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Transportation and Telecommunications Committee  
January 24, 2011

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[LB47 LB112 LB163]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, January 24, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB163, LB112, and LB47. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Louden; and Scott Price. Senators absent: None.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r. (Laugh) I act like I'm testifying (laughter) and I am Chair of the committee. I have way too many bills up already. But I am Chair of the committee. I'm from the 43rd District here in the Nebraska Unicameral. And at this time I would like to introduce to you the members of the committee that are present. On my far right is Senator Scott Price. Senator Price is from the Bellevue area. Next we have Senator Kathy Campbell who is from Lincoln. Next we have the Vice Chair of the committee, Senator Galen Hadley from Kearney. To my immediate right is Mr. Dustin Vaughan. He is the committee counsel. To my immediate left is Ms. Laurie Vollertsen, who is our committee clerk. Next we have Senator Scott Lautenbaugh from Omaha. And next to Senator Scott Lautenbaugh is Senator Annette Dubas from Fullerton. Also on the end, we have Senator Janssen from Fremont. Senator Louden will be joining us later. As you know, we have members who are in and out during these hearings. They are introducing their own bills where they do spell their names for people, and so please do not take offense if senators are coming and going. I would like to introduce Kyle Johnson from Sutton. There's Kyle, and we have Crystal Scholl who is from Lincoln. They are the committee pages this year, and so I would ask that if you have any materials to present to the committee, they will be happy to do that for you. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill need to come to the front of the room, be ready to testify as soon as someone finishes testifying, and that's so we can keep the committee hearing moving. I would ask that you sign one of the yellow sign-in sheets at that on-deck table and hand that in to our committee clerk, Ms. Vollertsen, before you sit down to testify. For the record, please spell your last name and also your first name, so we have that for our transcribers and you are listed correctly in the committee's records. If you don't want to testify, but you do want to voice your support or your opposition to a bill, you can indicate so at that on-deck table on the sheet provided. This will be part of the official record of the hearing. If you want to be listed, though, on the committee statement as a testifier at the hearing, you do need to come forward and be a testifier at the committee just if you say you are for or against the bill in order to be listed on the statement. If you would rather not testify, but would like to submit written comments, we also accept those, and they will be read into the official record. At this time, I would ask that you please turn off all your cell phones. Even though we are the committee on Transportation and Telecommunications, we do not allow cell phones on, and that

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means no texting in this hearing. With that, I will open the hearing on LB163, and welcome, Mr. Vaughan.

DUSTY VAUGHAN: (Exhibit 1) Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB163 is an attempt to streamline the application process for a handicapped or a disabled parking permit and make the process more convenient for handicapped and disabled individuals. Most notably, the bill requires a DMV to develop and implement an electronic application process. Currently, an individual is required to obtain an application from a local office or the DMV, take it to his or her physician for verification, and then return the completed application to the local office or DMV. The new system will allow the application process to begin and end at the medical provider's office or at the convenience of the applicant. The bill also tries to accommodate the needs and conveniences of handicapped and disabled individuals by authorizing the issuance of two permits to an applicant, allowing up to two replacement tags before requiring a new application, extending the valid period for a permanent tag from three to six years, and allowing a renewal application to be submitted up to 180 days before expiration of the current permit. Combined, these changes will make the application process and use of handicapped parking permits much easier for the individual and streamline the process internally at the DMV. Director Neth is here to testify on how they will implement these changes at the DMV, so I'll turn it back to you, Senator Fischer. [LB163]

SENATOR FISCHER: Okay. Thank you, Mr. Vaughan. Could I ask at this time how many are here to testify on this bill? We have two people? Director Neth, would you come forward, please? Good afternoon. [LB163]

BEVERLY NETH: (Exhibit 2) Good afternoon, Senator Fischer, members of the committee. I'm Beverly Neth, B-e-v-e-r-l-y N-e-t-h, Director of the Department of Motor Vehicles, appearing today to offer testimony in support of LB163. I'd like to thank Senator Fischer for introducing the bill on behalf of the department. LB163 proposes the first major substantive changes to the issuance process for handicapped parking permits since these permits were first authorized in 1977. LB163 will provide a multilayered approach designed to bring efficiency and cost savings to the regulatory process and streamline the process for customers who access handicapped parking permits. The bill amends the handicapped parking permit statute, Neb. Rev. Stat. 18-1738.01 to extend the renewal period for permanent issue handicapped parking permits from three years to six years. The proposed six-year period mirrors the recertification period that now applies to handicapped license plates. Federal law (23 CFR 1235.4) requires a renewal period for permanent issue handicapped parking permits, but it does not specify the length of the renewal period. Extending the renewal period to six years would provide conformity for DMV customers among the handicapped permits and the handicapped license plate programs. LB163 authorizes

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DMV to design a handicapped tag issuance system to include an electronic application process completed at physicians' offices, or on-line by applicants. The current permit process requires an individual to obtain an application form from a local office, usually the city clerk or county clerk, or the DMV offices, to take this form to his or her physician for verification, and return the completed application to the local office or the DMV. If the city or county office receives the application, they then forward it to the DMV. The DMV reviews the application, enters the data from the application, then issues or denies the permit. The department wants to streamline both the application and the issuance process. The department seeks to mitigate the number of trips made by applicants; time spent shuffling paper between offices, and time spent in data entry. LB163 will remove the statutory requirement that the DMV send a list of permit holders to local offices, as there really is no regulatory reason for this current requirement. LB163 will allow a handicapped individual to hold two handicapped permit tags. The DMV receives many requests from permit holders for extra tags, something currently prohibited by statute. Travel is the most common reason people request the second tag. Two tags would allow the permit holder to leave one tag in the vehicle parked at an airport and have another for use with them while on vacation, maybe with a rental vehicle, or with vehicles being used for parking. LB163 limits an individual to two replacement permits within a six-year period before triggering the requirement to reapply for the permit. That would also trigger a new physician statement requirement. LB163 recodifies the statutes dealing with the issuance of handicapped parking permits and moves them into the DMV statutes with updated language. The statutes will be in the same chapter of law as the handicapped parking license plates. Statutes dealing with the enforcement of handicapped parking laws will remain in Chapter 18 of the statutes that provide authority to local government. Senator Fischer, I want to thank you for the opportunity to testify on this, and I'll be happy to answer any questions that you or the committee might have. [LB163]

SENATOR FISCHER: Thank you, Director. For the record, I would note that we've been joined by Senator Louden from Ellsworth, Nebraska. Are there questions for the director? Senator Louden. [LB163]

SENATOR LOUDEN: Yes, thank you, and thank you for being here today, Director Neth. When you talk about these permits, are you talking about the license plates that go on the vehicle, or are you talking about these little things that you're going to hang on the window? [LB163]

BEVERLY NETH: This is the permit. This is the thing that hangs in the window, yes. [LB163]

SENATOR LOUDEN: Okay. Now, how does these license plates fit in because some people did have handicapped license plates? [LB163]

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BEVERLY NETH: The handicapped license plate program is not being amended by this law, so that will remain in place. It is a process whereby a person can apply for a handicapped license plate to one vehicle. They send us the same kind of form, but that really flows through the DMV. That plate then and that process is a six-year process. [LB163]

SENATOR LOUDEN: Now, correct me if I'm wrong, but in order to get that, all you have to do is get a doctor's signature and go down to the county clerk's office or treasurer or someplace, don't you? [LB163]

BEVERLY NETH: No, it's a little more complicated than that. You generally start by getting a form, and you can get the form online from the DMV, or you can get the form from the city clerk or county clerk. The duty of the city or the county clerk is to request some verification, identification from you, so they request to see your driver license. They say, we've seen the driver license. We've seen the state ID card. They sign that, that piece of information. Then the person takes that form, goes to their physician, goes through the process with their physician. The physician certifies that they have some limitations that would require them, or they meet the statutory requirements to obtain a handicapped parking permit. Then that form is ultimately mailed back to the DMV. We review all the information, and then we issue these handicapped tags out of our offices. [LB163]

SENATOR LOUDEN: Oh, I see, because I got one for my mom several years ago, and I didn't think it was that much of a deal then. We just went down and got one someplace. [LB163]

BEVERLY NETH: It's a pretty complicated process, quite frankly, right now. [LB163]

SENATOR LOUDEN: The county treasurers or none of them have those on hand? [LB163]

BEVERLY NETH: No, they don't. [LB163]

SENATOR LOUDEN: Okay, thank you. [LB163]

BEVERLY NETH: You may have acquired that prior to...there were some changes a few years ago pursuant to some lawsuits, so that process did change where it was all centralized, the issuance centralized with the DMV. So that may have been the last time you did that. [LB163]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? Senator Hadley. [LB163]

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SENATOR HADLEY: Senator Fischer, thank you. Director Neth, how much education do we do for people who get...who need these permits as to how they should be used and how they should not be used? Do we have forms, do we have things that say this is how you can use them, this is how you cannot use them? [LB163]

BEVERLY NETH: We do send, when we send this permit, we send a letter that has some of those prescribed uses, accepted uses within that letter, so that's primarily, I think, our communication, educational communication back to the customer. I think most people are pretty familiar, particularly if you have a permanent disability, you've been using this hang tag for a long time. Issues may arise more often with someone who would be accessing a temporary permit--I've broken my leg; I'm going to have this permit for six months. So that same kind of information would be sent to them where they would be told, these are the particular uses for this permit. [LB163]

SENATOR HADLEY: Okay. Thank you. [LB163]

SENATOR FISCHER: Other questions? Senator Campbell. [LB163]

SENATOR CAMPBELL: Just a quick comment and, yes, I commend both Senator Fischer and Director Neth for putting this forward. I had to get a temporary one when I had a knee replacement, and it's a long, complicated process. And I had somebody who could go get, you know, forms and things because I wasn't allowed to drive, and I was trying to do this ahead of time. It was very difficult. [LB163]

BEVERLY NETH: Thank you. The most common complaint from people is that it just...it's so many trips; it takes so long to be done, and I think just going directly to the physician, having the physician send us the information electronically is a great savings for all of us. [LB163]

SENATOR FISCHER: Other questions? Senator Price. [LB163]

SENATOR PRICE: Thank you, Senator Fischer, Director Neth. I have a question for you. In reading the bill, my question is, if you already have a disability granted to you, let's say, by Social Security, and then say, it's a hundred percent permanent and total. Does that person have to go through the process every time, or can you accept a document of being classified a hundred percent permanent and total by a federal agency enough to go ahead and grant issuance? [LB163]

BEVERLY NETH: Well, quite often that question comes to us in a different vein, more related to disability--military disability. The issue really is that the criteria for permanent disability under those kinds of things is quite often different than it is for the criteria for driving disabilities. And so, we still require their meeting the disabilities that are outlined relative to handicapped parking, and the person really has to go through the process

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extra. For instance, there is a disability--military disability for posttraumatic stress disorder. But that probably doesn't limit their ability to park some distance away, so if you're trying to...I'm not sure we're always comparing apples and apples when we're looking at other disability standards as they relate to parking. [LB163]

SENATOR PRICE: Okay, thank you. [LB163]

BEVERLY NETH: Welcome. [LB163]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Dubas. [LB163]

SENATOR DUBAS: Thank you, Senator Fischer. Forgive me if I...if this is in the bill, and I just have overlooked it, but can you have a license plate and a hang tag both? [LB163]

BEVERLY NETH: You can, yes. You can have one license plate and one hang tag currently. [LB163]

SENATOR DUBAS: Okay. Thank you. [LB163]

SENATOR FISCHER: Other questions? I see none. Thank you, Director. [LB163]

BEVERLY NETH: Thank you very much. [LB163]

SENATOR FISCHER: Are there other proponents for the bill? [LB163]

ED SCHAFER: Well, I don't know whether I'm a proponent or opponent. [LB163]

SENATOR FISCHER: Are you... [LB163]

ED SCHAFER: I have concerns about the bill. [LB163]

SENATOR FISCHER: Well, then maybe you're not quite a proponent yet (laughter). [LB163]

SENATOR FISCHER: Are there other proponents for the bill? I see none. Are there opponents of the bill? We also have a neutral position too. [LB163]

ED SCHAFER: Yes. Yes, and that's...I don't know where I'm at on how (laughter) you'll perceive what I say. [LB163]

SENATOR FISCHER: Maybe neutral then? [LB163]

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ED SCHAFER: Maybe. [LB163]

SENATOR FISCHER: Well, let's try this. Are there opponents to the bill? Okay, I see none. Neutral. [LB163]

ED SCHAFER: My name is Ed... [LB163]

SENATOR FISCHER: I need you to wait until you sit down, so the mike can pick it up. Thank you. [LB163]

ED SCHAFER: I'm sorry. Very good. [LB163]

SENATOR FISCHER: And welcome. [LB163]

ED SCHAFER: My name is Ed Schafer, E-d S-c-h-a-f-e-r. I appreciate being able to come to the committee and state my views on this. I didn't know until I became handicapped what a problem this is. First, the person must go at least two, generally three or more times, to get a license plate or the parking permit. But you have to obtain a form similar to this from the treasurer's office in Omaha, take it to a physician, have the physician okay it--what they do here on the bottom. Then if you're buying a new car, you have to buy license plates, so you pay \$15 for that set of license plates. And then you have this and everything else is sent to the Department of Motor Vehicles, and then you're told three weeks later, come in and get your handicapped tags. You, at that time, have to take your old...three weeks old...license plates off, turn them in, and then pay again for a set of handicapped license plates. And I feel, in this case, it's wrong. It doesn't need to be that way. Now, you could have a sticker to put in your window; you could have many different things that could be used. But you wouldn't be wasting the resources of the state which you really and truly do or of the individual. So, you wind up paying twice for your license plates where a person that isn't handicapped pays but once, and that, I think, is really unfair. For instance, also, with the hanger, if you happen to have your hanger that you've put in your car, when you go, or your...whatever vehicle you have, and you go to the airport, and you park in a handicapped parking stall, you have to leave this in there for it to be right. Then what do you take with you wherever you go to have handicapped parking privileges? You have nothing. So the idea of having one of these and one license plate doesn't work. Do you understand? Okay. The other is, the idea of patient confidentiality. I see where the state, and when I read the law, it seems like that they are going to set up a program where they're going to use the state Web site for doctor verification. Well, the state Web site has already been hacked once. This is my personal medical information. So far, when I turned this into the county treasurer, there was at least six people looked at this, and it gives my personal medical information. If I think any one of you were to go visit your neighbor in the hospital and ask the nurse in the hospital, I don't think that they would tell you anything because of HIPAA laws yet I have my personal medical information open to scrutiny from

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everybody. Does it have to be that way? No. The reason being, the doctor is the person that says whether a person is handicapped or not. They don't need to have all of these checkmarks. All they have to do is know what conditions these are, and once they sign it and they sign it that you have a permanent disability--a permanent disability means that my condition will never get any better, and I'll probably die from it. Why would you put a six-year limit on it or that you've had, what, a three-year limit on it? If you're handicapped permanently, you're handicapped. The doctor says so. Either you believe the doctor or you don't. In Iowa, if you have a permanent handicap it's a permanent handicap. There's no expiration to it. In South Dakota, if you have a...my understanding is that if you have a permanent handicap, you have a permanent handicap. There's no expiration to it. Permanent means permanent. It's not going to go away. You're not going to grow a new leg or a new arm, or for me, to grow a new lung. Other than that, I thank you very much for listening to me. If you have any questions, I'd be more than happy to answer them. There's certainly things that I think I know that you don't know, but I don't wish to be argumentative with any of you over it. I just think that there's a fairness issue, and that's where I'm coming from. So I would entertain any questions that anybody has. [LB163]

SENATOR FISCHER: Thank you, Mr. Schafer. Are there any questions? I see none. May I ask where you're from, sir? [LB163]

ED SCHAFER: Omaha, Nebraska. [LB163]

SENATOR FISCHER: Thank you so much for driving in today. [LB163]

ED SCHAFER: Yeah. [LB163]

SENATOR FISCHER: Appreciate that. [LB163]

ED SCHAFER: Thank you for listening to me. [LB163]

SENATOR FISCHER: And we will check on the points that you brought up. Thank you. [LB163]

ED SCHAFER: Okay. [LB163]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? Good afternoon. [LB163]

RICHARD HEDRICK: Hello. I'm Richard Hedrick, and since I'm a liberal I'm not against this. [LB163]

SENATOR FISCHER: I need you to spell your name, please. [LB163]



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RICHARD HEDRICK: What? [LB163]

SENATOR FISCHER: I need you to spell your name, please. [LB163]

RICHARD HEDRICK: Richard--Richard H-e-d-r-i-c-k. [LB163]

SENATOR FISCHER: Thank you. Go ahead. [LB163]

RICHARD HEDRICK: I'm a liberal, so I'm not against handicapped parking, but I'm sure against this abuses of the handicapped parking. I was at a hearing several years ago here, and an individual was complaining about not having enough parking downtown where nobody can get parking. And since then, I've been observing people that park that should not be parking there. My father-in-law had a handicapped parking ticket or whatever you want to call them, and he took it out of the car when he was not driving. He didn't let anybody else drive his car with the handicap. I was down at Menards last week, and there was an individual in a pickup parked after I did in the handicapped, and he had a half a pickup full of wood that was split. And he was in the Menards longer than I was and I was probably there a half hour. I don't know whether he should be in...have handicapped parking. There is a big problem with this handicapped parking. If somebody's driving, he shouldn't use a handicapped parking ticket for parking to...he could let the person out, and he could find the parking just like anybody else. This handicapped parking is for people that cannot walk or have trouble walking, and that...and park closer to where they are, not to be used otherwise. Is there any provision in this for that? Is there any penalty for a person using a handicapped space with a handicap permit? [LB163]

SENATOR FISCHER: I believe current law has such a provision, sir, but at this hearing we're just taking information from the public. [LB163]

RICHARD HEDRICK: Okay. Thank you. [LB163]

SENATOR FISCHER: Thank you very much. Any questions? [LB163]

RICHARD HEDRICK: Any questions? [LB163]

SENATOR FISCHER: I see none. Thank you. Anyone else wishing to testify in the neutral capacity? I see none. With that, I will close the hearing on LB163 and open the hearing on LB112. I see Senator Coash is here for the opening. Good afternoon, Senator, and welcome to the Transportation and Telecommunications Committee. [LB163]

SENATOR COASH: (Exhibit 3) Thank you. I have some things for the committee.

[LB112]

SENATOR FISCHER: Good afternoon. [LB112]

SENATOR COASH: Good afternoon. Thank you, Chairman Fischer, members of the Transportation Committee. For the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h. I represent District 27, and I'm here to introduce LB112 which has a more clear amendment that has been passed around. Since the bill introduction, we've made it even better, so I will be speaking to the amendment that was passed around as I speak about this bill. So first, I'm going to explain what this bill does and then spend some time explaining why we do need this change in statute. LB112 is a technical and clarifying bill. It will clarify the intent of what is meant by escort services. And as I talk about escort services, this is not to be confused with the type of escort services you might find in the Yellow Pages for men looking for companionship. Instead, this is escort services that have to do with supporting children and people with disabilities including transportation. As defined in statute, escort has always meant to be and practically applied to those persons or entities providing supports to vulnerable adults such as adults with disabilities and children. LB112 clarifies by definition what escort is and changes the name to avoid confusion with the other escort services, and is then added to a list of exemptions to certificated carriers. I've been asked a few times about why LB112 is required. LB112 was required because it is necessary to make a technical clarification to the list of statutory exemptions from the Public Service Commission regulation found in the Motor Carrier Act. Shortly after the Child Welfare Reform Initiative was launched and the comprehensive service contracts with the lead providers were signed in November 2009, the issue of whether lead contractors such as KVC and NFC, both of whom are here today, should be required to obtain PSC carrier certification was raised as a matter of first impression with the Public Service Commission. In response, in January 2010, the PSC opened public inquiry into this issue. They held a fact-gathering workshop on the issue in February 2010 and, again, in April 2010, they decided to refer this issue to the Attorney General's Office for consideration. And I've passed for the committee a copy of the Attorney General's Opinion. The AG's Opinion was issued in August, and it stated that the transportation activities of lead contractors did not fall within the Motor Carriers Act established exemptions from PSC regulation. But the Attorney General did conclude by recognizing that the coordination of services approach underlying the service contract is based on a desire by HHS to establish a cohesive system of care to serve families by utilizing lead contractors to provide a full array of core services rather than contracting with many providers to perform separate services. Attorney General went on to say that absent a legislative change, we do not believe that the manner in which transportation is currently provided under these contrasts comports with requirements established by the Legislature. The Public Service Commission held a second fact-gathering workshop in September to receive further input in light of this opinion. The commission has taken no further action on this issue, and following the issuance of the opinion in the September

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workshop, I began to work with interested parties and to, again, seek guidance from the AG's Office. That guidance ultimately led to the amendment, AM63 2-112 which you have in front of you. The Attorney General's Office agrees that this amendment clarifies the legislative change that was suggested in the opinion. So I hope the history has shed some light as to why we're here today. In practical terms, however, this bill brings our statute in line with the original intent of what is meant by escort services and the exemption that goes with it. And we've replaced the term, escort services, with supported transportation services, so that we can get that word "escort" out of there. Furthermore, it does bring the statute in line with what is currently the practice of providers to serve children, families, and people with disabilities. This bill does nothing to change the way in which services are currently being delivered. Finally, it serves the best interests of all of the people served, the contractors and the state of Nebraska. It is my concern and those who will testify in support today that if we do not pass LB112, that the best interests of vulnerable citizens will be in jeopardy, and the financial burdens placed on HHS and its contractors will be onerous at best and catastrophic at worst. There is a lot at stake with this particular piece of legislation. The success of the HHS reform is at stake, safety of vulnerable people is at stake and so with that, I hope that this bill clarifies what we need to clarify and will end my opening and answer any questions. [LB112]

SENATOR FISCHER: Thank you, Senator Coash. Are there questions? Senator Louden. [LB112]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, Senator Coash, as I look this over, I suppose this is the bill (inaudible). [LB112]

SENATOR COASH: Yes. [LB112]

SENATOR LOUDEN: Now, you've changed escort services over to supported transportation services. Is that what you've done? [LB112]

SENATOR COASH: (Exhibit 4) That's correct. That's correct. It was easier to eliminate the definition of escort services, and then redefine it as supported transportation services later on. [LB112]

SENATOR LOUDEN: And then you...and not only does the carrier engage in supported transportation services under contract or subcontract, and that's about all that's been done here. Is that correct? [LB112]

SENATOR COASH: Yes, and then at the very last of the bill, page 6, it adds those services to the list of exemptions for certificated carrier. [LB112]

SENATOR LOUDEN: I mean, that was the exemptions under...and then what it

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amounts to, all those exemptions were in law before, except you just actually added subcontract, right? [LB112]

SENATOR COASH: We replaced supported transportation or we replaced escort services with supported transportation as a definition to clear that up. That's what the Attorney General wanted, and then added it to the list of exemptions. [LB112]

SENATOR LOUDEN: Yeah. Added subcontract. [LB112]

SENATOR COASH: Yeah, and escort was already exempted and so now this becomes accepted. [LB112]

SENATOR LOUDEN: Now, will that...when we pass this legislation, then will all the trees shake their leaves loose and the earth tremble when we get it passed? (Laugh). [LB112]

SENATOR COASH: I don't believe so, Senator Louden, and I appreciate that question because services won't change. Services, the way they've been happening up till now will not change. But what we need is a change in legislation, so that it is clear to both the department and the Public Service Commission in light of the AG's Opinion that these services should remain exempt from being certificated. [LB112]

SENATOR LOUDEN: Thank you. [LB112]

SENATOR FISCHER: Other questions? I see none. Thank you. [LB112]

SENATOR COASH: Thank you. [LB112]

SENATOR FISCHER: Will you stay for closing? [LB112]

SENATOR COASH: Yes, I will. [LB112]

SENATOR FISCHER: Thank you. Could I ask for a show of hands of those who plan to testify on the bill? Okay, thank you. We will be using the light system which means you have three minutes for your testimony, but that also means the committee has plenty of time to ask questions. Page. Good afternoon, Director. [LB112]

KERRY WINTERER: (Exhibit 5) Good afternoon. Three minutes starts now, right? Good afternoon, Senator Fischer and the members of the Transportation and Telecommunications Committee. My name is Kerry Winterer. That's spelled K-e-r-r-y W-i-n-t-e-r-e-r. I am CEO of the Department of Health and Human Services. I would like to thank Senator Coash for introducing LB112. I'm here to testify in support of LB112. LB112 is intended to allow persons engaged in providing services to children and

families and also individuals who receive developmental disability services through contracts or subcontracts with the Department of Health and Human Services Divisions of Children and Family Services or Developmental Disabilities, the ability to continue to provide transportation services under a Public Service Commission exception. Providers of these services are not competing with commercial transportation carriers such as taxi services. They are providing transportation within the context of delivering necessary social services. Transportation is an ancillary, but necessary, element of the comprehensive services provided to the children and vulnerable adults that the department supports. The department does not coordinate or pay for these transportation services separately, but instead, they are included in the various comprehensive service contracts overseen by the department. In many cases, the transportation involved requires specialized skills and experience related to the individuals being served, and the department requires assurances that the individual's support needs are met while in transport. Transportation services have been provided in this manner by the department for years, both through individuals and through contractors. The department and its contractors have been operating under the escort service exception to the Public Service Commission Act since 1999. LB112 clarifies the act and failure to amend the act to address these issues could result in significant cost increases and possibly interrupt services for some individuals. For example, when children in foster care visit biological parents or other family members, the visits are often required by the courts to be supervised. Supervision may also be necessary while they are transported because of their age or other risk factors. Therefore, the person supervising the visit may also transport the child. The provider is paid by the department or one of its contractors for supervision and coordination of the visit. There is no separate cost for the transportation because it is part of the important social services provided on behalf of the child. The department contracts with providers to provide services to vulnerable Nebraskans. The department requires providers of such services to supply the transportation necessary to accomplish the services being contracted for. In regard to transportation, the department requires its contractors and, in turn, their subcontractors to assure that safe transportation methods are utilized, appropriate safeguards and safety restraints are employed, and that vulnerable children and adults being transported are supported in a way that meets their specialized needs including familiarity of transportation staff, specialized equipment, and other necessary physical accommodations. The department maintains an oversight role with all such providers, and monitors contractual requirements to ensure positive outcomes for the people we support. Should LB112 not be approved, the department will be faced with significant cost increases. The department would be required to pay transportation costs based on approved Public Service Commission rates, either to current DD and CFS providers who agree to become PSC certified or to reimburse them for the additional commercial transportation costs that are not incorporated into our existing contracts. This would drastically increase the cost of services for Developmental Disabilities and Children and Family Services. A conservative estimate of increased costs for DD if this bill does not pass is estimated at \$18.2 million. For CFS the increase is estimated at \$8 million for

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child welfare and juvenile services and \$7.8 million for child-care services. We want to thank Senator Coash for introducing this bill, and I'd be happy to entertain questions. [LB112]

SENATOR FISCHER: Are there questions? I have a couple of questions for you. If this service is moved, I guess from the Public Service Commission overseeing it to your department, what level of insurance coverage are you going to require? [LB112]

KERRY WINTERER: Well, I don't think you can assume in the first place it's a movement. This just allows us to continue doing exactly what we're doing, and the individual contractors and subcontractors are responsible for providing that transportation. Now, there are either rules or contractual requirements that the department has with the providers, either on the DD side or the children and family side that would provide the specifics for that...for providing that coverage or that service including where appropriate, insurance requirements. [LB112]

SENATOR FISCHER: So in each contract you have with the contractors or the subcontractors, you do require a certain level of insurance coverage. [LB112]

KERRY WINTERER: There's a whole host of requirements that would enter into a contract, and it's either in the contract or it could be in our own rules and regulations. It would require issues about safety, insurance and those things. [LB112]

SENATOR FISCHER: What if the contractor or the subcontractor does not meet that level? What happens to that contract that you have with the provider? What is the exposure to the state? How do you monitor that within your department? [LB112]

KERRY WINTERER: Well, we monitor it by periodically reviewing the contracts and monitor those contracts as we do any other contract. And it's a fairly straight forward process to review what kinds of insurance may be in place and to monitor that. [LB112]

SENATOR FISCHER: If you're looking...I guess as I read the bill, and in my discussions, I think we...this bill would move the regulation from the Public Service Commission to your department. Do you see it that way? [LB112]

KERRY WINTERER: That isn't exactly the way I would describe it. As I said in my testimony, we have been operating under the assumption that the escort exclusion in the current statute would exclude the Public Service Commission regulation of what we do. In light of the Attorney General's Opinion, there's some question about whether that exclusion actually operates in that way. What Senator Coash's bill would do would be to essentially further clarify that exception such that we can continue to be excluded from Public Service Commission regulation. [LB112]

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SENATOR FISCHER: Do you provide other transportation services in carrying out the duties of the department? [LB112]

KERRY WINTERER: Does the department or do the contractors? [LB112]

SENATOR FISCHER: Yes. Either way. [LB112]

KERRY WINTERER: Well, the department would to the extent that we are providing services in areas that have in Children and Family, for example, that we have not...that we don't have a lead contractor in those areas. We may be providing the services. Frequently, we would subcontract with those others to provide the service. It depends on the circumstance, depends on what services are available in a particular area. [LB112]

SENATOR FISCHER: Do you have other transportation services within the department that are regulated by the Public Service Commission? [LB112]

KERRY WINTERER: Not that I'm aware of. Now, occasionally, we would be using common carriers, and they would be regulated, but, again, they would be related to these kinds of services that we're offering. [LB112]

SENATOR FISCHER: But with this bill, you are just talking about this specific service then that would not be regulated by the Public Service Commission. This bill would not apply to any other transportation services that you deal with in your department. Is that correct? [LB112]

KERRY WINTERER: It's intended to, except from the Public Service Commission regulation transportation services that are just actually a small part of a much larger contract that provides a whole host of services to the individuals that the department or the contractors are providing services to. So it wouldn't in and of itself exclude some other kind of transportation service. It's intended to be...exclude just a piece of what is a much larger contract that provides all these services. [LB112]

SENATOR FISCHER: Right. I appreciate that. I'm just trying to clarify it for the record on what the intent is for this bill, and, as I see it, it is just specific to this service that we are talking about, correct? [LB112]

KERRY WINTERER: These services for which we provide these kinds of...that are part of a larger piece of the services we provide in Children and Family and DD, basically. [LB112]

SENATOR FISCHER: Okay. Thank you. Other questions? Senator Hadley. [LB112]

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SENATOR HADLEY: Senator Fischer, thank you. Mr. Winterer, I appreciate your being here. Just so I clearly understand it, you have been doing this now, but you have got an Attorney General's Opinion that the law should be changed to be...so you specifically will not come under the Public Service Commission jurisdiction. Is that correct? [LB112]

KERRY WINTERER: Yes, the Attorney General's Opinion was issued to the Public Service Commission, and it raised the question about whether the escort exception really applied to us, and we had assumed, and I think the Public Service Commission probably itself had assumed that we fell within that exclusion. The Attorney General's Opinion now calls that into question. [LB112]

SENATOR HADLEY: And, again, just to follow up on Senator Fischer's line of questioning, are there any other areas within the HHS that have this same type of concern? [LB112]

KERRY WINTERER: No, not the same kind of concern. [LB112]

SENATOR HADLEY: Okay. And one last quick question. The costs involved that you gave us, \$18.2 million... [LB112]

KERRY WINTERER: Right. [LB112]

SENATOR HADLEY: ...that is if this does not pass, this is the costs that basically you will have to incur because of the rules and regulations of coming under the PSC. [LB112]

KERRY WINTERER: Right. [LB112]

SENATOR HADLEY: Thank you, sir. [LB112]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Campbell. [LB112]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Winterer, as I was listening to Senator Fischer's question, the only service that might not come under here would be the broker services for Medicaid maybe which is a fairly new program that would not be covered under here. [LB112]

KERRY WINTERER: That's right. [LB112]

SENATOR CAMPBELL: So...but it would come under all the other regulations. Would that be accurate? [LB112]

KERRY WINTERER: That would be accurate so far as I know, yes. [LB112]



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SENATOR CAMPBELL: The follow-up question and this is just mainly...this would also exclude, just for the record, let me be very clear. This would exclude foster parents transporting children for visits with biological parents, and that exchange, correct? [LB112]

KERRY WINTERER: Yes. [LB112]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Dubas. [LB112]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Director, for being here today. I'm going to kind of continue along the same vein of questioning. So if we wouldn't have this bill introduced today and didn't take it to the floor and ultimately get passed, things would continue as they are, but the Public Service Commission would more than likely then have the authority over these types of transport. [LB112]

KERRY WINTERER: Our understanding was the Public Service Commission then could require that anyone providing these services would be licensed and certified by the Public Service Commission. It would clearly affect the costs that we would have, because then we're talking about a different...kind of a different structure for costs. It would add significant costs to the contractors and the subcontractors to provide the service, because they, in turn, if they were going to continue to do what they've always been doing, they're going to have to be licensed. More than likely, they would say, well, this is not the business we're in, and they would fall back and they would leave it then to us to find some alternative. We may end up hiring lots of taxi cabs. [LB112]

SENATOR DUBAS: So the types of things that the Public Service Commission would require of these types of licenses, if they were still in charge, do you require similar things from them? You're just doing it in a...I guess what I'm asking is, what is the Public Service Commission requiring that you aren't? [LB112]

KERRY WINTERER: I don't know that I can speak to that except for the fact the Public Service Commission has licensing requirements, and they have certain training requirements relative to drivers, and I don't know that they have particular vehicle requirements or whatever. We are clearly concerned about the safety of the individuals that we're responsible for. And so everything we do relative to the contractors and subcontractors in providing these services, we're concerned about the safety, so we're going to write that into the contracts. We're going to provide that it's in the contracts, or in some cases, it's part of our rules and regulations that these people providing these services need to meet certain requirements and certain specifications. We're really driven by concern for the safety. I can't speak necessarily to what PSC does, but I also have to point out, I think that we've been providing services for a long time with very little problem. We've had very little problem in terms of safety concerns on the part of

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the individuals that we're serving and so on. So the system appears and seems to be working well insofar as it's operating now. [LB112]

SENATOR DUBAS: I mean I understand why Senator Coash brought this bill forward. I just wanted you to have the opportunity to make that clear for the record that just because it's not going to fall under the PSC that doesn't mean that it's...there are lax regulations for the transport of the people that you're serving. [LB112]

KERRY WINTERER: That's very true. [LB112]

SENATOR DUBAS: Thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Lautenbaugh. [LB112]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. So for clarity sake, you're trying to preserve the practice that you've had for several years. [LB112]

KERRY WINTERER: That's correct. [LB112]

SENATOR LAUTENBAUGH: And while we don't know what hoops these carriers might have jumped through...if the PSC regulations do apply, we certainly know it's going to cost a lot of money. [LB112]

KERRY WINTERER: That's right. [LB112]

SENATOR LAUTENBAUGH: Thank you. [LB112]

SENATOR FISCHER: Other questions? Do you want one more clarification? (Laugh). No, I appreciate the cost savings that you're looking at here as we all are, and you are the CEO of a large agency which is a huge part of the state budget. But to clarify, the liability exposure then, if this bill passes, moves to you. It's no longer with the Public Service Commission. Is that correct? [LB112]

KERRY WINTERER: I would argue that it never has been with the Public Service Commission, because the Public Service Commission is never recognized as a service to be regulated. And so nothing has really changed, and ultimately, yes. I mean, we have...the Department of Health and Human Services has liability relative to all these individuals under our care. Sooner or later, ultimately, we're going to be responsible for this, and so, we, in turn, have to ensure the contracts and rules and regulations are there to protect the people that we're responsible for. [LB112]

SENATOR FISCHER: Okay. Thank you. Appreciate you coming in today. [LB112]

KERRY WINTERER: Thank you. [LB112]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB112]

SANDRA GASCA-GONZALEZ: (Exhibit 6) Good afternoon. Chairwoman Fischer and members of the committee, I appreciate the opportunity to share some information with you today. My name is Sandra Gasca-Gonzalez. That's spelled G-a-s-c-a-G-o-n-z-a-l-e-z, and I am the president for KVC Behavioral HealthCare. As a lead contract agency in the Families Matter Initiative, I wanted you to hear from me how this legislation directly impacts the children and families served by KVC. We currently serve 4,000 children throughout 19 counties of southeast Nebraska. KVC staff provide comprehensive services which may include transportation to children in our care each day. Our model of service delivery is based upon recognition of the trauma that these children have experienced. Our staff are trained to mitigate their trauma to the extent possible. One of the ways that we do that is by limiting the number of individuals that a child in crisis is exposed to as a result of their involvement in the child welfare system. Instead, we utilize trained professionals, who work to build trusting relationships with the children we serve, to deliver interventions throughout the interaction with them. So what that means to the child and our staff is that time spent transporting a client or a child to and from necessary services such as a therapy session or court hearings is more than just a drive. Our staff are trained to assess the physical and emotional wellbeing of the children that we are responsible for, and we're prepared to act accordingly, depending on what the outcome might be of those services to help minimize that trauma. As an employer, we ensure the safety of children being transported by requiring background checks and a combination of our evidence based practice trainings, as well as driver safety training for any staff member that provides transportation for any reason. We also require all staff to carry motor vehicle insurance, and our human resources staff verify that coverage annually. And in addition to that, KVC as an organization, carries additional liability insurance as an organization. I would also say that KVC is in five states, and we operate with this type of liability, and it has been a system that works for us, so the structure for KVC has been in place to be able to provide these services throughout the five states successfully. LB112 would benefit children and also help us continue to use our resources to benefit children and families. Based upon our current staff transportation costs, we estimate that our cost associated with our direct service staff providing transportation to children is right under \$2 million for 4.8 million miles that they drive, and this is in addition to the costs we incur by using commercial transport. In contrast, it would cost us more than \$7 million of taxpayers' dollars to subcontract this transportation to a commercial provider. So the difference of \$5.4 million would need to be removed from existing services in order for us to pay for transportation. Some circumstances do exist when we use commercial transportation. However, to use that in every instance would be a jeopardy in terms of the safety and the permanency and wellbeing of children, and it is cost prohibitive. So in closing, I just want to say that KVC believes that every interaction with a child is an opportunity for intervention. And we

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know that when children in crisis are transported with people they know, their emotional trauma is reduced. And, again, the driving factor for us is really about the emotional wellbeing for children. So, with that, I will pause and answer any questions you may have. [LB112]

SENATOR FISCHER: Thank you. Thank you very much. Are there questions? Senator Louden. [LB112]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Mrs. Gonzalez, what is KVC? Is that a private organization that does these services or what? [LB112]

SANDRA GASCA-GONZALEZ: We are one of the lead contract agencies for the Department of Health and Human Services, so we are responsible for when a child or a family is referred to us, we are focused on helping the family stay together, or if they have been removed into foster care, we work to reunify the family. If that's not possible, we work towards adoption or another permanent option. [LB112]

SENATOR LOUDEN: And at the present time, you do your own transportation of these children or members or whatever they are? [LB112]

SANDRA GASCA-GONZALEZ: We utilize commercial transport in some situations, but for the most part, our staff are providing the transportation. [LB112]

SENATOR LOUDEN: Okay, then whether or not this bill is passed, how does that affect you if you're a private corporation providing a service? [LB112]

SANDRA GASCA-GONZALEZ: The way that it would impact us is that we would then be required to become regulated through the Public Service Commission. And in my mind, we might as well go ahead and plan to subcontract everything, because there's a clause in the Public Service Commission regulations that allows for protest for anybody interested in becoming a contract carrier. The existing transportation companies can protest that and given the amount of money that we would be funneling in essence, I would expect some protest, and then we wouldn't be allowed to provide the transportation. [LB112]

SENATOR LOUDEN: Okay. Well then, would your fees...your fees would go up for your transportation part of the services you do here? [LB112]

SANDRA GASCA-GONZALEZ: We would be...we're expecting \$5.4 million would need to be taken from existing services to pay for transportation. [LB112]

SENATOR LOUDEN: Okay. And then how are you...are you bonded? How is that covered, you got insurance or how do you cover this? Because I remember here a

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couple or so years ago, somebody was transporting one of these persons and they...I don't know, passed out drunk or got picked up or something like that. So how do you handle that? Your insurance won't cover something like that, so are you bonded or what? [LB112]

SANDRA GASCA-GONZALEZ: We're not bonded. We have professional liability insurance that covers situations like you're mentioning, and that's more around the professional and how we're responsible for the actions of employees. We also, in addition to that, do carry liability insurance for transportation issues as well. [LB112]

SENATOR LOUDEN: How much...you mind if I ask, how much of a...what level of liability insurance do you carry, or I presume you have some insurance for medical or something like that? What level do you carry then for your operation? [LB112]

SANDRA GASCA-GONZALEZ: We carry different types of insurances for transportation related matters. It's \$1 million; professional liability is \$3 million. So, depending on the situation, we would look at our insurance company to tell us how that would best be handled. [LB112]

SENATOR LOUDEN: And what about medical in case you have a wreck with some of those people? [LB112]

SANDRA GASCA-GONZALEZ: That's all part of that coverage. [LB112]

SENATOR LOUDEN: Okay, and it all comes out of the liability. [LB112]

SANDRA GASCA-GONZALEZ: Um-hum. [LB112]

SENATOR LOUDEN: Okay, thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Louden. Are there other questions? I see none. Thank you very much. Next proponent, please. I would like to remind everybody to fill out a form, and I need you to hand those in to our clerk, if you would. Good afternoon. [LB112]

DAVID NEWELL: (Exhibit 7) Good afternoon, Chairman Fischer and members of the committee. My name is David Newell, D-a-v-i-d N-e-w-e-l-l, and I am the executive director of Nebraska Families Collaborative. NFC is an Omaha-based, nonprofit corporation formed by the Child Saving Institute, Boys Town, Heartland Family Service, Nebraska Family Support Network, and Omni Behavioral Health. NFC serves the greater Omaha area as a lead agency through a contract with the Nebraska Department of Health and Human Services, and at any given time, NFC serves approximately 1,000 children and youth in the child welfare and juvenile justice system in our region. When

NFC was created by its partner agencies, it was designed to utilize a network of Nebraska-based human service providers to meet the needs of its children and families. NFC currently contracts with 44 Nebraska agencies in its network to provide such services as family visitation, family preservation, behavioral healthcare, foster care, residential care, and many other services. These agencies have historically delivered these services in Nebraska without PSC regulation, because transportation is an incidental function of what these contractors do to ensure that these highly vulnerable children are able to go wherever is necessary to get what they need. Here are some examples of what an NFC contractor may need to do to support a child. A foster parent may take a child to her school. An agency worker may take a child to a family visit. A group home worker may take a child to a dentist, medical, or therapy appointment. An agency worker may take a youth to appear in court. All of our subcontractors have historically provided this type of support, because these children have experienced significant trauma, and they typically do best when those who know them and who are specially screened and trained to support their needs can transport them rather than having a stranger transport them. NFC strongly supports LB112, because it clarifies what has been historic practice in Nebraska. That is, that human service providers are exempt from PSC regulation. Not passing LB112 and allowing PSC regulations to be applied to NFC contract agencies will substantially impact agency operations which NFC's current rate structure could not support. Stated simply, without the passage of LB112, application of the PSC regulations to Nebraska's human service providers will create another funding crisis for our child welfare and juvenile justice system which will directly harm our children and families and jeopardize Nebraska's reform efforts. For all these reasons, NFC and its partner agencies strongly support the passage of LB112. In addition to my testimony, I have submitted four letters of support from our partner agencies. And thank you for this time. [LB112]

SENATOR FISCHER: Thank you, Mr. Newell. Are there questions? I see none. Thank you very much. Next proponent, please. Good afternoon. [LB112]

TOM McBRIDE: (Exhibit 8) Good afternoon. Thank you, Senator Fischer, members of the committee. First, I'd like to thank Senator Coash for sponsoring this bill and we support LB112 as amended. My name is Tom McBride, T-o-m M-c-B-r-i-d-e. I'm the president and CEO of Epworth Village, Inc., and also speaking on behalf of the Children and Family Coalition of Nebraska, 12 agencies which are child-caring, child-placing agencies around the state. For 122 years, Epworth Village has been providing the transportation services as we experience today from horse and buggies to our fuel efficient vehicles that we try to utilize today. This system hasn't been broken, and we really don't see any need to make any changes like that. We do not transport children and families for hire. It is supported of the supportive transportation and the services we provide. We will utilize regulated carriers when that issue is called for, primarily under Medicaid services for family therapy or transporting a youngster back and forth on a therapeutic leave day. We will transport children in a variety of ways every day from

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their residential placement to the local school, to doctors' appointments, to court hearings. Some of them are very short distances; some of them might be from York to Lincoln for a doctor's appointment or whatever. The people supplying testimony in front of me talked about the need to have someone with that child that knows the child, is well trained. When we're working with children with mental health issues, behavioral health issues, that's a critical component. There are instances where we have had a youngster in our care that has had a death in the family. I can't imagine calling a transportation company and saying, would you come and pick up this youngster on Wednesday and transport them, you know, to that family member's funeral when we need to be with that youngster to support them in that time and with that family. You know, the cost, people have talked about already. We're being asked to do more and more every day with reduced budgets, and this would be additional regulation to an industry or a service that is already highly regulated. So we think that as written and amended, that LB112 would be a, you know, would be appropriate. As a side note and unrelated to the legalities of this, I think I just need to note that we're a national mission institution in the United Methodist Church, and I think that our congregante members would rather that...be known that Epworth Village supported transportation rather than escort services (laughter). That's all my testimony, and I'd take any questions. [LB112]

SENATOR FISCHER: Thank you, Mr. McBride. I'd like to, yeah, see some of your letters soliciting contributions from your members for an escort service. I have a question, and I appreciate your testimony. You didn't just read what you handed to us. We've heard a lot about what this will cost if the bill doesn't pass. Is that because the Public Service Commission just has such onerous regulations and, you know, why would the cost be so great? [LB112]

TOM McBRIDE: Currently, all of the transportation services are within our per diems within our contracts. If you were to go outside, and I can't tell you exactly what a mileage rate would be, but I would suffice it to say that perhaps under the regulations they operate now for a contracted carrier, it would be maybe well over \$1 a mile for those services. I can tell you that in January, we provided over 160,000 miles of transportation. Now, bring that back underneath, you know, the cost that we would be able to then, you know, as a bill through that license or certificate, that's pretty onerous, you know, for budgets. [LB112]

SENATOR FISCHER: You know, but that's why I was asking earlier who's liable. You know, the Public Service Commission is charged. Their commissioners are duly elected by the public to protect the public on a variety of fronts. And if they are not going to be regulating you on this transportation service that's being provided, I do have concerns about the liability then that is transferred. I have to say the answers I've gotten have been reassuring from individuals that have testified on it, but I don't know if their regulations are that strict. You know, they have a duty to perform, and they are charged with a duty to protect the public. And I think that's what their elected commissioners do,

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so I just am curious when I keep hearing about how much this is saving. What would be your response to my comments? [LB112]

TOM McBRIDE: Well, I think we are regulated, and I think we do have requirements. Anybody that's transporting any of our youngsters has to have...you know, naturally, a valid license. They have to go through a background criminal history check. They have to go through a background check, central registry... [LB112]

SENATOR FISCHER: So, but what are the costs you're saving then if you already feel you are regulated? [LB112]

TOM McBRIDE: Well, as I said, right now for our treatment services, it's a per diem. This is what we're getting with the understanding, with the knowledge that we're going to be, you know, providing that supported and necessary transportation to get those youngsters to those various entities. If we were then, you know, regulated under the Public Service Commission as a carrier, whatever the term is... [LB112]

SENATOR FISCHER: We'll say carrier. [LB112]

TOM McBRIDE: Okay, thank you. I think what we would be looking at is we would be able to bill back to, you know, to Medicaid or to the Department of Health and Human Services at a much higher rate where that wouldn't necessarily be, you know, it would be under today's methodology, we have that...you know, that rate is set within the per diem. Now, we go outside of that to this other commission and regulate it that way. We would be eligible to bill back our transportation costs. [LB112]

SENATOR FISCHER: Oh, so the savings is that right now, or if this bill is passed, you are not eligible to bill those costs then. [LB112]

TOM McBRIDE: Correct. Right now we cannot bill those to the...there are some, you know, various things under contracts that if we exceed 25 miles for some certain services, we can bill at a...whatever the IRS rate, I think it is, much lower than what a commercial carrier, you know, would bill at. [LB112]

SENATOR FISCHER: Okay. Forgive my questions. I don't deal in health matters. That's why we have Senator Campbell also on this committee, so she can be our go-between on these. Thank you. Senator Hadley. [LB112]

SENATOR HADLEY: Thank you, Senator Fischer. Mr. McBride, I guess I'm concerned from a safety standpoint. Are there any requirements that the PSC would require that are good, sound safety measures, that an agency or company like yours might not want to undertake because of the costs? [LB112]



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TOM McBRIDE: You know, I don't...I can't think of anything, because, you know, we regulate that ourselves as well, all the safety things. We have a mechanic on, you know, on staff that looks at, you know, all the vehicles and stuff, all the performance issues with that. We've got requirements for insurance. We've got third-party assignment on the insurance. I, you know, I think the safety issues...we're in the business of safety for children, and, you know, so we take that very seriously. It's even to the point right now that if a...in our in-home safety services which we are subcontractor to KVC organization and NFC, that if a...one of our service providers loses a certain number of points within a year on their driver's license, say they get a little heavy-footed, they lose a certain number of points, they're no longer allowed to transport children. So I don't... [LB112]

SENATOR HADLEY: Okay. I guess I...and I understand...I've heard of Epworth Village, and know a little about it, and I certainly understand that. But we're also instituting a policy across a lot of organizations, and I would hope...I guess the last thing I want is to make a change like this and next year have some horrendous accident, and someone goes and says, well, if they'd have been under the PSC this would have...or some incident, and the PSC would have had a regulation that might have helped, and we don't have that now, so I just throw that out there. [LB112]

TOM McBRIDE: Yeah, I really couldn't speak to that. I'm sorry. [LB112]

SENATOR FISCHER: Other questions. Senator Dubas. [LB112]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. McBride. As I read through your testimony, you reference in here, most of transportation is incidental, so it's part of your service package. Would that be a correct statement? [LB112]

TOM McBRIDE: Correct, yes. [LB112]

SENATOR DUBAS: And so it's either absorbed by the agency, and then you go on to say, or the foster parent. And I do know that foster parents do a lot of transporting of their kids to school, doctors' appointments, etcetera, etcetera. [LB112]

TOM McBRIDE: Correct. [LB112]

SENATOR DUBAS: So going back to the liability issues, you know, agencies are one thing, as far as insurance and having mechanics on duty, etcetera, but if you have a foster parent and, you know, God forbid, something should happen as a foster parent is transporting a child, is that foster parent ultimately responsible or does that come back to the agency that they're under? [LB112]

TOM McBRIDE: The foster parent is required to maintain a degree of insurance

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themselves. You know, I'm not an attorney. In a litigant society, I think everybody will go everywhere they, you know, they can. But our agency, you know, does carry umbrella insurance, you know, to assist with that and, thank God, we've never had to, you know, to utilize that. But I think as far as the liability, you know, as far as the insurance coverage, I think we have it addressed. [LB112]

SENATOR DUBAS: I just think it's very important that this sentence in your testimony is that it's incidental to the services that you provide and are totally unreimbursable, so you aren't getting paid for this transport; neither are the foster parents usually unless there's some extenuating circumstances or you're going quite a few miles. But most of these things, foster parents are either paying for that out of their pocket or their reimbursement, or you're paying for it out of the monies that you collect with... [LB112]

TOM McBRIDE: Out of our per diem, yeah. Correct. [LB112]

SENATOR DUBAS: Thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Dubas. Senator Louden. [LB112]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, I would like to just get something clarified for my own use here. My understanding is, is that the savings would be that if you were overseen by the Public Service Commission then you would have to charge their rates. Is that why the...where the savings is? And if the Public Service Commission isn't involved, then you can charge...you can contract rates with the Department of Health and Human Services? [LB112]

TOM McBRIDE: That would be my understanding. [LB112]

SENATOR LOUDEN: Okay. Now, when you take the Public Service Commission out of there, as Senator Hadley, I thought was kind of...I was following his questioning along. Who's going to see to it, you know, knowing human instinct, who's going to see to it that your outfit or some other one in the future or whatever, adheres to all the rules they're supposed to? [LB112]

TOM McBRIDE: Well, you know, I think that...and I can speak only for Epworth Village; I can speak to, you know, some of the agencies that I know because I've worked with them for a long time. And it's a matter of integrity and competency. We don't want insurance, you know, problems to come, you know, and visit us either. But, as I said, you know, the businesses we are in is the safety of that child and that family, and we take that very seriously. Now, a lot of the transportation that we're talking about here, as I said, is going to be from that child's...in our instance, from that child's living unit across town to school. It's going to be, you know, to the doctor, to the courthouse, you know, different things like that so. But... [LB112]

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SENATOR LOUDEN: Well, I understand that, but I'm looking at if this goes into statutes, then we're talking about everybody all over the state of Nebraska. I don't have any problem with...what you folks have probably perhaps been doing, but we can always find somebody. I mean, we know that some of these contracts that Health and Human Services have entered into didn't work out like everybody thought they would. And this is why I'm wondering who's going to be the oversight if we take the Public Service Commission out of here. [LB112]

TOM McBRIDE: I would have to leave that up to the department, you know, to, you know, work within, you know, the contract as far as we're concerned. They make it very evident to us what the expectations are and what the requirements are. And we see to it that we follow those. [LB112]

SENATOR LOUDEN: Well, then should we be looking at some type of legislation to decide what rates the Public Service Commission should allow you to charge? Should we be looking at the rates that they have in mind rather than looking at moving this whole thing away from them? [LB112]

TOM McBRIDE: I'd prefer, you know, to keep things as they are right now. You know, and I want to address something that's, you know, that hasn't been talked about. We're an agency that's accredited by the joint commission, and there used to be an accreditation standard in there that dealt with non, you know, getting away from a stigma, associated with clients and care. And, at one point, they had in their standards that we could not put on the side of the van or the vehicle or whatever, Epworth Village, Inc., York, Nebraska, because anybody that saw that vehicle could tell that that youngster, you know, was in treatment somewhere. My understanding is, is every vehicle then that is registered as a carrier under the Public Service Commission would have to have some connotation on that vehicle of what the company is that it comes from. Now, that's unrelated to, you know, to the rates and stuff, but it's related also, you know, that we want to maintain a low profile. We want to maintain a safe environment, and as I said, we're already in a very highly regulated industry, and it is not my desire to now have to go back and meet regulations via the Public Service Commission when we have been operating very effectively, very safely for 122 years. I don't know if that answered your question. [LB112]

SENATOR LOUDEN: Without the Public Service Commission? I mean, without being regulated by the Public Service Commission is what you're saying? [LB112]

TOM McBRIDE: Yes, sir. [LB112]

SENATOR LOUDEN: Okay. And then who sets your rates? Is that just your negotiated contract with Health and Human Services or somebody? [LB112]

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TOM McBRIDE: The rate that we have, yeah, it's contracted with Health and Human Services. The rate that we have subcontracted with KVC and NFC. [LB112]

SENATOR LOUDEN: Okay. Thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Louden. Are there questions? I see none. Thank you very much, Mr. McBride. [LB112]

TOM McBRIDE: You bet, thank you. [LB112]

SENATOR FISCHER: Next proponent, please? Good afternoon. [LB112]

ROGER STORTENBECKER: (Exhibit 9) Good afternoon, Chairman Fischer, members of the committee. My name is Roger Stortenbecker, R-o-g-e-r S-t-o-r-t-e-n-b-e-c-k-e-r. In addition to my testimony here today, I'm also submitting testimony from Hands of the Heartland, a DD provider and Mosaic, a DD provider. I'm the chief operating officer for Developmental Services of Nebraska. I'm here to testify in support of LB112. Our work is to provide specialized habilitation, training, and support to help people with disabilities learn the skills they need to live and work independently in the community. Our approach is to teach in the environment where the skills are to be used. We take advantage of every opportunity every day to provide training. What we've learned is that it's best to train people at the time and in the place where they will use skills, and that includes while people are riding from place to place. It could be from home to school; it could be from home to work or workshops. It could be to doctors' appointments, therapy appointments, all those kinds of places that a lot of people go every day. The entire purpose of our existence is to provide training habilitation and support, and that goes on during all those transportation opportunities every moment of every day. To say that what we're doing is providing transportation really undercuts all the education, the expertise, and the work that we do every day for every person that we support. The kind of training that we might provide while a person is on a ride from one place to another may include just social skills...how to ride, how to be safe when they ride, learning routes for public transportation, learning how to use some of the contractive carriers, the common carriers that are out there--taxicabs, handivans, and city buses. Rides may be provided by our staff in vans that we own or lease, in cars that we own or lease, could be in staff's cars that they drive while they're on our business. It could be some of the families that we contract with provide services in their home. They may be providing training and providing the rides also. The way that people get training and rides under contract with us and directly from us is wide and varied and happens every day--may be one block; it may be several miles. Transportation...part of it is part of habilitation, has been viewed as exempt from motor carrier rules and regulations until just very recently. Legislative appropriation is the sole source of income for most of the service providers in Nebraska who do what we do. We are regulated by Health and Human Services, the

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Division of Developmental Disabilities, and we are contracted with that same agency to provide services. As the Legislature is the sole source, we don't have a lot of options if we have increased cost. And I have to say, as of today, I don't know exactly what that cost would be. I know we travel a lot of miles while we're doing our training, and am really not that well versed in all of the fees and the obligations for getting signed up as a contract carrier. I am somewhat familiar with the cost to hire a carrier because we do from time to time use those carriers. We don't have customers that we can pass on those additional costs to. Practically everyone in our service is Medicaid eligible, and we are prohibited from charging additional costs in addition to what we receive from Health and Human Services. The additional layer of regulations that would be caused by not passing LB112 hasn't been needed in the last 40 years of history in community-based developmental disability services. I don't believe it's needed now. I'd be happy to answer any questions. [LB112]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you. [LB112]

ROGER STORTENBECKER: Thank you. [LB112]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB112]

SARAH FORREST: (Exhibit 10) Good afternoon, Senator Fischer, members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm here on behalf of Voices for Children in Nebraska in support of LB112. LB112 basically...I feel like there might be some repetition from what other people have been saying, but for Voices for Children-Nebraska, it's really an issue of best practice. Lead agencies and their subcontractors are serving some of Nebraska's most vulnerable children and youth: those at risk of abuse and neglect; those who have been removed from their home for those exact reasons; those involved with the Office of Juvenile Services. Many of these youth have hard times establishing trusting and cooperative relationships with adults. We know from caseworkers' experience from best practice from around the country that time in the car is exceptionally valuable. It's time to bond and establish that relationship. It's time to talk about what's going on with visits or therapy sessions. It's a time when children are more likely to open up, because, you know, it's not a formal, traditional office setting. There are already so many people involved in the life of children involved in the juvenile justice and child welfare systems that, you know, adding one more seems to be a bit excessive. You'll see a handout on the back of just some of the people involved in a child's life. So, basically, LB112 would allow services to continue the way they have been and rather than a stranger, a child or a youth would be able to be transported by someone they trust and have established a relationship with. In our opinion, it takes an important step into assuring that child welfare agencies can provide the best possible services to our children, and we urge you to advance the bill. And I'll take any questions you have. [LB112]

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SENATOR FISCHER: Thank you, Miss Forrest. Are there questions? I just have a short question. [LB112]

SARAH FORREST: Sure. [LB112]

SENATOR FISCHER: I, and I guess I'd like to say, I understand the need for this bill. I appreciate all the comments we've heard, but I don't know if you're addressing the bill. And I guess I'm going to pick on you. [LB112]

SARAH FORREST: That's okay. [LB112]

SENATOR FISCHER: ...(laugh). What would change? What would change if this bill didn't pass? You're saying it would bring another person into it. We're talking about regulation through the Public Service Commission and meeting their requirements they have for motor carrier contracts. [LB112]

SARAH FORREST: Absolutely. [LB112]

SENATOR FISCHER: How is that directly going to affect a child? [LB112]

SARAH FORREST: I think it's...as you've heard from some of the lead agencies behind me, the cost and the requirements are about commercial vehicles. It's not about providing the best services to kids. So because of the Attorney General's Opinion and so on, you would be taking things that apply to commercial carriers and applying them to vulnerable children. So I guess the reason we're here testifying is because if this bill doesn't pass, that means that children and lead agencies are going to be fulfilling commercial vehicle...not that safety and so on isn't important, but that they provide for that and they provide for more, because they have training and experience with youth. I think we would all agree that, as opposed to sticking a foster child in a taxi with a stranger, we'd prefer that that caseworker transport them. So it is a children's policy issue, and I certainly also agree that it is, you know, a definitional issue, and I spoke more to the consequences of that definition, but the definition, you know, is there and we see it as a different thing than a commercial service, I think. [LB112]

SENATOR FISCHER: (Exhibit 12) Okay, thank you. Other questions? I see none. Thank you very much. [LB112]

SARAH FORREST: Thank you. [LB112]

SENATOR FISCHER: Good afternoon. [LB112]

BOB MATTHEWS: Good afternoon, Senator Fischer. My name is Bob Matthews. I'm

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from Black Hills Workshop and BH Services at Offutt Air Force Base. We employ people to work in the Downing facility or in the commissary. We have 34 people who are state-funded DD clients. I may be the only one that has experience with the PSC, because we initially contracted out all our transportation costs, and somebody who didn't get our contract complained to the PSC that the rates were incorrect. Eleven years ago we were told we would have to charge \$14 a ride for each person coming to work which is \$28 a day. At the time, our people are earning \$56 a day, so that was half of what they earned, but, of course, I would have had to pay that. We decided to go into business for ourselves. It costs us \$4 a ride. I'm not sure how much taxicab rates have gone up in the 11 years, but I'm sure they've gone up quite a bit, and it would be a lot more than \$4 a ride. Most of my people earn between \$8 and \$15 an hour. Almost every state permit person would probably lose their job, because I wouldn't be able to do this. With the way rates are now, I'm not even sure I'd be willing to. Under the ability of one of the contracts at Offutt, I have to hire somebody with a disability. It would be cheaper and easier to hire someone who drove with a disability. Most of my people pay the state for their services, because they earn enough money to do so. So you'll be returning people back to Social Security, welfare, and they won't be paying for their own services. That's all I have. [LB112]

SENATOR FISCHER: Thank you, Mr. Matthews. I appreciate you getting to the guts of this. Thank you. Other questions? I see none. Thank you very much. [LB112]

BOB MATTHEWS: Thank you. [LB112]

SENATOR FISCHER: Good afternoon and welcome. [LB112]

ALAN ZAVODNY: (Exhibit 13) Thank you. Senator Fischer, members of the committee, my name is Alan Zavodny, A-l-a-n Z-a-v-o-d-n-y, and I'm the chief executive officer for NorthStar Services. We provide supports for people with developmental disabilities in 22 counties in northeast Nebraska. We have approximately 600 employees, and we support 327 people. I'm not going to read this to you. [LB112]

SENATOR FISCHER: Thank you. [LB112]

ALAN ZAVODNY: All right. Here's what I'm going to say. We provide services in many small communities in Nebraska. In almost all of those communities, there are no commercial carriers. Our staff transport people to churches, grocery stores, sporting events, work, doctor appointments, paying bills. We support people in communities such as Inman, Emmet, Butte, Wood Lake, and we are the transportation system there. I like less government; that's me. I'm going to cut to really the...to the bottom of it here. We heeded what our Governor told us, and we tightened our belts; we cut spending, and you as members of the Legislature have asked us to do the same. If we don't do this, we see it as an unfunded mandate, and the bill goes to you, because you, by and

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large, are our only funding source. I've had senators tell me more than once that they would say, my constituents told me to go to Lincoln and do nothing. They'd be really happy. This is your chance to do that. It would leave the things the way it is (laughter) by passing LB112. That's going well, don't you think? I can tell. If we do this, it would leave things the way they are which would work out well. You know, I'm a mayor of a small town, and if we see a taxi going through our town, we know someone is paying an awful lot of money, because there aren't any taxis in our town of 2,500. So that kind of thing, you're going to have commercial carriers going all over the state, and I'm really worried about the service that would happen in rural communities. See, I threw it out the window, so that's all I have. [LB112]

SENATOR FISCHER: Thank you very much, appreciate it. Questions? Senator Hadley. [LB112]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Zavodny, do you do any transportation that falls under the Public Service Commission? [LB112]

ALAN ZAVODNY: The only time that public service comes into play is, we've had individuals who will access that type of transportation. But we have so many people that have to get so many different places at so many different times, if we didn't utilize the vehicles we have, some that are modified for people with wheelchairs, that kind of thing, the ramped vans, those kinds of things, and if our employees didn't utilize their own cars which we pay them a very small amount back in mileage, we'd never get everybody everywhere they need to go all the time. So we go from Valentine to specialists in Omaha and Lincoln, and if we didn't provide that transportation, and we've had people use some of the commercial carriers, but it doesn't always work into schedules and that kind of thing. So if we didn't do this, and it isn't in our rates, our rates provide for transportation from a residence to a day service center, but we eat a lot of this because we know it's important for people's lives and to get them to the doctors, those kinds of things. [LB112]

SENATOR HADLEY: I guess maybe you can't answer this, but you know, your company, NorthStar, provides this service that we've talked about...developmental disabilities supports people. Are there...and you're basically a transportation company, is that correct? [LB112]

ALAN ZAVODNY: No, we provide...we get paid to provide habilitation. We train people in life skills, work skills, vocational skills. Transportation...for us... [LB112]

SENATOR HADLEY: Okay, okay. I...okay, for some reason, I got the impression that you were a company that was providing this service to other organizations. [LB112]

ALAN ZAVODNY: No. Transportation is just part of it, and I'd have to argue that it's



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probably more than an incidental part, because people, in living their lives, go a lot of different places. [LB112]

SENATOR HADLEY: Are there companies in Nebraska that provide transportation services to agencies like yours under a contract? [LB112]

ALAN ZAVODNY: I believe there are. We've utilized some of them, but to utilize them to the scope we would need to, I think it couldn't happen. [LB112]

SENATOR HADLEY: And I would assume those companies would come under the PSC and maybe you're the wrong person to ask for that... [LB112]

ALAN ZAVODNY: I believe that that's correct. My real big concern is the amount of money this would cost to put into effect, and I'm pretty sure the Legislature doesn't have it. [LB112]

SENATOR HADLEY: Okay. I apologize. I thought, for some reason, you were in the transportation business is what I was trying to (inaudible). [LB112]

ALAN ZAVODNY: Do you want me to be? [LB112]

SENATOR FISCHER: Other questions? I see none. Thank you very much. Any other proponents for the bill? Any more proponents? Any opponents to the bill? Any opponents? Good afternoon. [LB112]

JOHN DAVIS: (Exhibit 14) Good afternoon, Senator Fischer and committee members. My name is John Davis, J-o-h-n D-a-v-i-s. I am director of operations for Happy Cab Companies in Omaha, Nebraska. This afternoon I'll try and keep this as short and succinct as possible. I know you've heard a lot of opinions today, a lot of which had to do with cab service. Speaking of opinions, I think there's an opinion that LB112 speaks to the desire for common carriers to maybe get into the business of doing more transportation for children that are...children or dependent adults that are in treatment. And I...being a common carrier, I don't know that I can necessarily agree with that. I also have the unique experience of also being on the other side of the fence, and for 16 plus years having been in child welfare, as a matter of fact, being a director of a child welfare agency in Omaha. And so from that perspective, I certainly agree with a lot of statements that have been given today regarding what's the best practice. I think certainly, if you have kids that are in crisis that you're dealing with issues, obviously, people that are trained to deal with those issues, to deal with them through that milieu certainly is best practice. I think really what LB112 is about because honestly, I think whether this passed or not, we probably would continue with the status quo that we have done for years, and that is the agencies that are charged with doing this...when I say this, meaning services to kids they probably would continue to do that as part of

their contracts. I used to sign the contract with HHS every year when I worked for Child Saving Institute, so I'm very familiar with those contracts. And I'm not a lawyer, so I guess don't hold me to this, but based on my understanding of what the AG's Opinion was not that services that fell under what is currently defined as escort is really what would be up for grabs or there's a question about. It's services that technically don't fit that definition, that aren't technically escort services. And again, since we're giving opinions, you know, it's my opinion that, you know, some of the numbers that have been thrown around are greatly inflated because, again...and, again, I'm only speaking for myself--common carriers really don't want to get in there and, again, do the transportation on situations when it's really best for someone who is, you know, a significant adult in that child's life or a therapist, direct care staff, that sort of thing. In terms of my opinion, I think that there needs to be some type of standardized expectations for these staff members that are engaged in doing these activities, though. When a common carrier does service...they have expectations from the Public Service Commission in terms of what they do for vehicle maintenance, what they do for training of staff, and so forth. Based on our contracts with the state or the third-party brokers that have been brought in, there are expectations in terms of training; in terms of vehicle insurance--several expectations related to that. If you look at the...you know, the contracts that HHS uses with childcare providers and that sort of thing, you don't have those same standards in terms of what kind of training specifically addresses transportation. And, quite frankly, in those entities, they typically are your most junior staff that are providing the transportation. So, if again, we're going to share an opinion, my opinion would be...is that this bill goes to address that. And we have actually been working with Senator Coash. We oppose the green bill, but we want to work with Senator to make sure that we have something in place that adds better definition. And so, again, I said I would try and make it as succinct as possible, and I think my time is about up. Thank you. [LB112]

SENATOR FISCHER: Thank you, Mr. Davis. Have you seen the amendment that Senator Coash gave us? [LB112]

JOHN DAVIS: I have. [LB112]

SENATOR FISCHER: Do you like the amendment? [LB112]

JOHN DAVIS: I like the amendment, but I think there needs to be more definition, and we will continue to work with Senator Coash up until tomorrow to try and add more definition. [LB112]

SENATOR FISCHER: When you say until tomorrow, why do you have a deadline of tomorrow? [LB112]

JOHN DAVIS: Well, that's the time line that we've been working under. I mean, we will

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continue to work with the Senator, so. [LB112]

SENATOR FISCHER: Okay. Thank you. Questions? Senator Price. [LB112]

SENATOR PRICE: Senator Fischer, thank you. Thank you for your testimony, Mr. Davis. My question comes in the line of you talked about expectations with a particular focus on training. And we'd heard in earlier testimony, isn't that an item that could be put into contract language when you're subcontracting with an agency that...a training standard, so they already have some. It would just be making that more robust for training? [LB112]

JOHN DAVIS: Absolutely. Again, I think that in situations where it's truly escort, where we're talking about a foster care situation whether that be short term or long term foster care, residential treatment, or emergency shelter, I think those are totally appropriate, you know, for those staff to provide that transportation. [LB112]

SENATOR PRICE: So it would be fair to say that it's not necessarily that it had to fall under the jurisdiction domain and/or purview of the PSC to do that, but the contract language in law can do that? [LB112]

JOHN DAVIS: Absolutely, as long as it is addressed. Right now it's not adequately addressed. [LB112]

SENATOR PRICE: Okay. And the final...one question just so we can scope it. You may not be able to answer the question, but in the Omaha area, they have the learning community and in that learning community they have students that are utilizing a taxi service to move around. Do you have any idea what the cost of that is? [LB112]

JOHN DAVIS: That's really a pretty broad question to answer. What I can tell you is that being an operator in the Omaha area, we assist every school district in getting their children to and from school. We have also heard a lot of testimony about MRDD population currently. My cabs in Omaha transport hundreds of MRDD clients from their homes or group homes to a shelter workshop location, and there's several throughout Douglas County and also in Pottawattamie County, back and forth every day, so it's something that we do every day. [LB112]

SENATOR PRICE: Is there a way that you can size that dollarwise, give it a range, just so we can understand and put legs on this to understand it? [LB112]

JOHN DAVIS: You know, again, it would be speculation at this point, and, you know, I didn't prepare that when I came here. What I can tell you that we do is that we arrange those into geographic routes, so that it makes sense, and that's something that, especially when we're working with our MRDD population, it's very important that we set

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that up so that we can...instead of having one person ride in a car and absorbing all of the cost of the trip, that we have four or five. We utilize minivans so we can transport up to six at a time, and we try and make sure that we have a maximum capacity rate, so that we're making it affordable. [LB112]

SENATOR PRICE: All right. Thank you very much. [LB112]

JOHN DAVIS: Okay. [LB112]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Campbell. [LB112]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Davis, in the present statutes, there are exceptions to this--churches, people maybe who transport the elderly...there's just a number of sections. Do you think that those entities should be...we should develop some kind of standards for them too even though they are exempt? [LB112]

JOHN DAVIS: Again, I think that as it stands right now, there are a lot of groups that are exempt. And if they are contracted with the state for reimbursement, I think that absolutely that there should be some defined criteria for what is expected in terms of minimal training, you know, minimum insurance coverage. What really scares me are the situations where you have someone who's providing transportation under, you know, the scope of they're doing escort, and that you have someone using their own vehicle to do transportation, and they're getting reimbursed at a mileage rate that they have worked out, and they're either an employee or an independent contractor. That's what is most concerning to me, because the PSC requires the common carriers, obviously, that there are monthly inspections of their vehicles, and, again, there is a minimum insurance rate that is much higher than in these entities...these individuals using their own vehicles are going to have the minimum rate of insurance for coverage in terms of liability which is typically about \$25,000 whereas taxicabs, for instance, their minimum is \$500,000 and I think open class, theirs is even higher...maybe \$1.5 million so. [LB112]

SENATOR FISCHER: Other questions? Senator Louden. [LB112]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. John, you handed out this Nebraska Transportation Association handout? [LB112]

JOHN DAVIS: I did. [LB112]

SENATOR LOUDEN: I'll ask you a question and perhaps you can't answer it, but how does these taxis that shuttle railroad employees up and down the state of Nebraska, how do they fit into this thing or do they? [LB112]

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JOHN DAVIS: I'm not sure I understand the question. They're not exempt. [LB112]

SENATOR LOUDEN: Okay. But would they come under this as part of these people that would...perhaps are under the Public Service Commission now. I doubt it, but they would become under it or do you know if that would affect them at all? [LB112]

JOHN DAVIS: They already are. [LB112]

SENATOR LOUDEN: They already are. [LB112]

JOHN DAVIS: You have to, by definition in your certification, you have to be certified to transport railroad crews. [LB112]

SENATOR LOUDEN: Okay, because they're not part of the railroad. They just evidently contract with the railroad. [LB112]

JOHN DAVIS: Correct. [LB112]

SENATOR LOUDEN: Okay. Thank you. [LB112]

SENATOR FISCHER: Other questions? I just have a short one here for you. You've been listening through the entire hearing. You heard me bring up concerns with the state's exposure to liability. You've made the comment that some of the foster parents...you don't think that they have enough coverage? What do you base that on? [LB112]

JOHN DAVIS: Well, my statement was that I was really concerned about the situations where you have people that are out using their own vehicles, and whether...I didn't define or identify foster parents. But whatever the situation is, and there's really no defining criteria for what they need to have in terms of training, for a regular maintenance on their vehicle to ensure that it's safe, and then also, to guarantee a certain level of insurance. [LB112]

SENATOR FISCHER: Are you working on that with Senator Coash to try to...to look into that, or do you think that should be under the rules and regulations of the department, or with their contracts that they have with these individual providers? [LB112]

JOHN DAVIS: I think in instances where it fits under the current definition of escort which, hopefully, will change here shortly, but that the department can handle that. But, again, they need to look at what the...because, again, the department's focus has to do with child caring practices and accreditations and that sort of thing, and really doesn't look that closely at vehicle maintenance and at automobile limits and that sort of thing.

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And, again, the people that are driving them which, again, in these residential treatment facilities, typically, their most junior staff are the ones that are out driving these vans, and sometimes we're talking 12- to 15-passenger vans. [LB112]

SENATOR FISCHER: But you would be hopeful that those concerns of yours would be met by the department? [LB112]

JOHN DAVIS: Absolutely. [LB112]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much. [LB112]

JOHN DAVIS: Okay. Thank you. [LB112]

SENATOR FISCHER: Other opponents to the bill, please? Good afternoon. [LB112]

STEPHEN MASON: (Exhibit 15) Good afternoon, Senator Fischer and committee members. Unfortunately, with three minutes my ten minutes piece of paper isn't going to work, so I'm going to try to paraphrase as best as I can. [LB112]

SENATOR FISCHER: Okay. I need you to state and spell your name. [LB112]

STEPHEN MASON: Yes. My name is Steve Mason. That's S-t-e-v-e Mason, M-a-s-o-n. I'm an independent insurance agent. I started in my industry in 1971, and for the past 23 years have worked at the Forsyth Insurance Agency here in Lincoln. For well over a quarter of a century, I've provided insurance coverage for a variety of ambulances, charter buses, taxicabs, limousine services, para-transit companies. And from that perspective, or my point of view is going to be a lot different from anything that you've heard from the other people. One of the issues I wanted to address was the special contracts that the state has with certain service providers. One of the transportation standards in that contract states that the contractor is responsible for providing all in-state and out-of-state transportation related to the contractors' primary business of servicing the children, youth, and families. And that's been part of the issue that we've been talking about. On September 27, 2010, the PSC held an informal hearing and discussed these issues. During that process, the service contractors and here, again today have indicated that the driving duties are incidental, and that no one was hired or paid specifically to be a driver and, therefore, they would not be subject to regulations by the PSC. And attached in the handout, you will find a job description from KVC Health Systems for a program support worker for the Papillion area. Their Web sites included several job postings for other cities that they serve, so this isn't just an isolated incident. According to the postings, 75 percent of his or her time would be spent providing direct transportation to children who are involved with the foster care and/or juvenile offender system, and the use of personal vehicle is required. Now, how that's

not for hire or a livery description is beyond me, and how could that be incidental? One of my biggest concerns is that the individuals are using their personal vehicles to transport others for a fee. We questioned several insurance carriers and asked them if they would accept a new client using the job description for KVC...if they would accept that as a new business client for them. Most of the companies were not very receptive to that. They said that they would either...if they had a client that had that exposure, they might not renew them, that they may deny a claim, because there's sections in the policy that exclude livery exposures, and this created a concern to me. I bring this up because the service contractors appear to show little concern for the plight that they may be creating for their own employees. One of the service contractors during that forum indicated that they require their employees to carry at least the state statutory minimum limits. That's wonderful, but that's also \$25,000; \$50,000; and \$25,000 whereas the regulated carriers have to carry \$1.5 million and that HHS contract with the service contractors require a million auto and a million umbrella. But statutory minimum is good enough for their own employees, and their own employees are the ones that are carrying the people. The service contractor said that they have hired and nonowned auto insurance on their business, and they probably do. Hired and nonowned comes in only after all other valid and collectible insurance has been exhausted. And, you know, the company...the service contractor would be protected, but their employees would be held personally liable, and they could be forced into bankruptcy for lack of protection. KVC further reinforced that concern when they stated they had only two claims in Nebraska with employee-owned cars, and they paid...and their insurance company paid the claim. It was probably a nonowned auto claim, because that's what would bring that coverage in, and the employee either had insufficient limits or no coverage at all. And I'm out of time, so I'll skip that real quick. And if LB112 is passed, service contractors could file for a PSC authority on their own. The application fee is \$300. It's \$50 for every authorized plate. They would have to carry \$1.5 million worth of liability limits on their vehicles. They would not have to purchase their own fleet, because the PSC has already provided a vehicle lease agreement that could allow the individually owned vehicles to be included under the service contractors' insurance policy. And the service contractor, when they file their rates, they file their rates. The Public Service Commission doesn't say, this is what you have to charge. They say what they want to charge, but it brings them under the protection and the auspices of the PFC, so there would be some regulation; there would be higher liability limits; there would be protection for the public; there would be protection for these youth that are the ones that we're supposed to be protecting anyway. The most disadvantaged people in our society are the ones that are having the least amount of protection. And I just don't think it's the job of the committee or the Legislature as a whole to enact legislation that will benefit a small number of nonprofit businesses at the expense of several for-profit businesses. There's 393 cabs and 600-and some odd para-transit vans that could be adversely impacted by this and hundreds of employees. And that's a terrible paraphrasing of a very wonderful letter, but I'm done. [LB112]

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SENATOR FISCHER: Thank you very much, Mr. Mason. Are there questions? Senator Price. [LB112]

SENATOR PRICE: Senator Fischer, thank you. Mr. Mason, just quickly, to make sure I understood what you said there that an employee driving their personally-owned vehicle gets into an accident, and they have the minimum claim, the claim, if large enough, will use all that up. Another policy that the nonprofit has would pay the rest of it, but that driver of that personally-owned vehicle would still be liable for some money? I wasn't following when you said that there's something on top of, yet they're still liable. [LB112]

STEPHEN MASON: What I'm saying is that under an insurance policy, there are five different sections that say that if you're using this vehicle as a livery, there's no coverage. Okay. If an individual is involved in an accident, and the insurance company denies any coverage or if they have insufficient limits to pay for all of the claim, the commercial business should have, what's called hired and nonowned auto liability insurance. And that's usually at a limit that's equal to their auto liability, a million or whatever it might be. That coverage would come into play to protect any suits filed against the business, but it will do nothing to protect the individual. And it's that individual, if he was negligent, that could end up losing his farm, losing his house, losing his assets because he was the one that was negligent in causing the accident. And depending upon how the courts would see the liability and the negligence aspect, there may not be any other protection for him. I don't know if that answers your question or not. [LB112]

SENATOR PRICE: I think I'm there. Thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Price. Senator Hadley. [LB112]

SENATOR HADLEY: Senator Fischer. Mr. Mason, just a quick question. I had heard earlier testimony, I believe, that we have been operating under a set of assumptions, and now we have an Attorney General's Opinion that the assumptions that we've been operating under are not correct. So how would...if we pass this law, how would this impact the taxis and the services you were talking about when we've already been doing this all these years, operating under the same system, I guess that LB112 will now put into statute? [LB112]

STEPHEN MASON: Well, by passing the statute, certain of the providers wouldn't be affected anyway, the people that are primarily...the escort services. It's for the for-hire type services that would no longer be regulated that should be regulated now. You know, before the Department of Health and Human Services transferred responsibilities for transporting clients in their charge, if you want to call them clients, they were using regulated carriers for that transport. So now we're taking that regulation or the use of the regulated carriers away and giving all that responsibility to two or three larger



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organizations, and they're not going to be regulated. They're not going to be subject to the same rules that were in place before. And that's what I think where I see is a problem. The fact that the regulated carrier carries a million dollars' worth of coverage and a million dollar umbrella...that's all wonderful, because that protects that corporation or that business. But my concern is the individual that's working for them that's not carrying that same limit...they don't have a requirement to carry a high limit. And many of their insurance carriers, if they found out that they were doing a lot of transportation as part of their daily job duties may not provide coverage for them any longer. I can't say everyone would, and just like with the escort service, it said in 75-303.01 or .03, one of the two of them, that that particular type of transportation would not be considered a livery. That's fine that that was put into statute, but the insurance companies usually don't listen to our statutes anyway. [LB112]

SENATOR HADLEY: Thank you, Mr. Mason. [LB112]

SENATOR FISCHER: Other questions? Senator Campbell. [LB112]

SENATOR CAMPBELL: Thank you, Senator Fischer. Just a comment, Mr. Mason. Before the contracts were narrowed down to five and then three and then two,... [LB112]

STEVE MASON: Yeah, yeah. [LB112]

SENATOR CAMPBELL: You know, the parceling down, the department had contracts with well over 150 agencies all across the state of Nebraska, and I would guess at some point, those agencies were transporting children are in foster care, particularly as they are now. I mean, I just wanted to clarify that, that they used to have a lot of contracts across the state, so they were not...the department themselves were probably not transporting all those children or DD clients. [LB112]

STEVE MASON: If I understand it correctly, previously, the Department of Health and Human Services would contract with different regulated carriers to provide the transportation service, and they had...that transportation had to be preapproved; it had set rates; it had all kinds of rules and regulations that everybody had to follow. And several of the transportation providers geared up their fleets, geared up their drivers, did everything that they...was necessary to be ready to provide the services that the state required. The state in their attempt to cut some of that expense has outsourced the coordination of the services, you know, getting the transportation providers to pick up the certain clients, whenever it was. Where the state caseworkers were doing it before, now there's a third-party service doing it as I understand it. I just lost my train of thought as to where I was going with that, but I know that a lot of things have changed in the attempt to save money. But it appears to me that some of these changes are going to be at the expense of the regulated carriers that have been following the rules, playing

by the rules all this time, and now by deregulating or not having any level playing field, then some of these services will probably go out of business. Some of the taxicab companies in the outlying areas, not necessarily Omaha or Lincoln, you know, they rely primarily on being able to provide transportation for HHS. Of all the vehicles that the Public Service Commission regulates right now that transport individuals, there is almost a thousand vehicles, and I've got the exact numbers in the paper. How many people do those businesses employ that may not be employed any longer as a result of this? How many claims are we going to have from employees of a service who are not required to carry a high enough limit to protect them? If the services are regulated and if they have a Public Service Commission authority, and they take advantage of the Public Service Commission's lease agreement, then they can bring the control of those cars and the higher limits under their own policy, and they don't have to charge an exorbitant rate to do it. They can charge a dime if that's what they want; they file their own rates. [LB112]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Mason, for coming today. Anyone else wishing to testify in opposition? Anyone in the neutral capacity? Good afternoon, Commissioner. [LB112]

TIM SCHRAM: (Exhibit 16) Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Tim Schram spelled T-i-m S-c-h-r-a-m. I'm a member of the Nebraska Public Service Commission representing the Third District. I am here today to testify regarding LB112. The Nebraska Public Service Commission regulates motor carriers that transport passengers and household goods. The commission is charged by the Legislature with ensuring that carriers that transport passengers are fit to do so including making sure that the vehicles are properly insured to meet the requirements to provide safe transport and charge rates that are fair and reasonable. The commission requires those transporting passengers to provide proof of the appropriate and sufficient insurance and conducts inspections of vehicles to ensure that they are safe with the proper safety belts and restraints, roadworthy, inspecting the engine, brakes, transmission. The commission also investigates complaints from the public regarding vehicle safety, service issues, and rate violations. You are all familiar with the contracts developed for the care of children who are wards of the state. As part of the contracts, contractors provide transportation for children and youth that are wards of the state. The contractors receive compensation for the provision of such service. During the negotiation of the contracts, the commission was consulted regarding the regulatory oversight of the PSC in relation to the provisions of transportation services. The commission held two workshops to gather information regarding the transportation services to be provided. Questions were raised over whether the contractors needed to abide by the requirements of the commission regarding insurance, safety, and rates. The commission requested and received an Attorney General's Opinion determining the commission had oversight over the contractors in the provision of transportation

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services. No steps have been taken to initiate regulatory proceedings to license the providers, primarily to give the Legislature to review the applicable requirements currently existing in law and to make policy changes you deem to be appropriate. LB112 would exempt providers transporting state wards under contract with HHS from commission regulation. The commission has concerns regarding the transportation environment that would be created by the passage of LB112. Those concerns focus on carrier oversight in regard to insurance and safety. Insurance is a primary focus of the commission. State law recognizes the risk to providers and the traveling public by requiring that passenger carriers carry higher levels of insurance coverage than those that are required for the average motorist. The exposure of the providers and passengers to the amount of traveling that the provision of the services incur necessitates these higher levels of coverage. There is no indication that the contracts involved with this program recognize the exposure that the provision of transportation under these contracts entails. Safety is the second area of concern. The commission maintains control over the providers of the services, including vehicle maintenance and safety checks. It is important that the carriers who plan to transport children and youth maintain vehicles and inspect them periodically. If LB112 is enacted, it is not clear if any vehicle maintenance standards will be required and what oversight will take place to ensure that these standards are being met. The commission conducts annual inspections of the vehicles transporting passengers, including vans, taxis, limousines operated by certificated carriers in the state of Nebraska. In the proposed amendment to LB112, it is stated in subsection 17 of Section 75-302 that "Supported transportation services means any person or entity providing transportation services to a minor, a person who is physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision, or a person who requires transportation as part of the provision of social services." It would be helpful if the term "provision of social services" could be more fully defined. There is no definition regarding who is providing services or what all is entailed in providing social services. The commission has taken no position on LB112, however, we do wish to bring to your attention some of the concerns and issues we believe are important when discussing the commercial transportation of passengers, especially children and youth. In the unfortunate event that an accident were to occur under one of these contracts, questions will be asked regarding insurance, maintenance, and safety of the transportation services provided to state wards. Clear requirements and proper oversight to ensure compliance with those requirements is essential. I will be happy to try to answer any questions that you may have. Thank you for the opportunity to testify before you today. And in the next course of the next couple of weeks, if there's any questions, please contact the commission, but I'll answer any questions here today. [LB112]

SENATOR FISCHER: Thank you, Commissioner Schram. Are there questions? Senator Price. [LB112]

SENATOR PRICE: Senator Fischer, thank you very much. Thank you, Commissioner

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Schram. My question centers around the inspection of vehicles. Right now (inaudible) you're set up to inspect any number of vehicles, but what would you anticipate if we went to adopt some of your suggestions? Can you size the level of effort it would be to inspect all these vehicles that transport wards of the state for the various things that you're set up to inspect? I mean, that would be a big load increase, I would think. [LB112]

TIM SCHRAM: Yes, it would be...currently our inspections...our inspectors inspect on an annual basis and sometimes more periodically. If there's been violations found, then, of course, we keep a closer eye on that, and we'll do more inspections in a calendar year. But it would... [LB112]

SENATOR PRICE: But it would be a lot more if you had to bring in all these carriers. [LB112]

TIM SCHRAM: It would. [LB112]

SENATOR PRICE: Okay. [LB112]

SENATOR FISCHER: Senator Campbell. [LB112]

SENATOR CAMPBELL: Thank you, Chairman Fischer. Commissioner Schram, I want to go back to one of the questions I asked of a gentleman before. There are exceptions. I keep stumbling on that word--exceptions in the statute--churches that have buses and, you know, take kids to camp, back and forth, and that kind of thing. Has the PSC said, maybe they should be inspected or have standards? I mean, have you ever looked at that issue because they are...I mean the exceptions are transporting the elderly and youth, and are they not? [LB112]

TIM SCHRAM: Correct. Well, I think if you go back into history of common carrier, and the key thing you have to remember, is there compensation being received for the transport of that passenger? And the exempt organizations, to my knowledge, in the history of the PSC have not done any regulatory work with those exempt entities. [LB112]

SENATOR CAMPBELL: And probably in some of the situations that we've looked at here, I would guess that it's not the major thing that we transport Johnny from the foster family to the biological as much as it is the effort that we need to have that child visit the parents and back and forth. The emphasis on importance has not been on just the transportation, and that's probably what some of the organizations who testified struggle with. Thank you, Commissioner. [LB112]

TIM SCHRAM: Um-hum, I would agree. [LB112]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Hadley. [LB112]

SENATOR HADLEY: Senator Hadley. Commissioner Schram, when we first started this discussion, I guess I was under the impression...still under the impression that we were operating under one concept of rules and regulations, and now we have an Attorney General's Opinion that it has changed that. Has there been anything that has really changed in the underlying process or concept of what we were doing in the past versus what we will be doing in the future, or have we had an Attorney General's Opinion that says, what you've done in the past is incorrect? [LB112]

TIM SCHRAM: Yes. We sought the Attorney General's Opinion, because looking at when HHS was changing their methods of transportation that whether or not beings there was compensation involved, whether it was incidental or not, to their main purpose of what they were doing, whether or not they were subject to PSC regulations, and at that time, we held a number of workshops and then sought the AG's Opinion. [LB112]

SENATOR HADLEY: Okay. So there really has been somewhat of a change in the method of doing business as the reason that you've kind of...or the reason you asked for the AG's Opinion. [LB112]

TIM SCHRAM: Not so much. I think, and I can't speak for HHS, but from what I gather, when the move from HHS was for the more community-based care that there was a greater need for transportation at a local basis. That may have been the driver of it, but the commission has always been concerned with...in transportation with, first of all, whether there's a need. And, obviously, in this case, there is a need. The second thing we look at is fitness, the proper insurance, safety of the vehicles, what I just went over. But the AG's Opinion was when the escrow component came in, that more clearly defined whether it was truly an escort service or was it a service being provided that was being compensated for? [LB112]

SENATOR HADLEY: And just one other quick question. You may not be familiar with this or you maybe won't be able to answer it, but in Kearney we have RYDE--Reach Your Destination Easily, and it's funded, I think is it, Mid-Nebraska or somebody that funds it. Would that fit into this discussion that we're talking about here? Does that come under your jurisdiction now? They operate a huge number of buses and taking people to different places. You may not know, but... [LB112]

TIM SCHRAM: Are they funded by the city? [LB112]

SENATOR HADLEY: No, they're funded by the Mid-Nebraska nonprofit organization. [LB112]

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TIM SCHRAM: Okay, because I do know there are like regional offices of aging that also provide transportation, and to my knowledge, we don't regulate them. [LB112]

SENATOR HADLEY: Okay. I was just curious because they have a significant number, and just how this either would or would not impact that. [LB112]

TIM SCHRAM: I haven't seen that name come across my desk. [LB112]

SENATOR HADLEY: Okay, okay. Thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Hadley. Other questions? Senator Campbell. [LB112]

SENATOR CAMPBELL: I guess I just really want to emphasize once more that, for instance, in the DD community, and there's a number of providers here, they would have been providing transportation for years, individual agencies, individual groups that have those contracts. And when we changed to the child welfare system, again, we went from 150 contracts to five, and then now down to two. But many of the people sitting in this room would have provided transportation for years. They just had the direct contract with the department, but now they subcontract with it. So a lot of these agencies that testified, they have been doing this for years. [LB112]

SENATOR FISCHER: Are there other questions? I see none. Thank you, Commissioner. [LB112]

TIM SCHRAM: Thank you. [LB112]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. Senator Coash, would you like to close? [LB112]

SENATOR COASH: I will be brief. Thank you to the committee for your patience and great questions by all the committee members. I think you're getting into the heart of the issue that we're trying to address here. As I listen to all the testimony, one of the things that kept coming to mind, and Senator Campbell, you hit this at your last question is, if it's not broke, let's not work to fix it. This is about clarifying what's already occurring. This did start with some questions with child welfare providers, but as we looked into this, this issue grew, and it's not just child welfare. This is an HHS issue. That's why CEO Winterer is here, because this affects all the divisions, not just child welfare--the developmental disability providers as well. This is good policy, because it's been working, and what I will say is that this issue didn't come up because kids were unsafe. Okay, a lot of questions around safety, and safety isn't the issue here. But I did talk with CEO Winterer, and he's going to provide the committee with all the things that he puts

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into place with regard to all of these providers whether it's through a contract and requirements of providers under contract; whether it's through rules and regulations, but liability stops with the department, and they're not going to let a contractor provide services to vulnerable people without making sure that there are safety mechanisms in place. That's their job. I will point you to the fiscal note--\$33 million is a big number, and that's the fiscal note that...the cost to the department. That goes back to the providers and, ultimately, the people in services. Senator Campbell, you asked a couple of questions about exemptions. There's 11 and we're only talking about adding...or there's 11 including the change from escort to supportive transportation providers, and so I think it's important to keep that in mind. You know, HHS isn't responsible for keeping an industry in business. Okay? It's not their job. I will tell you that if agencies are required to have Public Service Commission certificates, most agencies will just do all the transportation, and then that will put them out of business. But I don't think that's the case, because we've been doing this for years and years and years, and I don't think that things are going to change. We have an issue in front of us which is a little bit unique. We've got HHS and providers on the same page of an issue which is (laughter)...which is great. [LB112]

SENATOR FISCHER: That's because you came to our committee for a change (laughter). [LB112]

SENATOR COASH: Senator Campbell, we're going to reference all of our issues to this committee. [LB112]

SENATOR CAMPBELL: Okay. [LB112]

SENATOR COASH: But we have them working together, and I do appreciate, you know, I saw Mr. Davis come up. And him and I used to work together on the provider side of things, so I will work with him, and we'll see what we can get accomplished for some clarification. And we'll make sure...the committee's concern for safety is also my concern, and I wouldn't bring a bill if I thought kids would be at risk by doing something we've already done. So I'll make sure that the committee has that information as well. Thank you. [LB112]

SENATOR FISCHER: Thank you, Senator Coash. I just have a question on the fiscal note. The one that we have access to, there is no fiscal impact, and it doesn't show the \$30 million to \$33 million. So if you could... [LB112]

SENATOR COASH: I saw it. I'll get it to you. [LB112]

SENATOR FISCHER: ...if you can get that to us, I would appreciate it. [LB112]

SENATOR COASH: And then I do have another letter of support from Nebraska

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Appleseed that...she didn't testify, but we'll put that in the record. (See also Exhibit 17.)  
[LB112]

SENATOR FISCHER: Okay. Thank you. Thank you very much. With that, I'd close the hearing on LB112 and open the hearing on LB47. (See also Exhibit 11.) Welcome, Mr. Vaughan. [LB112]

DUSTY VAUGHAN: Thank you, Senator Fischer. [LB47]

SENATOR FISCHER: Let's get back to business with Transportation and Telecommunications. Okay. [LB47]

DUSTY VAUGHAN: Yeah, we're still talking about PSC jurisdiction, though, so I don't know how much longer that's going to be. [LB47]

SENATOR FISCHER: Okay (laugh). [LB47]

DUSTY VAUGHAN: For the record, again, my name is Dusty Vaughan. It's spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB47 makes a small change to a process passed last session by this committee in the full body. To give a little refresher, LB181 was introduced in 2009 and passed last year that established a process at the Public Service Commission to deal with wire line crossing agreements between telecommunications carriers and railroad carriers. The committee became involved in the summer of 2008 due to some difficulties that various telecommunication carriers were having when trying to get a telecommunications line across the railroad right-of-way. LB181 was introduced to authorize the Public Service Commission to resolve wire crossing disputes between railroad and telecommunication carriers. Telecommunication carriers are of last resort, are required to provide telephone service to every residence. The Legislature felt an oversight process was warranted in this case when the state is mandating that a private company provide service and circumstances out of its control are preventing it from doing so. The bill required a telecommunication carrier who wanted to place a wire line or cable across the railroad right-of-way to request permission from the railroad through a written application. If the carrier and the railroad cannot agree within 60 days after receipt of the application, either party could petition the Public Service Commission to have a hearing on the disputed terms and conditions. The bill also required the telecommunications carrier to pay a one-time fee of \$1,250 to the railroad. This fee is in lieu of any actual expenses that they experienced as a result of the placement of the wire. LB47 expands upon the process by clarifying that a railroad's owner, manager, agent, or represent is subject to the process. Some railroads contract with a third party with regard to these crossing agreements. There was some confusion during last year's construction season whether these third parties were subject to the Public Service Commission's jurisdiction with respect to the process. LB47 simply adds a little bit of language that clarifies that these third parties are, indeed,



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subject to the commission's jurisdiction. And with that, Senator Fischer, I can take any questions. [LB47]

SENATOR FISCHER: Thank you, Mr. Vaughan. Any questions? Senator Louden. [LB47]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. As the bill summaries say or the bill also creating a one-time fee of \$1,250 for the easement, that was already in statutes, wasn't it? This bill doesn't create that, does it? [LB47]

DUSTY VAUGHAN: Right, right, Senator Louden. You, the committee, and the Legislature last year passed LB181 that put that one-time crossing fee into statute. [LB47]

SENATOR LOUDEN: Yeah, yeah, because I know we had this before us before. [LB47]

DUSTY VAUGHAN: Right. Correct. [LB47]

SENATOR LOUDEN: Yeah, okay, yeah. And all we're talking about is who the agents can be actually on this bill. [LB47]

DUSTY VAUGHAN: Correct. [LB47]

SENATOR LOUDEN: Yeah, okay, thank you. [LB47]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Vaughan. First proponent, please. Welcome, again, Commissioner Schram. Isn't it nice to look out and see all our familiar faces again, the usual suspects in the crowd? [LB47]

TIM SCHRAM: (Exhibit 18) It most certainly is. [LB47]

SENATOR FISCHER: Welcome. [LB47]

TIM SCHRAM: Good afternoon, again, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Commissioner Tim Schram spelled T-i-m S-c-h-r-a-m. I'm a member of the Nebraska Public Service Commission. I'm here today to support LB47. To begin, I want to update the committee on the commission's progress regarding the railroad crossing bill, LB181 passed by the Legislature in 2010, which LB47 would further amend. LB181 was passed due to difficulties experienced by telecommunications carriers in entering into crossing agreements with railroads when attempting to build lines that require crossing railroad tracks. LB181 simply provides telecom carriers and railroads an avenue to resolve disputes and avoid costly delays when an agreement cannot be reached. The

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commission opened a Rule and Regulation Docket, number 176, on August 31, 2010, to promulgate rules and regulations to administer the provisions of LB181. As part of that docket, the commission has solicited two rounds of comments from interested parties, making additional changes and edits based on the comments we have received. The commission is also preparing to schedule a hearing on the proposed rules. Some controversy has arisen over the applicability of the provisions of LB181 and, in turn, the commission rules, to certain land management companies that manage the railroad right-of-way for railroad carriers. LB47 would simply clarify that the dispute resolution process adopted in LB181 applies to any agents or others working on behalf of the railroads, thereby putting to rest the controversy over the scope of LB181 and the commission rules. As LB47 clarifies provisions of law already in effect, we respectfully request that an emergency clause be added to the bill to enable the clarifications to be added as soon as possible. The commission urges your support of LB47, and I would like to thank Senator Fischer for introducing the bill. I would be happy to answer any questions that you may have. Thank you. [LB47]

SENATOR FISCHER: Thank you, Commissioner Schram. Are there questions? Senator Louden. [LB47]

SENATOR LOUDEN: Yes. Thank you, Senator Fischer. Actually, then you're more interested in getting the emergency clause on this, so you can start using it right away, so Jim Fisher (phonetic) or somebody doesn't have to sign off on every railroad crossing or something like that. Is that part of it so it says where any agent...in other words, some of the local people that's working for like a short-line railroad can sign off on this rather than having to have the president of the corporation. [LB47]

TIM SCHRAM: It's the clarification of it, Senator. You know, right now the commission and its staff, if there's railroad tracks with a train going over it, whether the ground was titled to the railroad itself and/or a leasing company, to make that distinction, the cable still has to go across that right-of-way whether it's a leasing company and/or railroad in term. [LB47]

SENATOR LOUDEN: And you've run across some problems with that then. [LB47]

TIM SCHRAM: We have heard from the telecom carriers that number one, it's what the cost of the right-of-way may be, and this would allow an avenue to resolve that. Also, a job we take very seriously at the commission is getting consumers in the state of Nebraska the quality service and reliable service that they need in a timely fashion. We firmly believe this would accomplish that. [LB47]

SENATOR LOUDEN: Okay, thank you. [LB47]

SENATOR FISCHER: Any other questions? I see none. Thank you, Commissioner.

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[LB47]

TIM SCHRAM: Thank you, again. [LB47]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB47]

BRIAN THOMPSON: Good afternoon. For the record, my name is Brian Thompson spelled B-r-i-a-n T-h-o-m-p-s-o-n. I am the vice president of external relations for Consolidated Companies, and we provide telephone, broadband, long distance, and cable services in central and western Nebraska. We serve about 9,000 square miles of the state, and, for the past 13 years, it's been my job to manage our railroad crossings and that process, and we currently have over 90 active crossings with three different railroads. I'm here today to let you know about the efforts of our company and other telecommunications companies, and the implementation of LB181 passed last year in the Legislature, and also on behalf of my company and the Nebraska Telecommunications Association to support LB47. Since the passage of LB181, NTA legal counsel has filed comments with the Nebraska Public Service on behalf of the NTA including my company, stating the following, and I quote, "The commission has jurisdictional authority to review disputed terms of crossing agreements between telecommunications carriers seeking to place a line, wire, or cable across the railroad right-of-way." The NTA has also filed pre-filed testimony prior to Rule and Regulation number 176 that Commission Schram referenced, for upcoming hearing, and telecommunications carriers acquiring railroad crossing rights-of-way. We continue to stay heavily involved in this process and want to create a strong record and help in developing the rules that will make this process easier for all the companies who provide services in Nebraska. The NTA and its member companies believe the commission has jurisdiction today to handle these disputes, and we find that LB47 will further clarify and make crystal clear that the agents who are delegated this responsibility from the railroads are governed by LB181 and the rules put in place by the commission in Rule and Regulation number 176. During 2010, my company has been trying diligently to complete a crossing, actually near Mullen, Nebraska, has been unsuccessful in reaching a reasonable agreement. I will say that the railroad carrier has made a few concessions in late December, actually December 22, but that was long after the construction season was completed. I look forward to completing this process with the railroad, but we started back in June 2010, and are still not done. I would also echo that we would really appreciate the fact or the possibility that an emergency clause would be added to this bill to move it along, so that the clarity can move across to the commission, and that we would be able to move forward. So with that, I would take any questions that anyone has and be happy to answer those. [LB47]

SENATOR FISCHER: Thank you, Mr. Thompson. Are there questions? When is your construction season? [LB47]

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BRIAN THOMPSON: We usually do construction, hopefully, starting March and running till, typically, November, just kind of depends on what the weather will allow us to do. And, of course, you know, right now we're froze pretty well and the snow is fairly deep over our buried facility, so we're kind of stopped at the moment. But, hopefully, we can start burying things in March. [LB47]

SENATOR FISCHER: Thank you. Senator Hadley. [LB47]

SENATOR HADLEY: Senator Fischer, thank you. Mr. Thompson, I guess, are you...when you say you're dealing with the railroad, are you dealing with the railroad or an agent of the railroad in working on this? [LB47]

BRIAN THOMPSON: The way that this process had started is back in June we requested an undercrossing easement agreement, and when they sent the first agreement to us, it had several different parts of the agreement that were not in really compliance with LB181. And we working with a firm called Jones Lang LaSalle on the... [LB47]

SENATOR HADLEY: I'm sorry? [LB47]

BRIAN THOMPSON: ...the firm's name was Jones Lang LaSalle, and they are the organization that Burlington Northern Railroad has contracted with to do all of their railroad crossing work. We worked with them and sent them red line versions of the contract and wanted to try and get it completed, and we're having very little success. We were then given a name of another person, and I am not certain if she works for Jones Lang LaSalle or if she works for Burlington Northern, but all in all, they seem to be the same entity in terms of this land management contract. Anyway, that new person was the one who sent me concessions on December 22, and not all of those concessions that we ask for are in the new easement. But we have just prepared a new red line to go back to that person with in the last couple weeks, so we're still in that process and trying to negotiate in good faith with the railroad's representative, whoever that may be, prior to Rule and Regulation number 176 being completed. Petitioning the commission would be not necessarily fruitful yet because the rules aren't done. [LB47]

SENATOR FISCHER: Are there other questions? And I'm going to ask you a question, but you know, if this is a problem for you in your negotiations with another entity, of course, do not answer it. The concessions that you are being given now by the company, the individual, are those concessions following the bill that we passed last year, LB181 that's current law? [LB47]

BRIAN THOMPSON: To some extent. One of the concessions that we asked for was that the term of this agreement be a one-time agreement that would last for the lifetime of the crossing. In the concession that we got, they said, the attorney for Burlington

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Northern told us that they would like to have a 20-year term in the agreement with a renewal for a new 20-year term which that puts me out 40 years and then I've got to do a new one. [LB47]

SENATOR FISCHER: Right. And, you know, it's not our job to get involved in the negotiations between telecoms and railroads, but it is our job to pass laws. Specifically, how do you think LB47 is going to help? Why is it needed? [LB47]

BRIAN THOMPSON: Why is...that's a good question. In our estimation,...well, we had heard early on in our negotiation process when we were working with the first set of attorneys for Burlington Northern that they were not sure that they were subject to LB181, and so that kind of surprised us because we felt that they, obviously, as a representative ought to be under the jurisdiction of LB181. And so I think this would take out any uncertainty, make it crystal clear that they definitely are governed by it. [LB47]

SENATOR FISCHER: Okay, thank you, Mr. Thompson. Other questions? I see none. Thank you very much. [LB47]

BRIAN THOMPSON: All right. [LB47]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Are there opponents to the bill? Any opponents? Anyone wishing to testify in the neutral capacity? Good afternoon and welcome, Mr. Munguia. [LB47]

ROBERTO MUNGUIA: Good afternoon, Senator Fischer, members of the committee. My name is Roberto, R-o-b-e-r-t-o, Munguia, that's M-u-n-g-u-i-a. I'm the executive director of government affairs for BNSF Railroad for the state of Nebraska, Oklahoma, New Mexico. And I have a short statement that I'd like to read and make part of the record, and this kind of stems from information I received verbally from a number of people concerning the fact that they were saying this bill was drafted specifically because of issues concerning BNSF Railroad. And I'll read the statement, then I'll answer any questions you might have. Strong Lp is a private company established in 2001. It's categorized as an investment banker located incorporated in Dallas, Texas. Part of the business is to buy permit portfolios from railroads. Under the terms of the sale, Strong Capital has the right to adjust the economic and business terms of the permits. The specific railroad contains certain rights specifically related to operating and safety concerns. These retained rights allow the railroad to utilize the termination, relocation, and indemnity provisions of the permit to ensure the safe and efficient operation of the railroad. The railroad's express written approval is required for any changes to the facility, as well as any requested by the permittee for access to the right-of-way. Strong Capital has retained an affiliate company by the name of Railroad Management Company, RMC, to manage its permit portfolios. In 2006, BNSF conducted a package sale of permit portfolios from various states within our system,

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including Nebraska, to Strong Capital. I just wanted to make clear that neither Strong Capital nor the Railroad Management Company are representatives or agents of BNSF or any railroad from which they purchased permit portfolios. And they buy...my understanding that we sold them back in 2006. There was about 5,000 plus permits. Other class 1 railroads also sell permits, these permit portfolios, as well as short lines, to this Strong Capital. And, basically, I just wanted to make that a part of the record, and the comment was made about the permit crossing in Mullen. And I guess I would like to share that. If there are utilities that are experiencing permit problems, and for some reason, you know, Jones Lang LaSalle, no question about it, they are an agent of ours. Okay, and we have control of that, and I guess if there are issues there where we're dragging our feet, i.e. Jones Lang LaSalle, I guess I'd like to know about it. They could call me, and I'll run some interference; I'll build some fires where I have to, to get people off center, and basically, that's what I wanted to share. Thank you. [LB47]

SENATOR FISCHER: Thank you. Are there questions? Again, I'm not trying to pry into your business, so if you don't want to answer any of these, you certainly don't need to. The permits that you talked about that in 2006 that Burlington has sold,... [LB47]

ROBERTO MUNGUIA: Yes. [LB47]

SENATOR FISCHER: ...permits for what? Are those the crossings? Are those...? [LB47]

ROBERTO MUNGUIA: There are agreements that are conducted between the railroad, i.e. Jones Lang LaSalle, and that utility company. There is an agreement that's in place, a permit agreement. Okay. And that is what the railroad sells to this Strong Capital. They buy that, and, in essence, our hands are...I won't say are completely washed from that. As I said earlier, there are provisions dealing with the operating issues or safety concerns, we're still involved with that. [LB47]

SENATOR FISCHER: Right. [LB47]

ROBERTO MUNGUIA: But the permit and the collection of fees is handled...well, it's not our business. It belongs now to Strong Capital. [LB47]

SENATOR FISCHER: Because you've sold that. [LB47]

ROBERTO MUNGUIA: That's correct. [LB47]

SENATOR FISCHER: Because you've sold that, so the telecom companies, they are dealing with Strong now that owns these permits. Do you believe that the law we passed last year applies to Strong because they are the owners of the permits? Do you think LB181, current statute applies to them? [LB47]

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ROBERTO MUNGUIA: Obviously, I'm not an attorney, but the way I read the bill, and inasmuch as Strong Capital is not an agent of the railroad, I don't see where they're covered and... [LB47]

SENATOR FISCHER: But under current statute, though, you don't think they're covered? [LB47]

ROBERTO MUNGUIA: Based on my reading, no. [LB47]

SENATOR FISCHER: Okay. Do you think they're covered under this bill, under LB47? [LB47]

ROBERTO MUNGUIA: And, again, we're talking about Strong Capital? [LB47]

SENATOR FISCHER: Correct. [LB47]

ROBERTO MUNGUIA: I don't see it, because, again, they're not an agent. They are not a representative of BNSF Railroad. [LB47]

SENATOR FISCHER: They're owners of the crossings themselves. Would you say that? [LB47]

ROBERTO MUNGUIA: No, they're owners of the permit. Obviously, the right-of-way belongs to the railroad. [LB47]

SENATOR FISCHER: They're owners of the right to negotiate the deal with the telecoms for the easements. [LB47]

ROBERTO MUNGUIA: In terms of the fees, and the fees, and going from the little bit I know, fees are...the invoices I've seen run \$82 to about \$99 per year per permit. [LB47]

SENATOR FISCHER: So, how do we get them covered? What do we call them in this bill to get them covered? That is my objective. I thought agents would get them covered. You're telling me that that term will not cover Strong Capital. How do I get Strong Capital covered? [LB47]

ROBERTO MUNGUIA: Sitting here today, Senator, I... [LB47]

SENATOR FISCHER: You know, owners and not just them. I mean, but... [LB47]

ROBERTO MUNGUIA: I don't know. [LB47]

SENATOR FISCHER: ...owners of permits. [LB47]

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ROBERTO MUNGUIA: I don't think I can answer that. I really don't know. [LB47]

SENATOR FISCHER: Okay. [LB47]

ROBERTO MUNGUIA: You know, we fall within the provisions of LB181. [LB47]

SENATOR FISCHER: Right. [LB47]

ROBERTO MUNGUIA: That's clear. We have no issue there. Jones Lang LaSalle is a representative of us, and that they fall within that as well. Again, not to be redundant here, but if there are issues out there, then I'd like to know about it so I can handle them. [LB47]

SENATOR FISCHER: Right. And I always appreciate you working with my office. Thank you. Other questions? Senator Hadley. [LB47]

SENATOR HADLEY: Senator Fischer. Thank you for coming. I guess the original bill that we were talking about talks about...intends to place a line, wire, or cable. We're not talking about existing, and that's what Strong Capital does is that they own existing contracts, right? Am I correct in that? [LB47]

ROBERTO MUNGUIA: They own permits that were initiated back in 2006. [LB47]

SENATOR HADLEY: Okay. So if Burlington Northern Santa Fe was negotiating with Strong or whoever it might be, Strong Capital would have nothing to do with that negotiation at this point in time for a new crossing. Is that correct? [LB47]

ROBERTO MUNGUIA: That's correct, yeah. They're not involved at all. [LB47]

SENATOR HADLEY: That's right. That's right. So what we're doing is saying owner, manager, agent, or representative of the railroad carrier, because the telecom would be negotiating with the railroad or its owner, manager, agent, or representative. [LB47]

ROBERTO MUNGUIA: In the permitting process. [LB47]

SENATOR HADLEY: In the permitting process, not... [LB47]

ROBERTO MUNGUIA: That's correct. [LB47]

SENATOR HADLEY: ...and then once that permit was issued and the agreement was reached, it was possible that Burlington Northern Santa Fe might sell that to whomever. In essence, you're discounting the future stream of revenue from that permit, and the



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company you sell it to basically is an investment company investing in an asset. [LB47]

ROBERTO MUNGUIA: That's exactly right. [LB47]

SENATOR HADLEY: Okay. Thank you. [LB47]

ROBERTO MUNGUIA: They do the collection, whatever the fees were under that particular agreement. [LB47]

SENATOR FISCHER: Thank you, Senator Hadley. Senator Price. [LB47]

SENATOR PRICE: Thank you, Senator Fischer. Sir, just so I can wrap my head around that little last part there. My understanding is simplified is Strong is a collection agency. You outsource collection of fees, simple as that. And what we're talking about here, regardless what happens, it's a new permit; it's a new invasion of your right-of-way. Therefore, it'd be going through your LaSalle and/or corporate entity to negotiate that. There's no collection of fees; it (inaudible) risen to the point to whom you sold it to. [LB47]

ROBERTO MUNGUIA: That's correct. [LB47]

SENATOR PRICE: Thank you. [LB47]

SENATOR FISCHER: Senator Louden. [LB47]

SENATOR LOUDEN: Thank you, Senator Fischer. Well, thank you, Bob, for being here today. And I'll have to get at Senator Hadley's college professor so he can understand a little bit more complicated than me, but when...if I had a power company, and I wanted to build a line across your railroad, okay, I go to get this permit. Who do I get it from? Do I get the permit to build that line across from Burlington Northern, or do I get it from Strong and company? [LB47]

ROBERTO MUNGUIA: Don't even think about Strong at this point. The provisions of that particular permit would...you'd work through being a (inaudible) and our representative...our land management representative, Jones Lang LaSalle, and we would be governed by LB181. Okay? Now, once the agreement was in place and let's go back to 2006. Once that agreement is in place, the company got a bunch of these permits in place and Strong wanted to buy them, and so we said, okay, we'll sell them to you. Here's what we want, and then now that's your business. [LB47]

SENATOR LOUDEN: Okay. Then I'm negotiating with Strong. [LB47]

ROBERTO MUNGUIA: Then you're...in terms of the fees to be collected, you're working

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with whoever buys the permit portfolio. [LB47]

SENATOR LOUDEN: Buys that permit that I've put in. Now, what does that entail when I...what can they do for me when I buy that permit? Do they just say, go ahead and build it, or do they say, no, you got to be so high or so deep, or you have to have something on the track? Where do they fit in on that? [LB47]

ROBERTO MUNGUIA: That's already taken care of once the permit has been agreed to between the railroad or Jones Lang LaSalle and you, the utility. We've knocked that out. It's all agreed to, and there's the package. It's a done deal. [LB47]

SENATOR LOUDEN: Okay. [LB47]

ROBERTO MUNGUIA: Okay. Now, let's say there were fees associated, an annual fee for the permit and, again, there's some that are... [LB47]

SENATOR LOUDEN: Oh, it's an annual fee for that permit? I would have to pay an annual fee or a one-time fee? [LB47]

ROBERTO MUNGUIA: No, we're going back to 2006 now, and at that time, it was an annual permit that ran...again, I've seen invoices from \$82 to \$99 a month per permit. That's different now, because under LB181, you have a one-time fee of \$1,250. [LB47]

SENATOR LOUDEN: Okay. Now what kind of permits can I get for that \$1,250 that allows me to do what? Or what kind of permits can we get? [LB47]

ROBERTO MUNGUIA: You'll be able to negotiate with us in terms of where this line is going to cross the railroad and certain liability provisions and other things. [LB47]

SENATOR LOUDEN: Okay. [LB47]

ROBERTO MUNGUIA: That gives you a permit to cross. [LB47]

SENATOR LOUDEN: Okay, because I was going to say, when I was on the board of directors for REA, we had very little trouble and (inaudible) paid anything for the line to cross (inaudible) that. Now, the next thing I'll drop on you is, can I take that permit and get one of those permits so I can cross cattle at 12:00 at noon or 6:00 in the morning? [LB47]

ROBERTO MUNGUIA: I don't think LB181 covers it, Senator. [LB47]

SENATOR LOUDEN: Okay. Thank you. [LB47]

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SENATOR FISCHER: Other questions? I see none. Thank you very much. Anyone else wishing to testify in the neutral capacity? Good afternoon. [LB47]

BRENDA MAINWARING: Good afternoon. I will be very brief. My name is Brenda Mainwaring. It's the common spelling on Brenda. Mainwaring is M-a-i-n-w-a-r-i-n-g. I'm director of public affairs for Iowa-Nebraska for Union Pacific. We understand the reasons for this bill. We understand the reasons for LB181; we understand the reasons for LB47. We do not contract out our...either our crossings or the rights once they've been assigned to...for a crossing nonetheless, obviously, this has an effect on us. And I think that LB47 is at the root of it which is to address the crossing. Nonetheless, I suspect from this conversation, there may be some further changes or at least some consideration of what the language, final language is going to be. Mr. Vaughan mentioned that the telecom companies have a mandate to serve customers, and I would just ask that the committee keep in mind that the railroads have a mandate to serve customers as well, and that requires us to have control over our line and our right-of-way and the ability to make sure that they're safe, that they're not interrupted, that they are maintained with their integrity, so that we can continue to service customers across the country. I think that LB47 addresses perhaps what it needs to address, but if there are additional changes, we would ask that the committee keep those kinds of issues in mind as well. Thank you. [LB47]

SENATOR FISCHER: Thank you very much. Other questions? I see none. Thank you for coming in today. Anyone here wishing to testify in a neutral capacity? I see none. With that, I will close the hearing on LB47 and close the hearings for the day. Thank you all for coming. [LB47]