placed at the beginning of that zone, so if you're increasing, you shouldn't increase to 65 until you pass that sign. [LB819]

SENATOR STUTHMAN: Okay. [LB819]

DAN WADDLE: So if you increase before the sign, then you're still in the previous zone.
[LB819]

SENATOR STUTHMAN: Okay, okay, well that...that...it wasn't clear to me because I've had law enforcement tell me if you can...if you've got good sight and you see the 65 one, you can see the 65 one and you look at your speedometer going 65, you're legal, but that isn't true. [LB819]

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DAN WADDLE: That's not how we position the signs, no. [LB819]

SENATOR STUTHMAN: Okay, okay, thank you. [LB819]

DAN WADDLE: Thank you. [LB819]

MONTY FREDRICKSON: Thanks, Dan. [LB819]

SENATOR STUTHMAN: Any other questions from the committee for the director?
Seeing none, thank you for your testimony. [LB819]

MONTY FREDRICKSON: Thank you. [LB819]

SENATOR STUTHMAN: Any other ones as a proponent? Anyone in the opposition?
Anyone want to testify in the neutral? Seeing none, Mr. Vaughan, do you want to close?
Mr. Vaughan waives closing and that closes the hearing on LB819 and opens the
hearing on LB838. Senator Lautenbaugh, welcome. [LB819]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee.
It's nice to actually be introducing one of my own bills in my own committee so I get to
be at my own committee sometimes; it hasn't happened a lot this year. This is a very
simple bill and in some quarters it won't be a well-beloved bill, but I was asked by a
reporter yesterday, what moved you to bring this bill? And I said, well, I drive. And that's
really the long and the short of it. This bill mandates that there be incentives and
disincentives in contracts for every road repair and construction project in the state.
Now honestly there's a drafting error that I should have caught. What I wanted to have it
say was that there "may" be incentives, but there "shall" be penalties if the project isn't
done on time. And they can negotiate it on said project...per project...on a per project
basis, excuse me. Any project carried out within city limits must engage in minimum
lane closure. Minimum lane closure requires that any lane not actively being worked on
shall be open while not actively being worked on. Lanes can be open through the use of
road plates or other means to make lanes navigable. What I mean by that is say a utility
comes along, not the electric company, and makes a very small hole in the street; rather
than just covering it with a plate and letting us all get on with our lives, we block that
lane until such time as someone comes out and puts the concrete back. Any lanes that
are improperly closed shall be subject to a fee of at least \$1,000. We've been asked to
bring a friendly amendment to increase the amount of that fee by one of the cities here
in Lincoln...or fine, I guess would be more accurate way to put it. Any contractor for
bridge or highway project shall be required to provide signage. These signs will have
the general contractor's name and a contact number in 4-inch lettering. So as you're
sitting there and curiosity gets the best of you as to when the project might someday be
done, you would actually have someone to contact and see what exactly is going on

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with that and when the completion date is. This bill does have a fiscal note, but it only applies to signage and other avenues...and other avenues could possibly be found to arrange signage and thus reduce in costs. Let me explain some of the scenarios that brought this about. The West Dodge Expressway: there were incentives to complete the upper level of that and it got done early and everyone was thrilled. I found out there were no incentives to finish the lower portion. The lower portion went on for what seemed like an eternity to me and it looked like it could have been finished up with any reasonable ambitious worker with a push broom for the last six months. And if I was incensed by it, and that's the right word, those business owners at 114th and Dodge had to be livid or bankrupt, one or the other, maybe both. You can be livid and bankrupt at the same time, I guess. And I thought this had to stop. As I drive around town and I see a very small hole in the street necessitating the closing of a lane on Dodge Street which is Omaha's main artery for a day or two during rush hour, I have to question. I don't think we pursue projects necessarily with a contempt for the drivers, but I don't think we pursue them with what I would call an aggressive concern for the convenience of motorists often enough. And I don't want to say something finally snapped because that doesn't sound like a good reason to introduce legislation that you finally snapped, but this is a serious bill addressing a serious problem. The roads are there for the motoring public. And if projects need to be done, fine, I understand that; but they should be done swiftly; they should be done expeditiously, they should be done, perhaps, before embarking on another venture so you have workers to finish those projects and the inconvenience to the public should be minimized to the greatest extent possible. I'm willing to work with the committee, of course, as always, to come up with any way to improve this; but I do think it's important that we, at long last say; look, enough is enough, projects are not supposed to last a lifetime. They need to begin and they need to end and we need to make it clear that we want them to begin and end. I've received correspondence, in part, regarding the fiscal note. I think the Douglas County Engineer's Office thinks the Douglas County engineer should be involved, not surprisingly. And that's fine and he would do a good job and there's certainly a role for that. I've contemplated the possibility of having there be a specific person in the city who has to sign off on lane closing for major thoroughfares like Dodge Street. If you're going to close a lane, you have to say how long you want to do it. This isn't in this current bill, but at least it's a possibility of an amendment. When you're going to close it; when you're going open it; why you're closing it; and there has to be a person who says and that's okay for that amount of time; and there has to be a person who is responsible when it doesn't come to fruition and it's still closed after the fact. So in a nutshell that's my purpose in bringing this bill is that I want construction projects to move along expeditiously and maximize the convenience to the motoring public. I have...I don't know if I have any proponents behind me or not. I'll be happy to answer any questions you may have to the extent I can. [LB838]

SENATOR STUTHMAN: Thank you, Senator Lautenbaugh. Any questions from the committee? Yes, Senator Campbell. [LB838]

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SENATOR CAMPBELL: Thank you, Senator Stuthman. Senator Lautenbaugh, would you like to comment about the fiscal note? [LB838]

SENATOR LAUTENBAUGH: Yes, I think it's mainly for signage and I think we can otherwise address that and make that go away. I have the unpleasant circumstance of being in a committee the other day introducing what I thought was a cost-savings bill that came with a fiscal note and I said that was the definition of failure. So yes, I would like to work to take out the fiscal note on that, whatever is causing the concern in there and the need for additional signage at the state level, I think, is what was doing it. [LB838]

SENATOR CAMPBELL: Do you think that it...the fiscal note has to do with the incentives? [LB838]

SENATOR LAUTENBAUGH: And that was the other aspect, that to the extent that it's the incentives that are mandating it; as I meant to draft this and we used the word "shall" twice instead of "may" and "shall" the incentives were to be optional, the penalties were to be mandatory. I think that accounts for a lot of it as well. [LB838]

SENATOR CAMPBELL: So on the penalties, are you looking at liquidated...like a liquidated damages, a percentage, per day? [LB838]

SENATOR LAUTENBAUGH: I would like to...I prefer leaving that to localities to figure out. [LB838]

SENATOR CAMPBELL: Okay. [LB838]

SENATOR STUTHMAN: Thank you. Senator Hadley. [LB838]

SENATOR HADLEY: Senator Stuthman, thank you. Senator Lautenbaugh, do you know of any studies...do the incentives or the disincentives do they work? You know, I think common knowledge would think they might, but have there been studies...do they work? And secondly, do they cause...potentially cause the...an increase in the price of projects? [LB838]

SENATOR LAUTENBAUGH: Well again I would say that the localities will be negotiating that and the contractors will be negotiating with localities and so there will be a certain amount of built-in consideration for that. Do I have any studies that show that states that have a law like this would have additional...have had increased costs or have had success? I've seen no study in that regard. The anecdotal story I gave you, and I hate to rely on anecdotes, but that's what I have, of the upper deck of the West Dodge Expressway having incentives for early completion and the lower level not having

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incentives was very telling in my experience. [LB838]

SENATOR HADLEY: I could give you an anecdotal story of 30th Avenue in Kearney, but when I was mayor there was a serious problem with completion and disincentives and... [LB838]

SENATOR STUTHMAN: Senator Louden, do you have a question? [LB838]

SENATOR LOUDEN: Thank you, Senator Stuthman. Senator Lautenbaugh, is this...I'm not familiar with the area that you're talking about, is this an Omaha deal or this a statewide problem? I mean, is this something in Omaha that they're not fixing the street and closing up part of the streets or...or does city of Omaha have jurisdiction over that? [LB838]

SENATOR LAUTENBAUGH: It is not meant to be an Omaha specific bill and I don't think it's drafted as such. It's meant to address more of a statewide issue. [LB838]

SENATOR LOUDEN: Well then as that's drafted then, does it include the cities on the construction on their streets? [LB838]

SENATOR LAUTENBAUGH: Does our...I would argue yes. [LB838]

SENATOR LOUDEN: Then that would have quite an impact on some of these towns and cities around the state, wouldn't it? If this bill was drafted to make them come up with their signage and have their contractors set up so that they had to get it all done and that sort of thing, I mean, isn't that kind of over-kill? [LB838]

SENATOR LAUTENBAUGH: Well the signage would be signage posted by the contractor themselves. So that really wouldn't be a burden on the locality. Again, negotiating the contract clearly to provide incentives and if they choose penalties if they...in any event and incentives if they chose, the dollar amounts and everything would be left to the localities so I don't know if that would be a great burden and the timing of it and when the penalties would kick in would again be part of the contract. So again, I think any city manager or council could adequately protect itself in that regard. [LB838]

SENATOR LOUDEN: Well I just wondered because at the present time I've been told by some of the contractors statewide that as you add these things in here, then that brings the price of the contract up and also that there's certain districts in Nebraska that when they get a contractor they always add a percentage because there's some problems they think that will occur with some of the people they're working with. In other words, not all districts get treated the same when it comes to the contractors bidding those contracts. I wonder if that would happen with this that as soon as the contractor saw

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there was some of this; it would also have to be done in the towns that we would be seeing some higher priced bids rather than, I mean, somebody's got to pay for it, I guess. [LB838]

SENATOR LAUTENBAUGH: Well, there would certainly be the prospect that some might bid higher, but that would be the value of competing bids, I guess is what I would say. [LB838]

SENATOR LOUDEN: Okay, thank you. [LB838]

SENATOR STUTHMAN: Thank you, Senator Louden. Senator Lautenbaugh, you mentioned the lane closing and stuff and I've always had a problem with a lane closing; in my opinion, it's a safety factor, you know, if you're driving along and all of a sudden you got to move in and move in and squeeze them apart and stuff like that, and I've always thought that, you know, maintaining some of those lanes, if it was just a smaller project could be done during the least traveled time of the day and, you know, with concrete nowadays, you know, it don't take long and it set up and it could be opened again. So, I really appreciate that part of it, so. Any other questions from the committee? Seeing none, thank you, Senator Lautenbaugh. Anyone want to testify in the proponent? Any in the opposition? We have one, two, three, four. Come forward please. Good afternoon again, director. [LB838]

MONTY FREDRICKSON: (Exhibit 2) Good afternoon, Senator Stuthman and members of the committee. I'm Monty Fredrickson, director/state engineer of the Department of Roads; M-o-n-t-y F-r-e-d-r-i-c-k-s-o-n. I'm appearing before you today to offer testimony in opposition to LB838. I do understand the desire of Senator Lautenbaugh to accelerate completion of road and street projects and I share the frustration when a major project is delayed. However, speed of completion of a project is merely one factor. The department looks at each individual project on a case-by-case basis in determining which tools would be most effective to promote a safe, cost effective and timely project. I believe our current level of flexibility has served the department and the traveling public well. Over the last five years, approximately 75 to 80 percent of our highway projects were completed on time with very minimal use of incentives. LB838 could potentially increase the cost of projects by mandating incentives that are not needed. Currently, the department reviews each project before bid to determine the need for incentive/disincentive provisions. If prudent, it is placed in the bid. The requirement for negotiated incentives and disincentives could affect federal funding. 23CFR635.113 prohibits negotiations with the contractor after the letting and prior to award. I am also concerned about the language in LB838 regarding lane closures. The department currently uses lane rentals on selected projects to minimize traffic delays and prefers to continue this practice without a mandate. It is also unclear under the language of the proposal, should it pass, who has the power to determine the duration and standards for a lane closure or an unacceptable length of time for a lane closure.

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Finally, the third provision of LB838 would require the contractor to post information signs every mile in maintenance, repair and construction zones. Our current practice is each of our district engineers has the option to have the contractor install signs with the contractor's name and phone number. It is optional and the signs are placed only at each end of the project. The department has approximately 120 projects under construction in any given year. The cost of furnishing, installing, maintaining and removing the signs required by this bill on every mile of project is difficult to determine given that the type of projects each year varies. We have estimated in the fiscal note that it could cost the department up to \$1 million a year to have these signs provided. Thank you for the opportunity to testify and I would be happy to answer any questions. [LB838]

SENATOR STUTHMAN: Thank you, director Fredrickson. Does the committee have any questions? Senator Louden? [LB838]

SENATOR LOUDEN: No, I was... [LB838]

SENATOR STUTHMAN: Okay. I do have one. I have a little bit of a concern too also with the signage part of it, would there be anything...and I know a lot of these contractors, you know, have their name on the door and maybe a phone call or something like that, which would solve part of that problem if you would...maybe we need legislation to mandate their phone numbers on their trucks while they're sitting along side the road. [LB838]

MONTY FREDRICKSON: Well, that could be done. I don't know if there would be other issues with that. Usually our district engineers, when they are deciding which projects to put signs up, they're going to pick the longer duration ones that are major projects that people want to know sometimes when is this going to get done and even though we have that information on our Web site, sometimes they like to call the contractor. So that's where we would put the signs up. Most every major project and especially urban project that we do in today's world, we have either weekly or every other week meetings on the project with all the businesses and parties that are affected by that project so they know exactly what's going to happen that next week as far as driveway closures, lane closures, intersections, whatever and that's worked very well for us; that information is great knowledge to those businesses that are trying to survive during a construction project. [LB838]

SENATOR STUTHMAN: Okay. Any other questions? Senator Campbell. [LB838]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Director Fredrickson, in the paragraph you talk about that you determine in the cost of the project whether you're going to mandate incentives, and I'm assuming that...the question comes to mind is that also involve penalties? [LB838]

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MONTY FREDRICKSON: Yes. I would say that...or I would let you know that the federal requirements for any federal aid project, you cannot have an incentive without a disincentive; you have to have both. That's their policy. And then the second thing that I would point out is, it is our practice and we think it's good practice that if we're going to do an incentive/disincentive, decide what it should be up front and when it's a federal aid project, they have formulas that they would like us to adhere to and they're reasonable as to what is the value of that incentive based on, what are you doing to the traffic. Because in many cases, it's not a lane closure situation, it's a total closure and so that...those are the first kind of jobs we look at is what's the cost to the public to not be able to use this road every day and what can we put in the contract to mitigate for that and get it done early. [LB838]

SENATOR CAMPBELL: If I could follow up, and I do understand that you may not choose to do this on every project, but by what criteria would you say most projects that have these, why did you pick those projects? [LB838]

MONTY FREDRICKSON: They just had a huge impact on a large volume of traffic. I did a little research before I came down and over the last ten years we've done about two a year...or last five years, we've done two a year incentive projects. Senator Lautenbaugh mentioned the West Dodge elevated expressway was one; well, you can imagine the traffic on West Dodge, that's a prime candidate. The south Omaha bridge that's being built right now has an incentive in it because we wanted to finish it before the College World Series starts this year. That was our whole goal on that project. So it's a...we had an incentive on finishing the Platte River bridges on I-80 between Lincoln and Omaha just because of the sheer volume of traffic that was traveling through there and if we could get all lanes open before winter, we knew it was a tremendous safety benefit. [LB838]

SENATOR CAMPBELL: And one last follow-up. [LB838]

SENATOR STUTHMAN: Go ahead. [LB838]

SENATOR CAMPBELL: On these projects, are there times when you say we really can't afford to close the whole road, we're only...we're going to try and keep something open? To get sort of to Senator Lautenbaugh's question. [LB838]

MONTY FREDRICKSON: Yes. The interstate six-lane work from Lincoln to Omaha. We knew there was too much traffic there to push over on Highway 6, just could not handle it. So right from the get-go, we said we got to maintain two lanes in each direction at all times on the six-lane work. We've never done that before, but once you reach a certain traffic volume, you just can't squeeze them into one lane, even if it's an off-peak period that just doesn't work. So we said two lanes all the time, it costs money, we had to put in

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temporary pavement to do that, but it has worked extremely well for us for those people that use that road. And the other thing that I wanted to say is, that if we choose to put the incentives/disincentives in, we put it in up front so all perspective bidders know what the provisions are. Negotiating it after the award could cause us some problems with the unsuccessful bidders. [LB838]

SENATOR CAMPBELL: Thank you. [LB838]

SENATOR STUTHMAN: Thank you, Senator Campbell. For the record I would like to also introduce Senator Janssen from Fremont and I think Senator Louden from Ellsworth was in here before so. I do have one question, Senator (sic) Fredrickson. What is the benefit of having an engineer project manager retained, discretion or incentives or disincentives? [LB838]

MONTY FREDRICKSON: You mean for us to retain that... [LB838]

SENATOR STUTHMAN: Yep [LB838]

MONTY FREDRICKSON: ...discretion? I just think we deal in this every day and we have experience with the formulas that are used to calculate user costs and we're the best ones to decide where they should be used and where they shouldn't. [LB838]

SENATOR STUTHMAN: Okay. And a follow-up to that is: how many times has there been a penalty against a contractor been assessed to them for not completing a project? Has that ever occurred? [LB838]

MONTY FREDRICKSON: Oh yes. You talked a little bit ago about liquidated damages, we have that provision in every contract. So there's many contracts that don't get done on time, so those 20 percent over the last five years that didn't get done on time were assessed liquidated damages every day until they got completed. In addition to that, any item that's paid for by the day, like signs and barricades, payment is no longer made to the contractor, he has to furnish those at his own cost until he finishes the job. As far as the large incentive/disincentive jobs over the last ten years, to my recollection, every one of them has reaped the maximum incentive. [LB838]

SENATOR STUTHMAN: Okay, thank you. Any other questions? Seeing none, thank you for your testimony. [LB838]

MONTY FREDRICKSON: Thank you. [LB838]

SENATOR STUTHMAN: Any other ones in the opposition? Good afternoon. [LB838]

CURT SMITH: Good afternoon, Senator Stuthman, members of the committee, my

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name is Curt Smith, S-m-i-t-h C-u-r-t S-m-i-t-h. I am the executive director of the Nebraska Chapter of the Association of General Contractors and I'm here to testify in opposition of LB838 as written. And I think Senator Lautenbaugh's opening remarks perhaps addressed some of our concerns in the language, in the ambiguities perhaps and some of the phrasing. But I would like to touch on at least three of those areas that we talked about, the three areas that are of most of the concern. The first area would be the blanket incentive/disincentive language and use of the word negotiated. It is not clear in this...it's not clear if this is before the project is advertised for bid or after the contract is awarded. Contractors, generally, are very cautious of vague or ambiguous contract wording. The clarification of those wordings would be helpful in the understanding of this, the intent of this law. Contractors have long supported the concept of incentive/disincentive contracts, but the question, the value of inclusion on every project led in the state. Almost all road and highway construction contracts contain language regarding the time of completion for work. This language generally addresses the number of working days would be allowed to complete the project along with the liquidated damages that would be assessed for each day the work remains incomplete. This process works well with a large number of projects and we would urge that it be accepted as a standard with this incentive...incentive options offered as a possible alternative when judged preferably by the owner. But remember, there's almost always a cost when accomplishing construction in a shortened time period. Any incentive earned by a contractor may or may not cover the cost incurred to speed the completion of the work. Number two: the wording regarding lane closures is vague and ambiguous. We would encourage the language of the bill be altered to state that if a project requires lane or intersection closing restrictions, then the contract be written to explicitly state those restrictions. It would not be a matter to be decided on a daily basis on a project site. Otherwise, arguments can erupt on an almost daily basis. And then lastly, the cost of the required signs has been mentioned previously; those would be significant. We suggest that the owner concurrently require the erection of such signs if they so desire. With the limited funds available for highway construction, we question the value of requiring this type of sign at one mile intervals on every project. That concludes my remarks; if you have questions, I'd try to answer them. [LB838]

SENATOR STUTHMAN: Thank you, Mr. Smith. Any questions from the board? Seeing none, thank you. [LB838]

CURT SMITH: Thank you. [LB838]

SENATOR STUTHMAN: Next testifier in the opposition. Good afternoon. [LB838]

TIM O'BRYAN: (Exhibit 3) Good afternoon. Thank you, Mr. Chairman and members of the committee. My name is Tim O'Bryan and I'm the construction engineer for the city of Omaha. My last name is O-'B-r-y-a-n. I'm writing to oppose LB838. The cities should be able to evaluate whether an incentive/disincentive provision is the best and most

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effective way to develop contracts. This bill will require cities across the state to insert an incentive/disincentive provision into all contracts. Currently, the city of Omaha utilizes the incentive/disincentive packages to expedite construction and reduce the impact to the road user on major projects that directly impact the traveling public on major thoroughfares with a high volume of traffic. The city of Omaha, as well as other cities in the state, have various reconstruction, rehabilitation, and maintenance programs to rebuild and maintain streets, bridges, sidewalks, traffic signals, and sewers. Contracts of this nature require short duration lane restrictions and require a specific amount of time to complete the work. If incentives are not sufficient to cover the contractors cost for the extra effort, there is little motivation for the contractor to accelerate production. Furthermore, a great number of the projects are performed in residential areas that have little traffic volume or the road user is able to utilize another street with very little effort. While incentive/disincentive packages are a useful tool for expediting construction, the general practice is to utilize this method of contracting when the project impacts areas of high traffic volume or requires detours around the construction. Cities should be able...should have the ability to determine the best and most effective types of contracts that will expedite construction as well as reduce impacts to the road user. I thank you for your consideration and I'll be glad to answer any questions if you have any. [LB838]

SENATOR STUTHMAN: Thank you, Mr. O'Bryan. Senator Hadley for a question. [LB838]

SENATOR HADLEY: Senator Stuthman. Mr. O'Bryan, in your experience, do you...if you had a disincentive package in a project, is that ever negotiable after the fact? [LB838]

TIM O'BRYAN: No, sir. Typically our incentive/disincentive packages are put into the contract at bid time. So all contractors are aware of the incentive/disincentive and have the ability to understand what they are responsible for. [LB838]

SENATOR HADLEY: I guess I was asking more that if...let's say a project was X-number of days late, do you ever waive the disincentive clause? [LB838]

TIM O'BRYAN: No, a contract is specifically stated on a number of days. [LB838]

SENATOR HADLEY: And you don't waiver it because of any peculiarities of a particular contract? [LB838]

TIM O'BRYAN: Well there's provisions in the contract that allow you to adjust time and yes, if that...if those times are valid or those requests made by the contractor are valid, that time can be adjusted. [LB838]

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SENATOR HADLEY: Okay. Thank you. [LB838]

SENATOR STUTHMAN: Thank you, Senator Hadley. Any other questions from the committee? Senator Campbell. [LB838]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Mr. O'Bryan, there would be...the time would be adjusted in many cases because of weather, would it not? [LB838]

TIM O'BRYAN: Typically weather is one issue. In an urban setting, obviously, there are a lot of utilities that are within the street, right-of-way, and while we work at great length with the utility companies to try to determine exactly what it is they have to do, we also try to work with the utilities from the standpoint of getting them out ahead of the contractor; therefore they can make any relocation efforts that they need to previous of the construction starting. But, obviously, there are those locations that come into play while the contractor is working. Sometimes that becomes a time adjustment for the contractor. [LB838]

SENATOR CAMPBELL: Most complaints that I ever take, having to do with a road construction within a populated area had to do with closing all lanes down and really affecting businesses to a great extent when there's no one that can get to their business. How do you deal with that in Omaha? [LB838]

TIM O'BRYAN: Well again, we have used the incentive/disincentive package and that's one of those options. We've had a number of locations...we just did a project last year with a contractor on Cummings Street where we removed the entire section of the pavement and there was a large storm sewer that was installed plus they had to rebuild the pavement so there were portions of that project that we actually identified as incentive/disincentive because of businesses and because of the traffic that had to flow through that area. [LB838]

SENATOR CAMPBELL: Thank you. [LB838]

SENATOR STUTHMAN: Okay. Thank you. Any other questions? Seeing none, thank you for your testimony. [LB838]

TIM O'BRYAN: Thank you. [LB838]

SENATOR STUTHMAN: Any other ones in the opposition? Good afternoon. [LB838]

LYNN REX: Good afternoon. Senator and members of the committee, my name is Lynn Rex, R-e-x representing the League of Nebraska Municipalities. And we thank Senator Lautenbaugh for introducing this measure and clarifying in the introduction some of the

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vague language that's here. We do have the concerns that have already been expressed by other opponents. We're concerned about the cost of signage. We know that that is going to be passed on to the cities so we are concerned about that. Obviously, I think that something the cities should have the option of requiring and they do have that option to require it, but we don't think it should be required in all cases. In the same way that others have indicated that the incentive/disincentive packages don't necessarily have to be used all the time. And we are concerned about that and the cost relative to that. I'd be happy to answer any questions that you may have. [LB838]

SENATOR STUTHMAN: Are there any questions from the committee for Ms. Rex? Seeing none, thank you for your testimony. [LB838]

LYNN REX: Thank you. [LB838]

SENATOR STUTHMAN: Any other ones wanting to testify in the opposition? Seeing none. Anyone testifying in the neutral position? [LB838]

LARRY DIX: Good afternoon. For the record, my name is Larry Dix spelled D-i-x. I'm executive director of the Nebraska Association of County Officials appearing today in a neutral capacity on LB838. One of the things, it's been mentioned before, I just call your attention to, on page 3, line 5, where it says "shall", I think from our point of view and I've visited with Senator Lautenbaugh about that, we would like that to be "may" so that the counties can make their decisions. Certainly when we're talking about county roads, we're not talking about the volume that you heard in all the previous testimony, we simply don't have some of those issues on the graveled county roads that many of the other folks would have. And about the only time that, from the county perspective, that we look at incentive or disincentive really is on bridge projects. On the majority of the other gravel projects and those types, there's probably not a whole lot of incentive or disincentive that really would come into play; but occasionally on bridge projects they would. So, that would be what we would look for in the bill is to simply allow that to local government to have the option to either have an incentive or disincentive. I'd be happy to answer any questions you'd have. [LB838]

SENATOR STUTHMAN: Thank you, Mr. Dix. Any questions from the committee? Seeing none, thank you for your testimony. Any other ones want to testify in the neutral position? Seeing none. Senator Lautenbaugh, do you want to close? [LB838]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman, I'll just do it briefly from here. There was good discussion here today and some good ideas to ways to tighten up the bill and I'd be happy, as I indicated, to work with the committee towards that end. [LB838]

SENATOR STUTHMAN: Okay. Any questions for Senator Lautenbaugh in his closing?

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Seeing none, that closes the hearing on LB838. And I will now have Senator Fischer introduce LR286CA. Welcome, Senator Fischer, back to the committee. [LB838]

SENATOR FISCHER: (Exhibit 4) Thank you very much, Senator Stuthman and members of the Transportation, Telecommunications Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, I am the senator representing the 43rd District here in the Nebraska Unicameral. I come before you today to introduce LR286CA. This is a constitutional amendment to put the Highway Trust Fund into the Nebraska Constitution and reserve the three main highway user fees for the maintenance, preservation and expansion of Nebraska's highways, roads, and streets. The three main highway user fees are the fuel tax, sales tax of motor vehicles, and motor vehicle registration fees. The amendment specifies that any current use of these three main user fees for other purposes than highway funding will continue as long as they are authorized by law in January 1, 2011. The Legislature may also provide other sources of funding for the trust fund through statutory law. I've spoken in the past about Nebraska reaching a crossroads in its highway funding. I believe the time has been reached when the Legislature needs to decide how important Nebraska's highway transportation system is to our citizens. This constitutional amendment is the first step in that process. Through the adoption of this amendment, the citizens of Nebraska would be stating that highways are important to this state and highway user fees should not be allocated for any other governmental purpose. The state is currently in the middle of a revenue and economic downturn. This body will be faced with difficult decisions in the coming days and will be forced with the inevitable question of what role should the government play in the lives of its citizens. As a fiscal conservative, I believe that government should have a limited role. Maintaining our state's infrastructure and meeting the growing needs to our highway system should be one of the purposes for which our government exists. It is a function that cannot be done by private citizens in a fair and equitable manner. With the downturn, we are presented with an opportunity to recognize the true priorities of this state and I believe highways and adequate infrastructure are one of those priorities. LR286CA is a step in the process of insuring that our highways are adequately funded into the future. I don't introduce this constitutional amendment lightly. This is the first I've introduced as a member of this body. I believe the appropriate funding for our state's highway needs is something that must be a priority for this state and it should be reflected in Nebraska's most sacred document. Thank you. [LR286CA]

SENATOR STUTHMAN: Thank you, Senator Fischer. Are there any questions for Senator Fischer? Seeing none, thank you. [LR286CA]

SENATOR FISCHER: Thank you. [LR286CA]

SENATOR STUTHMAN: (Exhibit 4) First of all I would like to have read into the record a letter of support of LR286CA from the Nebraska Trucking Association. At this time I would invite anyone in the proponent portion of this to come forward please. Good

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afternoon, Jessica. [LR286CA]

JESSICA KOLTERMAN: (Exhibit 5) Good afternoon Senator Stuthman, members of the Transportation Committee. For the record my name is Jessica Kolterman and I serve as the director of the PAC in state governmental relations for the Nebraska Farm Bureau Federation. Kolterman is spelled K-o-l-t-e-r-m-a-n. I come before you today in support of LR286CA as we have a long standing member forum policy in support of the Highway Trust Fund. Good roads, highways and bridges are essential to farmers and ranchers who face more and more global competition. The key is to keep the cost of shipping commodities as low as possible to help producers competitively market their products in a global market place. Today more and more agricultural commodities are hauled by truck. A recent growth of ethanol production in Nebraska shows agriculture's growing reliance on the state's road infrastructure. Grain that at one time was shipped out of state by rail is now trucked to local ethanol plants. Distillers grains is trucked from an ethanol plant to a feedlot. Cattle are trucked from feedlots to packing facilities. As you can see, good highways are very essential. I provide you with this background as the reasoning behind Farm Bureau's long standing policy in support of the Highway Trust Fund and dedicating revenue sources to fund it. Farm Bureau policy strongly supports the Highway Trust Fund and equally strongly opposes diversions from it for other governmental purposes. Previous state budget crisis have led to attempts to divert monies from the Highway Trust Fund which we opposed. By placing the Highway Trust Fund in Nebraska's constitution and dedicating revenue sources to the fund, LR286CA would provide a strong fire wall in protecting the fund from diversion. For this reason Farm Bureau supports the bill. I also have with me letters of support from the Omaha Chamber of Commerce to enter into the record. And I have sheets for you as well. With that I will answer any questions if you have any. [LR286CA]

SENATOR STUTHMAN: Thank you, Miss Kolterman. Any questions from the committee? Seeing none, thank you. [LR286CA]

JESSICA KOLTERMAN: Thanks. [LR286CA]

SENATOR STUTHMAN: Next testifier please. Good afternoon. [LR286CA]

LARRY DIX: Good afternoon, Senator Stuthman and members of the Transportation Committee. For the record my name is Larry Dix, D-i-x, I'm executive director of Nebraska Association of County Officials. Certainly I'll be very brief here. We do support this. As you know, the county officials, the county roads are fairly near and dear to what we do. And for a number of our taxpayers around the state, the NACO Board every year establishes a platform and in that platform are about 20 core principals that we firmly believe in and that we will do whatever we can to support and protect and I would tell you that the Highway Trust Fund is one of those that is in that platform that we review each and every year. And we agree, as Senator Fischer had mentioned in her opening,

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that this is one step. We know that there are some funding challenges ahead of us. We certainly are looking to work together to try to address those in the future; but we believe this too would be a first step in that fashion. With that I'd be happy to answer any questions if you may have them. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Dix. Any questions from the committee? Senator Janssen. [LR286CA]

SENATOR JANSSEN: Thank you, Senator Stuthman. I had a question and I probably should have asked Senator Fischer when she was here and I'll just throw it out there now and perhaps she'll cover it in her closing. As I read this, this basically puts a lockbox, if you will, if enacted, on the funding. Do you have any fear that...and you just mentioned it, most people, I imagine, or proponents of this would like more funding for roads. Do you think an unintended consequence of this could be that people said, well, we've already got a trust fund for this; we've already got this locked away, so why are we adding. So this is a reason not to add additional revenue sources to it. I didn't know if that was something that was... [LR286CA]

LARRY DIX: Well, we had that conversation, really, within our board when we took a position on this. But in the past, I think you've heard myself and really the county officials testify before that we so firmly believe that all of those funds that the citizens pay toward...through their gas tax and through their registration fee, must be used for roads that...that we believe that firmly and that we think if it is in the constitution, it does lock it down a little bit more firmly. Is there a risk that somebody would take an opposite view? I would tell you that anytime you put a constitutional risk up there, there are going to be pros and cons to it; there's always going to be two sides of the issue. But certainly from our point of view, we believe it is worth the risk. [LR286CA]

SENATOR JANSSEN: So what I hear you saying is that more motorcycle drivers on the road will actually help our funding. (laughter) Thank you. You don't have to answer that. [LR286CA]

SENATOR STUTHMAN: Thank you. Any other questions from the board? Seeing none, thank you, Mr. Dix. Next testifier please. Good afternoon again. [LR286CA]

LYNN REX: Good afternoon. Members of the committee, my name is Lynn Rex, R-e-x, representing the League of Nebraska Municipalities. We'd like to thank Senator Fischer for introducing this measure. We do think it is critically important to have in the constitution the protection of the Highway Trust Fund. We think that it's timely and we thank her for bringing this forward especially in the time frames that we're operating under now with revenue shortfalls. There's always an effort to try to take money from this fund or that fund or do something else with it. I think the voters of Nebraska want to make sure that those funds are going for their streets, roads and highways. I'd be happy

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to respond to any questions that you may have. [LR286CA]

SENATOR STUTHMAN: Thank you, Miss Rex. Any questions from the committee? Seeing none, thank you. [LR286CA]

LYNN REX: Thank you. [LR286CA]

SENATOR STUTHMAN: Next testifier, please; in the proponent. Good afternoon, Pete. [LR286CA]

PETE McClymont: Good afternoon. Senator Stuthman, members of the committee, I am Pete McClymont, P-e-t-e M-c-C-l-y-m-o-n-t. I am vice president of legislative affairs for the Nebraska Cattlemen. I would like to thank Senator Fischer for bringing this LR and our board is strongly in support of it. Good quality roads are essential to our state. Obviously, living in a large area, sparsely populated state, we all know the necessary needs for this, especially in our industry, the beef industry. Farm to market roads are critical to make sure that we attain the commerce that we need. And the time limits, obviously, this committee is a good example of the need for...we have a small urban district that Senator Gay represents and Senator Louden's district is vast and so the good thing about this bill, a lot of times, you as senators will have legislation that will pit groups against one another, while this LR286CA benefits all the state and if this was passed and affirmed by the voters, it just makes sure that we as a state know the great importance of roads now and into the future. So with that, I conclude my remarks. I want to thank Senator Fischer for bringing this. [LR286CA]

SENATOR STUTHMAN: Thank you. Mr. McClymont. Any questions from the committee? Seeing none, thank you. [LR286CA]

PETE McClymont: Thank you. [LR286CA]

SENATOR STUTHMAN: Next testifier in the proponent. Good afternoon. [LR286CA]

WILLIAM ARNESON: (Exhibit 6) Good afternoon. Senator Fischer, members of the Transportation Committee, my name is William Arneson, A-r-n-e-s-o-n. I'm the legislative co-chairman for American Society of Civil Engineers and a member representative of the Professional Engineers Coalition. The Professional Engineers Coalition, or PEC, is made up of three organizations: Nebraska Society of Professional Engineers; American Society of Civil Engineers; and Professional Surveyors Association of Nebraska, with one associate member, mechanical engineers...American Society of Mechanical Engineers. PEC supports LR286CA, a proposed constitutional amendment to create the Highway Trust Fund. Public and private sector engineers who work for the city, counties, and the Nebraska Department of Roads all dealing with a growing gap between the number of transportation projects that need to be completed

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and the available limited revenue stream. User fees and other revenues generated to maintain or expand Nebraska roads should be spent to do just that. The Professional Engineers Coalition strongly supports LR286CA to protect Nebraska's transportation system and to stimulate growth through additional roads, street construction infrastructure projects. Failure to protect these funds for the purpose that they were collected would be a violation of public trust. Thank you for your time. I'd be happy to answer any questions. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Arneson. Any questions from the committee? Seeing none, thank you for your testimony. [LR286CA]

WILLIAM ARNESON: Thank you. [LR286CA]

SENATOR STUTHMAN: Next testifier please. [LR286CA]

CURT SMITH: Good afternoon, again. [LR286CA]

SENATOR STUTHMAN: Good afternoon. [LR286CA]

CURT SMITH: Senator Stuthman, members of the committee, my name is Curt Smith, C-u-r-t S-m-i-t-h, I am the executive director of the Associated General Contractors, Nebraska Chapter. I am here to support...speak in support of LR286CA. The Nebraska highway contractors appreciate and support the concept and idea shared with many of the state citizens. Its integrity of the Highway Trust Fund should be continued. The value and importance of our highway system to the economic health of the state is well known. With user tax revenues no longer able to fund capital improvements, but only able to meet asset preservation and maintenance requirements, now is the time to move forward to further protect the integrity of the trust fund. The AGC strongly supports LR286CA and thank Senator Fischer for introducing it. If you have any questions, I will answer. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Smith. Any questions from the committee? Seeing none, thank you. [LR286CA]

CURT SMITH: Thank you. [LR286CA]

SENATOR STUTHMAN: Next testifier, please. Good afternoon. [LR286CA]

BRUCE BOHRER: (Exhibit 7) Good afternoon committee members. Bruce Bohrer appearing on behalf of Lincoln Chamber of Commerce and for the record my last name is spelled B-o-h-r-e-r and I'm going to continue the course here and try not to be too repetitive. The Lincoln Chamber of Commerce has a long standing policy statement which commits us to work to protect the Highway Trust Fund along side many of the

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other groups, organizations and individuals you've heard from this afternoon who understand the vital role adequate road funding plays for the economic vitality of our state. The Lincoln Chamber and our members have worked to protect the Highway Trust Fund and to find solutions for our road needs. More recently, protecting the Highway Trust Fund has taken on added urgency as the Madam Chair mentioned in her opening and the importance of budget pressures, the economy and the fact that we still have the challenge of developing an adequate funding plan for our state road funding needs ahead of us all point in the direction of making this a proposal that we need to support. Accordingly, we are very supportive to LR286CA and the concepts and objectives outlined in the Chair's statement of intent and her introduction. That ends my testimony and I would be happy to answer any questions. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Bohrer. Any questions from the committee? Seeing none, thank you for your testimony. Next testifier in support. Good afternoon. [LR286CA]

LOY TODD: (Exhibit 8) Good afternoon, Senator. Members of the committee, my name is Loy Todd, that's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealer's Association. I have been asked to testify this afternoon, not only on behalf of our association, but also for the Nebraska Chamber of Commerce and Industry; the Nebraska Trucking Association, who has already submitted a letter to the committee; and also the Nebraska Petroleum Marketers and Convenience Store Association and they have just submitted the letter in favor of this legislation also. I will not be repetitive. Certainly our highways are supported primarily by user fees in this state. We believe that's the public expectation and we don't want that to change. Through the years I've represented our association, we have seen attempts to raid the Highway Trust Fund and to...and we have seen successful attempts to divert the taxes on motor vehicles and other issues come up. We're very concerned about that, especially with the diminished capacity of our industry to contribute; as well as the lessened use of petroleum products that are all hurting that effort. And more recently we have seen some discussions and some efforts to maybe look at getting rid of the Highway Trust Fund and having those monies poured into the General Fund and compete for the dollars that are available with other entities and we think that's completely inconsistent with the public opinion and with the historic funding of our roads. We're the envy of most other states in this country because of this base source of funding. And I want to thank Senator Fischer for bringing this forward. I can also tell you that our association will be willing to contribute to any kind of campaign effort to help promote this on the ballot that takes place. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Todd. Are there any questions from the committee? Senator Gay. [LR286CA]

SENATOR GAY: Thank you, Senator Stuthman. Mr. Todd, I'm going to go back on your

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experiences because you've been around a long time, but you just mentioned that there had been several attempts to divert money; some were successful, some weren't. Can you give us some examples of that? [LR286CA]

LOY TODD: Well back during the Kerrey administration, there was actually an attempt to fund the State Patrol from the roads fund and from the Highway Trust Fund. And most recently, when there was a budget crisis and the sales tax was increased on a "temporary" basis until we all wrestled that back. My association argued at that time against raising the sales tax on motor vehicles, simply because it didn't go to the General Fund and therefore would not contribute to the concerns. Well everybody believed us, so they went ahead and took that half cent, the increase and diverted that to the General Fund at that time. So, you know, there are historic times when it has happened and it was really a fight to get that back. And so from that standpoint...and we were also seeing other groups sometimes want to take a run at it. I don't know if it was such a formal attempt, but there are people who are pretty jealous of that fund. When the balances go up like they do from time to time, because you have to put money away to fund huge projects and all of a sudden there will be hundreds of millions of dollars sitting there in the trust fund and as you know, when there is money laying around and there is a crisis, there is a real temptation to go get it and so we see those kinds of things from time to time. [LR286CA]

SENATOR STUTHMAN: Do you have another question? Go ahead. [LR286CA]

SENATOR GAY: Last year Senator Fulton had a bill to take school...some fees away from schools, didn't get very far, obviously the schools came in and said, well, we don't want you to do that. I mean, on some of this though, what's to prevent...we start to put this in the constitution to prevent other people, other committees, Health and Human Services or Education, say, you know what, stay away from our pool of money; don't go there. And I understand and I consider myself a supporter, but I hear, you know, just now nine people come up and say, don't touch this money. Like I say, I can see, kind of, I know what you mean, if there's money laying around, people go for it. But I guess, if you're in another committee or your interest was something else, education, social services and all that, do they then start carving out and say don't touch this piece. Don't touch this piece and maybe we should have a constitutional amendment to protect ourselves. [LR286CA]

LOY TODD: Well that certainly happened, Senator. There have been attempts from time to time to make any kind of funding or raids on funding or isolate funds available. The one unique thing about the Highway Trust Fund, at least in my opinion, is the fact that it is a user fee. It is so directly derived from and attributable to sources of income that are uniquely tied to the roads that it is. I can tell you this, I don't relish the thought down the road sometime of competing against the schools or competing against other necessary funding for those kinds of things. But if they can stand on their own merit and

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come in and make the case with this Legislature and with the public that their funding source is like this one and so tied and so related to their needs and to their spending, so be it. We might even be there supporting it because there are some things you just have to do and this is one of them. This is one of those things that is so vital to this state for so many reasons, I think it justifies this unique attempt and this unique protection.
[LR286CA]

SENATOR STUTHMAN: Okay. One more question. [LR286CA]

SENATOR GAY: Thank you, Senator Stuthman. So I guess this would be like during the special session when we had just certain cash funds, people felt very strongly about, you know what, you told us these were for this specific need, don't touch it, and the Legislature, I think, did a pretty good job of, okay, we hear you, the Appropriations Committee, and we didn't touch some of those funds. Now other ones we did, but so I'm kind of torn on this, because I can see what you're saying, it's a lot of money sitting there, but we'd have a lot of needs as well. So I'm kind of torn and really I'm not...I just, you know, feel comfortable asking you, because you've been some of the historical knowledge that maybe you could bring to this. But anyway, so thank you. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Todd. Any other questions from the committee? Seeing none, but I would like to thank you for bringing this letter of support and will be entered into the record from the Nebraska Petroleum Marketers and Convenience Store Association for their support also. So thank you, Mr. Todd.
[LR286CA]

LOY TODD: Thank you. [LR286CA]

SENATOR STUTHMAN: Any other testifiers in support of this bill? Good afternoon, Walt. [LR286CA]

WALTER RADCLIFFE: Good afternoon, Senator Stuthman, members of the Transportation Committee. My name is Walter Radcliffe, last name R-a-d-c-l-i-f-f-e, appearing before you as a registered lobbyist on behalf of the Nebraska Expressways Coalition; NEED, Nebraska Expressways for Economic Development in support of LR286CA. For all, frankly, for all the reasons that everybody else has said, I had two particular things I'd like to point out. I mean, the Expressways Coalition very supportive of expressways, the reality of it is, you're not even going to get to the issue of expressways unless you have the money. And this is one way to ensure a revenue stream for that. Senator Gay, picking up a little bit on what you were asking Mr. Todd historically. This isn't the first time the Legislature has had this issue before it. It's probably...I think it was when Governor Kerrey was in office, Senator Warner introduced a similar resolution and he did not pursue it. It was in front of the old Constitutional Revision and Recreation Committee, that's an interesting committee, but...and I

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remember I asked Senator Warner one night, I said, Jerry, why aren't you pursuing that? And he said to me, this is a paraphrase, but he said, you know basically, Walt, I can't really make the case for it. He said that we've got plenty of money in the fund; he said, they did talk about it for the State Patrol, but he said, realistically, nobody is really trying to steal it from us. He said, it seems to be a pretty stable fund. And I would submit to you that for all the reasons that Senator Warner, at that time, sought not to pursue it, those reasons exist today to pursue it. The fund is declining; it has been the target, as Mr. Todd pointed out in the past for, you know, for other groups to go after. And I also believe that, I guess, oh, "earmarking", if that's the right word, it's not a good word, but it illustrates the point. We do in the constitution segregate the lottery funds for environment, for education and the state fair. Other funds maybe don't enjoy a constitutional protection, but in essence, TEEOSA, for example, not constitutionally enshrined, but, you know what, I think the Highway Trust Fund would trade a constitutional clause for an escalator clause. So I'm just saying, as you look at...as you look and go through the budget and look at the way the state allocates and maintains funding allocations in different areas, there, in significant areas, there is usually a way to ensure that that funding need is addressed. So with that I'd be happy to try to answer any questions. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Radcliffe. Question from Senator Gay. [LR286CA]

SENATOR GAY: Thank you, Senator Stuthman. On the lottery deal, that was a vote of the people at that time it went to... [LR286CA]

WALTER RADCLIFFE: As any constitutional amendment has to be. [LR286CA]

SENATOR GAY: So they'd probably...was that placed in there, probably, to garner support of, let's do this and here's the good benefit that will come from the gambling, or lottery proceeds. [LR286CA]

WALTER RADCLIFFE: Originally when the lottery was passed, a coalition was formed with education and environment to give them to...for them to be the beneficiary recipients in return for their support of the issue on the ballot. And that was a statutory scheme and it was passed and was put in place. Then the State Fair, when it was about 4 million bucks in the hole, there was a change in the lottery vendor that resulted in approximately \$7 million more being paid to the state. And so the fair sought to get that revenue and one of the issues was that...that was raised, was people in the state were not supportive of the fair. So the only way to actually get the people to show their support and vote on it, was to constitutional amendment, that's the only thing people can vote on. So because the extra money was there, it didn't take anything away from education, environment; and Senator Landis introduced it, was put on the ballot and it was passed. Now that's a short summary. [LR286CA]

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SENATOR STUTHMAN: Thank you. Any other questions from the committee? Seeing none, thank you, Mr. Radcliffe. [LR286CA]

WALTER RADCLIFFE: Thank you. [LR286CA]

SENATOR STUTHMAN: Next testifier in the support of this bill. Good afternoon. [LR286CA]

DAN PARK: Good afternoon. Madam Chairman, members of the committee, my name is Dan Park, D-a-n P-a-r-k. I'm chairman of the legislative committee for the American Council of Engineering Companies of Nebraska. Our organization continues to support efforts to protect the Highway Trust Fund and we certainly appreciate Senator Fischer's continued dedication to our Nebraska's transportation system. As we all know, transportation systems are vital to the citizens of our state and our economy. And as you're well aware of, our state transportation needs greatly outweigh the funds that are currently available. Our roadways continue to age and new roadways continue to go unbuilt. The department now finds itself in a maintaining and preservation mode, while a number of major projects all across the state continue to go unmet. The properly funded transportation system takes a steady and committed investment of dollars. It can't be subject to annual General Fund political decisions and it needs certainty, and protecting the trust fund is one step in providing that certainty. To be perfectly honest, the board of...our board of directors met yesterday and discussed the matter. It considered taking a position of neutrality and the reason for that, but we didn't, we are supportive of this effort and we want to commend the senator, and we believe that the trust fund must be maintained, but we do have some reservations over taking the matter forward in the constitutional amendment as we've been discussing here. But we did not want to come across by remaining neutral as coming across as negative, so we are supporting it, but with certain reservations. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Park. Any questions from the committee? [LR286CA]

DAN PARK: Thank you. [LR286CA]

SENATOR STUTHMAN: Seeing none, thank you. Any other testifiers in support of this bill? Anyone in opposition? Anyone wanting to testify in the neutral position? We have one. Good afternoon. [LR286CA]

JACK CHELOHA: Good afternoon. Senator Stuthman and members of the committee, my name is Jack Cheloha, the last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify today in a neutral capacity on LR286CA. I really don't have any prepared remarks other than when this bill was

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introduced, I typically, as a lobbyist, will send it to the appropriate departments within city of Omaha government, so I sent this out to our finance department. I sent it to our Public Works Department and I said, you know, I asked them just to take a look at it and maybe, you know, do a little e-mail debate or give me their thoughts on it to see where we wanted to be. And with that, we really, if you will, didn't come to any consensus yet. Through the history of the Highway Trust Fund, which has, all of you would know, has a life span of over 40 years. It seemed like it served the state very well in terms of, you know, having a set amount of money from various sources to fund our needed projects throughout the state, and the city of Omaha has always been, at least from my 16 years of doing this, part of the coalition of the willing, if you will, all of the people that you heard from in terms of the proponents, we've always done our part to help preserve the Highway Trust Fund. It's important to Omaha. We gain significant source of revenue from it and so on one hand it's very crucial; we understand the importance of it. But yet, at the same time, if you go to a constitutional amendment, you know, that is considered a very serious step. Maybe, you know, all I can...as I was sitting there listening, maybe drastic times do take drastic measures. I'm not sure. And it seems like we are on pretty tough times right now. So...so, you know, I don't know what you...if our testimony is neutral negative or neutral positive, I'm not sure. We just haven't come to any consensus, but we do acknowledge the importance of the trust fund and our support of it and we think that it has worked for...you know, as I've said, for 40-plus years. One of the things that we had questions about though within the language, I think it's a very well worded constitutional amendment and I think it certainly focuses on the areas that would be appropriate to designate and it also gives you that, at the same time, the flexibility within the Legislature to add on line 13 any other source of revenue as you need. Which, you know, so, on the one hand you cover what you need, but then you still have flexibility to add. What we looked at as well, would be on the top of page 2, you know, we talked about municipal streets and that's important to us, and then the word says: and related expenses. So our people said: well, what are related expenses? Does this include, you know, the statutory language we have now relating to construction, reconstruction, maintenance and repair of all facilities, apparatus and structures deemed necessary. So we kind of got into a little bit of, well, can we spend this for a design and engineering and things on the front end? But what if we have to have that afterwards, as transportation demands increase and we need to change it accordingly. I think there's a good argument that all of these things are related expenses. But then at the same time, some of the more questionable things may be, for instance, an urban setting, we utilize some of our Highway Trust Fund to pay for street lighting. Is that appropriate to do street lights, or is it not necessary? You know, we think it's necessary for the, you know, safety and well-being of the people and they are, accordingly, lighting the right-of-way, and so we think it's, you know, a necessary expense. And so for those reasons, I guess, we're conflicted. That's why I'm here in a neutral capacity just to caution you and to let you know that there are, you know, many factors to consider here and I'd just ask the committee to do that and ultimately, you know, the city of Omaha, if you decide to go forward, maybe, you know, in full support of this. But, as of right now,

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they just weren't willing to take that step at this point. So that's why I'm neutral. I'll try and answer any questions. [LR286CA]

SENATOR STUTHMAN: Thank you, Mr. Cheloha. Any questions from the committee? Seeing none, thank you. [LR286CA]

JACK CHELOHA: All right, thank you. [LR286CA]

SENATOR STUTHMAN: Senator Fischer, you're invited to close. [LR286CA]

SENATOR FISCHER: Thank you, Senator Stuthman and members. Don't you just love a love fest? So this was great. I know Senator Hadley always appreciates it. What I thought was really interesting were Mr. Radcliffe's comments. And he gave us some of the history on this. And I've read the transcripts when Senator Warner was moving forward with the constitutional amendment back in the eighties. And he didn't know if the time was right. I say to you, the time is right now. I found Mr. Cheloha's comments very interesting considering a few months ago we had the mayor of Omaha before this committee at a hearing in Papillion telling us that they'd need money. We had the mayor of Lincoln here in this room telling us they need money. They don't need it for lighting; they don't need it for a street car, they need it for the potholes. And I think you can talk to anyone, including us, who drives down the streets here in Lincoln, that that funding is needed and we'd better get it fast. Senator Radcliffe...Senator Radcliffe, I just demoted you back there, Mr. Radcliffe, my apologies. Mr. Radcliffe always has very interesting stories and I find them enlightening and he pointed out some things with TEEOSA to Senator Gay. Yes, I wish we had that adjustment in the Highway Trust Fund, that...to the billion dollars we spend on state aid to school has. We don't have hundreds of millions of dollars sitting in that fund. We have maybe three hundred total, but it's a pass-through and it doesn't all go to the state. We have to remember that. It's a pass-through fund. In fact, during special session when it was proposed by the Executive Branch to go after some of those cash funds, that included the Highway Trust Fund, because it's a cash fund. So I don't think we can sit back and just be complacent on this. And at the time that that was proposed, there wasn't 300 million sitting in that Highway Trust Fund, there was like 5 million. It changes daily. There was 5 million. So why other groups may look on the Highway Trust Fund and say, we need to get some of that money, well, it depends on the day. And it also depends on what the contracts are out there, because that money is already obligated. Mr. Vaughn always tells me I need to change the title of my talk. We can't just talk about highway funding, can we, Dusty? He wants something catchy out there. So I came up with a new one today and I said we're at the tipping point, because we are at the tipping point. I'm past asking for 10 million, like we did in LB305, which is the sales tax on leased motor vehicles three years ago, four years ago; which by the way, saved us. A couple years ago, you can talk to Senator Heidemann on Appropriations and that saved the Department of Roads. But that was like 10 or 12 million. I'm past that. I'm past looking for maybe an extra 20

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million. We need to build roads. And when you're looking at 8.5 million a mile down in this part of the state, we need to be looking at hundreds of millions of dollars. Senator Janssen asked about the trust fund and if I'm looking for a lock box. You bet I am. And I hope everybody on this committee is too. I think what we need to get across is this lock box that I'm looking at won't even cover maintenance in 2012. We can't even do maintenance in two years. So we don't just need a lock box, we need another factor in there too. You know we talked about this for years; the body talked about it before any of us were ever here. And not to say that our predecessors didn't act in good faith, but I don't believe enough was done. I think we do have a sense of urgency and I think we need to move forward on it. So I would ask your serious consideration of this amendment. Thank you. [LR286CA]

SENATOR STUTHMAN: Thank you, Senator Fischer. One moment please. I think I have a question for you. Senator Campbell. [LR286CA]

SENATOR CAMPBELL: Thank you, Senator Stuthman. Senator Fischer, my question is only technical. Okay, I mean, I just...because as I was sitting...in the language that goes before the voters, do we need to make some reference to bridges? [LR286CA]

SENATOR FISCHER: To bridges? [LR286CA]

SENATOR CAMPBELL: Bridges. [LR286CA]

SENATOR FISCHER: I will tell you that legal counsel and I in consultation with some of the folks that are behind me, worked really hard on the language in addressing the problem, but also in protecting certain entities that receive funding from the trust fund currently. And I think we, certainly, can address that in our committee discussions and see if we need to do some more fine tuning, but I'm willing to look at it and I would like to include some of the folks behind me who have been very, very helpful and understand how the process works. [LR286CA]

SENATOR STUTHMAN: Any other questions? Senator Hadley. [LR286CA]

SENATOR HADLEY: Senator Stuthman. Senator Fischer, I guess more of a comment than a question, if current situation keeps going the way it is, we won't need a lock box, we'll need a coin purse. Because unless we seriously look at what we...where we can get sources of revenue to tackle the problem, having a lock box if you can't put anything in it, doesn't do us any good. I'm in favor of this and such as that, but ultimately, we've got to figure out the long range funding of highways, bridges, whatever they may be. [LR286CA]

SENATOR FISCHER: Thank you, Senator Hadley, and I totally agree with you. I view this as one of the first steps that I'm trying to accomplish this session. And we've talked

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about the need for funding and the need for hundreds of millions of dollars. And how we can help cities, help counties, but most of all, our priority as state senators is to the state of Nebraska and our state highways. And I think the options are out there. And I think the public, especially after this winter again, I see our pages nodded when I talked about potholes, I mean, everybody knows about it and knows the costs involved to your vehicle if you hit one. And I believe the time is right for a number of reasons to do this. But I also believe that the public is so well educated and so well informed on this issue that they will support this amendment. [LR286CA]

SENATOR STUTHMAN: Senator Louden for a question. [LR286CA]

SENATOR LOUDEN: Yes, thank you, Senator Stuthman. I would more of a question, Senator, more of a comment rather than a question, Senator Fischer; since Senator Stuthman and I were the only two left here in 2003 when I say the state was literally broke then. Senator Schrock made an eloquent speech on the floor that we needed to raid the Highway Trust Fund or he didn't say raid, but we need to get the money out of the Highway Trust Fund and they had plenty and so and so forth. And as Walt Radcliffe mentioned, that when the dust all settled, what came about of that is they raised the sales tax and they took the half cent sales tax from the sale of new and used cars and put it into the General Fund which should have really went into the Highway Trust Fund the way it was meant to be. So it can be raided. And as we went through this last special session, lord almighty, I mean, you about had to lock your daughters up, you know, because you didn't know what all as going to happen. I mean everything was vulnerable. So I do think we need to do something about this because as we have more of these times; as I say, Senator Stuthman and I are the only two left here that went through that in 2003 and Senator Gay is asking questions on what happened. So as we get this term limits and that, there's some of these things that need to be chiseled into cement a little bit better than what they are. So I think, yes, the time has come to do something, to point it out. And as they did with the fair board back then, well yes, they put \$2 million come out of the environmental or out of the lottery fund and went into the fair. And I remember the argument then was, well that could be done in statutes and Raikes and some of them didn't like it and they voted against it, but Landis had the votes besides he and Cudaback and we pointed out that you could have kids starving on the street, but you were still going to take \$2 million out of the lottery fund to go to the fair. So, when you do take...put the money in constitutional amendment like that, that is where it will go and that is where it will be. So I think the time has come that something has to be done. [LR286CA]

SENATOR FISCHER: Thank you, Senator Louden. And as you remember, we worked to get that half cent back to the trust fund and we were able to do that a few years ago. The Legislature will still have control over the Department of Roads' budget which in turn determines how much money is in the trust fund. So if a future body wants to raise the budget and we keep the current funding system we're under now, then yes, gas tax

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would go up if consumption would stay the same or go down. I don't anticipate consumption would go up. So the gas tax probably would go up; there would be more money in the trust fund, but right now, you know, we're looking at about 300 million, that's what this revenue brings in; that's what these user fees bring in. I think we need to protect that because as Mr. Todd said so eloquently, that that money is user fees. And I think we understand that, but you never know. As you said, we've seen attempts to...of different groups to go after it. I had a senator say to me at the beginning of special session that there's 300 million sitting in the trust fund. Why can't we use some of it? And that's when we checked and I went back and said, well there's only 5 million in there today. So I think we need to protect what we have that has worked so well for the state and the citizens. [LR286CA]

SENATOR STUTHMAN: Thank you, Senator Fischer. Any other questions from the board or comments? Seeing none, thank you, Senator Fischer. [LR286CA]

SENATOR FISCHER: Thank you very much, Senator. [LR286CA]

SENATOR STUTHMAN: That closes the hearing on LR286CA and that closes the hearing for the day. [LR286CA]