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Transcriber's Office

Transportation and Telecommunications Committee
January 27, 2015

[LB94 LB122 LB275]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, January 27, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB122, LB275, and LB94. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Al Davis; Curt Friesen; Tommy Garrett; John Murante; and Les Seiler. Senators absent: Beau McCoy.

SENATOR SMITH: Good afternoon and welcome to the Transportation and Telecommunications Committee hearing. I am Jim Smith from Papillion and I am Chair of the committee. To my left I'd like to introduce my colleagues that sit on the Transportation and Telecommunications Committee. To my left is Senator Tommy Garrett from Bellevue. Next to Senator Garrett is Senator Les Seiler from Hastings. Senator Beau McCoy will not be joining us today; Senator McCoy is from Omaha. To my far right is Senator Curt Friesen from Henderson. Next to Senator Friesen is Senator Al Davis from Hyannis; he's going to be joining us here shortly, hopefully. Senator John Murante is also currently away and he will be joining us a little bit later. Vice Chair of our committee is Senator Lydia Brasch from Bancroft. Committee staff on my immediate right is Mike Hybl, legal counsel to the committee. And on my left, is Paul Henderson, our committee clerk. The page joining us today is J.T. Beck from Centreville, Virginia. J.T. is a senior at UNL. We will be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify in order to keep the hearing moving. If you are testifying, please complete the sign-in sheet so it is ready to hand to one of our pages when you approach the testifier table. And for the record at the beginning of your testimony, please state and spell your name. And please keep your testimony concise and try not to repeat what has already been covered. I see the audience is fairly slim today so we are not going to be using the light system today, but I would appreciate if you could keep your comments and your testimony to about five minutes. If you do not wish to testify, but want to voice your support or opposition to a bill, you can indicate on the sheet provided on the table at the front of the room. This will be a part of the official record of the hearing. If you do not choose to testify, you may submit comments in writing and have them read into the official record. We ask that you please silence all cell phones. Also, we are an electronics-equipped committee. And information is provided electronically, as well as in paper form to the committee members. Therefore, you may see committee members referencing information on their electronic devices. As always, please be assured that your presence here today and your testimony are important to us and is critical to the operation of our state government. So with that, we have three bills that we will be hearing today. And we will begin with the first bill, LB122, introduced by Senator Schumacher. It relates to the change provisions relating to operation of utility-type vehicles. Welcome, Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Smith, members of the Transportation

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Committee. I'm Senator Paul Schumacher, District 22 in the Legislature. I'm here today to introduce LB122, which those of you who were on the committee last year will recognize as LB84 from the last session of the Legislature. It is so much the same thing as LB84 that in the statement of intent it is referred to as LB84 instead of LB122. LB122 is an issue of great pressing concern to the people of Columbus and perhaps other areas of the state. And it deals with those cute little vehicles called UTVs. LB122 in its old label was advanced to the floor of the Legislature last year by this committee, whereupon it was eaten by the mountain lions as we debated mountain lion legislation. So it is back again. And the cute little vehicles look like mini Jeeps. And boys with their toys like to drive them. And the boys with their toys that happen to live at a lake-side area or some area that has its outlet to the world crossing a four-lane highway are somewhat stymied in their ability to drive their toys around town, unlike their counterparts that don't have to cross a four-lane highway that is their gateway to the world, thus unjustly deprived of the pleasure of their UTV. And they watch their counterparts buzz around in their UTVs while they have got to stay confined to their area or risk the local constable taking them into custody. So after they attempted with the local city council to make some exceptions to the rule, they were thwarted when the law says that there is no exception and the city council doesn't have that authority. Whereupon they sought relief and here is an attempt at relief again. What this basically provides that if you're operating one of those vehicles and you come upon a four-lane highway, which the statute says you can't drive on, that you can cross it if you cross in conformity with a traffic light and if the city council, or in the case of a county, the county board, says it's okay to do it at that intersection at which time you can join the people on bicycles, skateboards, wheelchairs, cars, trucks, semis, and everything else in crossing that intersection. And so this is, basically, an attempt to deal with an oddity in the law which prohibits the UTVs from getting out of their nest and crossing into the world on a fishing trip or a trip to the hardware store for a wrench. And I would be...it's a simple piece of legislation. It alters no other provisions of law. It is local control, let's it up to the local officials as to whether or not you can cross at a particular stop light, requires a traffic-controlled intersection, protects the safety of the public and the pleasure of the boys with their toys. I'd be happy to answer any questions. [LB122]

SENATOR SMITH: Questions for Senator Schumacher? I see no questions, Senator. Thank you for your testimony. [LB122]

SENATOR SCHUMACHER: Thank you, Senator. [LB122]

SENATOR SMITH: We will now entertain proponents of LB122, those wishing to testify in support of LB122. Welcome. [LB122]

PAT PTACEK: Thank you, Senator. Good afternoon. My name is Pat Ptacek, that's P-a-t P-t-a-c-e-k. I represent the Association of Nebraska Ethanol Producers in support of Senator Schumacher's bill today. As you might know, Gibbon...our plants and their

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adjacent facilities, their plant structures, adjacent to many small or medium-sized towns, they often utilize these UTVs, not only going from the office to the plants, but also doing shopping, as the senator said, going to the hardware store, running around. And this would be a great clarification of the law to allow some of these folks to take advantage of the law instead of maybe not always obeying the law and crossing those four-lane highways from time to time. So we think it's a matter of safety and it's a matter of utility for our members. And so with that I'd be happy to answer any questions you might have. [LB122]

SENATOR SMITH: All right. Thank you, Mr. Ptacek. Do we have questions from the committee? I see none. [LB122]

PAT PTACEK: Thank you, appreciate it. [LB122]

SENATOR SMITH: Very straightforward testimony, appreciate it. We will continue with proponents of LB122. Proponents. Seeing none, we turn to opponents of LB122, those wishing to testify in opposition. Seeing none, anyone wishing to testify in a neutral capacity on LB122? Seeing none, Senator Schumacher, you're invited to close on LB122. [LB122]

SENATOR SCHUMACHER: Thank you, Chairman Smith. If the committee is inclined to advance this bill, I'd appreciate it if they would advance it early so we maybe can get in before priority designations take affect or have a better chance against the mountain lions on consent calendar. [LB122]

SENATOR SMITH: Now, Senator, you're not anticipating mountain lions. (Laughter) [LB122]

SENATOR SCHUMACHER: Prairie dogs. [LB122]

SENATOR SMITH: Prairie dogs, okay. Thank you for your testimony. [LB122]

SENATOR SCHUMACHER: Thank you. [LB122]

SENATOR SMITH: That concludes the hearing on LB122. We now move to LB275 which is introduced by Senator Friesen. The description is change penalties for operating a motor vehicle during a revocation period. Welcome, Senator Friesen. [LB122]

SENATOR FRIESEN: Thank you, Chairman Smith and the rest of the members of the committee. My name is Curt Friesen, F-r-i-e-s-e-n, representing District 34. LB275 was intended to clarify language currently in law dealing with driver's license revocation periods under the Nebraska Revised Statute 60-6,197.06. (Statute) 60-6,197.06 makes

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it unlawful to operate a motor vehicle during a period that a license has been revoked. That revocation can be for a variety of previous offenses including, for example, motor vehicle homicide; failing to stop following an accident; multiple DUI infractions; etcetera. These violations are denoted in 60-6,197.06(1). Revocations under these noted previous offenses can be as long, for example, as 15 years. Driving during this period a license has been revoked under one of the violation denoted in 60-6,197.06(1) is any separate violation subject to an additional 15-year revocation. The language being added to 60-6,197.06(2) makes it clear that if the driver is then again pulled over while during revocation under 60-6,197.06, that driver is subject then again to an additional 15-year revocation period. Put simply, if an individual is pulled over while driving under revocation, that revocation being a result of violating 60-6,197.06, that driver is then subject to an additional revocation period of 15 years. The new language in (2) is meant to clearly articulate such a violation and is intended to be merely clarifying language. This bill was brought to me by the County Attorneys Association and originated in the Merrick County Attorney's Office. And there is a representative to answer the technical questions if anybody has any. So if you have any questions, you can direct them to her. Thank you, Mr. Chairman. [LB275]

SENATOR SMITH: Thank you, Senator Friesen. Do we have questions? I see Senator Seiler has a question. [LB275]

SENATOR SEILER: I don't have a question on this, I just wanted to tell you that under the reforming of the sentences under the Council of State Governments, we were changing some of their class felonies and misdemeanor sentences, so you might want to check with Diane in my office to see if that...even though you aren't changing anything, that may change. [LB275]

SENATOR FRIESEN: Okay. [LB275]

SENATOR SEILER: And I don't want to blindside you on that. [LB275]

SENATOR FRIESEN: Point well taken. [LB275]

SENATOR SMITH: Thank you, Senator. Other questions for Senator Friesen? Seeing none, thank you for the testimony. [LB275]

SENATOR FRIESEN: Um-hum. [LB275]

SENATOR SMITH: We now open the hearing to proponents, those wishing to testify in support of LB275. Welcome. [LB275]

LYNELLE HOMOLKA: (Exhibit 1) Good afternoon. My name is Lynelle Homolka. I currently serve as the Merrick County Attorney and I have served as the Deputy Hall

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County Attorney in Grand Island for ten years prior to taking this office. [LB275]

SENATOR SMITH: May I ask you to spell your name for us, please. [LB275]

LYNELLE HOMOLKA: Absolutely. I spell my name L-y-n-e-l-l-e, last name Homolka, H-o-m-o-l-k-a. [LB275]

SENATOR SMITH: Thank you. [LB275]

LYNELLE HOMOLKA: Thank you. Not only am I in service as the Merrick County Attorney, but I also am part of the Nebraska County Attorneys Association's legislative committee and I recently was appointed to their board of directors as well. And so on behalf of the Nebraska County Attorneys Association I'd like to thank Senator Friesen for introducing LB275. And we, obviously, as the County Attorneys Association do support this bill and we respectfully request your support of the same. As the county attorney, most of you know that we also act as county coroners and so we go out on and help investigate several traffic fatalities. And also as the mother of a soon-to-be teenage driver, I want you to know how much we appreciate your support of bills that keep our roads safe and keep unsafe drivers off of our roads. As Senator Friesen pointed out, this is merely a clarifying bill from the existing statute. The language does clarify, if you look at the statute under the rules of statutory construction, as you know, we have to literally and strictly interpret all of our laws. Sometimes that leads to loopholes or unintended ambiguities. And as a result of that, we have discovered, in my jurisdiction, in Merrick County, a set of facts that certainly reveal a loophole that we as the County Attorneys Association would like to see closed. And so with your permission, I'd like to pass around just a short synopsis of the facts presented in my jurisdiction. The top portion of my handout simply just lists the variety of the enumerated statutes for which the statute applies. So if your license is revoked under any of the provided statutes beginning with 28-306, Motor Vehicle Homicide, etcetera, for a period of between 1 and 15 years, and then you choose to intend and do drive despite that revocation, the statute applies. As you can imagine, we have folks that don't like to obey your laws, let alone a court order, and choose to drive anyway. And they are then, obviously, eligible for being charged under the statute as a Class IV felony. And as Senator Friesen explained, along with that comes another 15-year revocation. As you can imagine, some people continue to drive despite that 15-year revocation and then they are eligible for the enhancement under (2) for a second offense, or at least, I believe, that was the obvious intent of the Legislature when this law was passed. And so if you look at just the synopsis and the facts in my case, we had an individual convicted for driving under the influence, third offense, in 1995 and his license was revoked for 15 years. He was then eligible to be reinstated in October of 2010. He was one of those people that chose to drive anyway and he was stopped May 14, 2010, and convicted of driving during the 15-year revocation under the statute. What I didn't put in my handout is the fact that this particular driver did this not this one time, but four

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separate times. He was convicted under the statute driving during revocation in 2001 in Dodge County, again in 2003 in Butler County. But, of course, was also convicted for driving under the influence. He was convicted again in 2004 in Dodge County, not only for driving during revocation, but for DUI again. And then this instance in 2010 in Platte County. And so we have the defendant revoked for not only his DUI offense, but also the 15-year revocation for violating the statute. The defendant, as I indicated, was revoked for an additional 15 years and eligible then to be reinstated in 2025. What happened then was that he was stopped in Merrick County in April of 2014. So he was still revoked then for the driving during revocation, however, he was eligible to be reinstated under that underlying offense for the DUI. So hopefully this clarifies a little bit of that time frame and the time for which he was revoked and eligible to be reinstated. This defendant was then arrested and he posted bond and he got out of jail on what would be his fifth offense, driving during revocation, but then was arrested three months later in Hall County for the very same thing. And so, essentially, this driver was eligible to be reinstated on that underlying charge, but not on the 15-year revocation. So if you look at (2) of the statute as written, under this section, that language there, if you do strictly construe that literal interpretation would mean that you still have to be suspended for one of these underlying offenses. And so in that particular situation, my situation in Merrick County and in Hall County, he's not suspended any longer for one of those enumerated offenses. He's eligible to be reinstated for that DUI. And so as a result of that, I'm not able to enhance to a second offense, let alone even charge him under this existing statute because he's no longer suspended for one of those underlying offenses. And so as a result, we simply had to charge him for driving during suspension under 60-4,108 which is simply a Class II misdemeanor. And so it's kind of a complicated little loophole to explain and hopefully my handout provides explanation of it. But I think it's a real easy problem to fix. We propose some cleanup language in (2) that we feel adequately addresses the problem and closes that figurative loophole, if you will. So we would just simply ask for your support in getting that amendment to the statute passed. Are there questions that I can answer? [LB275]

SENATOR SMITH: Thank you, Ms. Homolka. Do we have questions? Senator Seiler. [LB275]

SENATOR SEILER: I assume in your example that you gave there was penalties like jail and had to go to rehab and everything else. [LB275]

LYNELLE HOMOLKA: Yes, as indicated, this... [LB275]

SENATOR SEILER: How do you...how do you envision the 15 years revokes is going to affect this guy at all? He's just thumbing his nose at you. He didn't care what he gets. [LB275]

LYNELLE HOMOLKA: He's absolutely thumbing his nose at us. And as I've indicated,

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he had been convicted not once, not twice, not three times, but four times in the past. [LB275]

SENATOR SEILER: Right. [LB275]

LYNELLE HOMOLKA: Two of which he was also driving under the influence. And so certainly he is the type of individual that we want to see the ability to enhance on. We want to see him as an unsafe driver kept off of our roads. [LB275]

SENATOR SEILER: But taking his driver's license away isn't going to keep him off the roads. [LB275]

LYNELLE HOMOLKA: Hopefully though, if I'm enable to enhance that penalty, he spends more time as we go by on the subsequent offenses in prison, hopefully, one day he'll get the picture. [LB275]

SENATOR SEILER: That's what I wanted to get to. Are you satisfied with the current Class III felony amount? [LB275]

LYNELLE HOMOLKA: I am. I've researched the history on this particular driver and all of those four prior convictions, two of which were enhanced to Class III felonies, the judge only sentenced him to the very minimum, one to three years. And so, as you know, with a Class III felony, he could be sentenced up to 20 years. And I think that adequately addresses the problem. It would provide that deterrent for him to commit the offense again if we could get a judge to buy into it and give him a longer sentence than one to three years. [LB275]

SENATOR SEILER: Thank you. [LB275]

LYNELLE HOMOLKA: You're welcome. Are there other questions? [LB275]

SENATOR SMITH: Senator Brasch. [LB275]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Ms. Homolka? [LB275]

LYNELLE HOMOLKA: That's correct. [LB275]

SENATOR BRASCH: Thank you. I believe I'm on my thought process aligns with Senator Seiler here. My concern lies in...I don't think the...you know, definitely we do not want an individual behind the wheel under the influence. However, by revoking the license continually, that is not stemming at the problem--alcoholism perhaps, or something. They're probably having an employment problem. And so we're going back

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to recidivism, whether it's this or another nature that perhaps we should be looking at enhanced programs to go to the stem of the problem where had this person had the right help, the treatment, then we would not have a road accident, impaired judgment behind the wheel. And by increasing the penalty I don't think we're curing the alcoholism or even putting him in prison with say a mental problem or a drug addiction. And so I would rather see something added in that 15-year requirement that... [LB275]

LYNELLE HOMOLKA: Helps rehabilitate him? [LB275]

SENATOR BRASCH: Or sentence them to e-bicycles perhaps. (Laughter) [LB275]

LYNELLE HOMOLKA: Or UTVs. [LB275]

SENATOR BRASCH: Yes. [LB275]

LYNELLE HOMOLKA: And I respect your position on that. [LB275]

SENATOR BRASCH: Yes. But that...I see bringing it forward and increasing, you know, it isn't helping. I think we're just setting them up for more loss of time rather than helping them to regroup and have a fulfilled, healthy, safe life, employable, and contributing citizen and taxpayer. [LB275]

LYNELLE HOMOLKA: And I do understand your concerns, Senator Brasch. I think it's important to point out and clarify though, I'm not asking, and the County Attorneys Association, and Senator Friesen is not asking to increase the penalties beyond what they currently are. This is just clarifying language so that in this given set of facts, when they're eligible to be reinstated for the underlying offense but not on this offense, in that specific given set of facts we're still eligible to enhance and charge under the statute. So again, we're not asking for further increased penalties, we're fine with them the way that they are. And I would point out as well, that when you have an individual that says that the law says he can't drive, the court orders him not to drive, and he chooses to drive anyway, he's the type of individual that's not going to obey the laws. He has proven that four or five different times already in this set of facts. [LB275]

SENATOR BRASCH: Sure. It is alarming to see this happen. But more alarming is the underlying problem that's making this reoccur. Thank you for your testimony. [LB275]

LYNELLE HOMOLKA: You're very welcome. Are there other questions? [LB275]

SENATOR SMITH: Senator Seiler. [LB275]

SENATOR SEILER: I would just like to make a comment that I'm going to introduce a legislative resolution to review the mental health, both in prison and out. I hope your

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committee of county attorneys participates and brings fresh ideas to the subject matter. [LB275]

LYNELLE HOMOLKA: Thank you for doing that. I appreciate that. We've seen that as more and more of an issue as time goes by, especially after recent changes in the regional centers closing up. [LB275]

SENATOR SEILER: Maybe Hastings Regional Center was correct after all. [LB275]

LYNELLE HOMOLKA: Perhaps. Are there other questions I can address? [LB275]

SENATOR SMITH: Thank you again, Ms. Homolka. [LB275]

LYNELLE HOMOLKA: Thank you for your time. [LB275]

SENATOR SMITH: Thank you. We will continue with proponents of LB275. Proponents of LB275. I see none. Opponents, those wishing to testify in opposition to LB275. Seeing none, anyone wishing to testify in a neutral capacity on LB275? Seeing none, Senator Friesen, you're welcome to close. [LB275]

SENATOR FRIESEN: I think we're good. [LB275]

SENATOR SMITH: Senator Friesen waives closing. And that concludes our hearing on LB275. I will now turn the committee hearing over to Vice Chair Brasch as I will be introducing LB94. [LB275]

SENATOR BRASCH: Thank you, Chairman Smith. And please proceed with your introduction of LB94. [LB94]

SENATOR SMITH: Thank you, Senator. And good afternoon, Senator Brasch and members of the Transportation and Telecommunications Committee. For the record I am Jim Smith, J-i-m S-m-i-t-h and I represent the 14th Legislative District in Sarpy County. I am here today to introduce LB94. LB94 would provide a process for county treasurers to issue a title with a lien recorded for a motor vehicle that is sold in Nebraska but is intended to be removed from the state by a nonresident customer. When a Nebraska resident purchases a vehicle in this state today and the vehicle is financed, a notation is made on the title that there is a lien. This is called "perfection of a lien." The perfection of the lien is generally required by state and federal law to protect the security interest of the lender. However, when an individual from a different state purchases a vehicle in Nebraska, the title isn't issued until that person registers the vehicle in their home state. This leaves a period of time when the lender's interest is not secured and leaves all parties involved--the lender, the dealer, and the customer, vulnerable. LB94 seeks to close this gap. It allows a local county treasurer to issue a

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temporary Nebraska title to a nonresident car buyer with the lien noted. That person would then take the Nebraska title to their resident state and present it, along with other necessary documents, when registering the vehicle in that state. A similar process to this is used in Iowa and it has proven to be simple and effective in protecting the lender, the dealer, and the customer. That concludes my testimony of LB94 and I am willing to answer questions, but there will also be someone following me today as a proponent that can probably get into more details of answering any questions you may have. Thank you. [LB94]

SENATOR BRASCH: Are there any questions from the committee pending the following testifier? Seeing there are none, thank you, Chairman Smith. Will the first proponent please come forward. Welcome and please say and spell your name. [LB94]

LOY TODD: Thank you. My name is Loy Todd, L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. And I first want to thank Senator Smith for introducing this legislation for us. We first became aware of the situation that's been referred to by an occasional phone call from a dealer or someone who had sold a car that was going to be taken to another jurisdiction. And the call would normally be it. And what normally happens is the person just doesn't get to the courthouse in their resident state in a timely manner. And under federal law and state laws, we really have about a 30-day period...not about a 30-day, it is 30 days under federal bankruptcy laws and other laws. If that title...or that lien is not perfected or noted on that title within that 30-day period, the lender becomes a general creditor and no longer has their preferred status. And so that delay can make everyone very vulnerable during the process. And so when a dealer sells a...let's say a Nebraska dealer sells a vehicle to a Indiana customer, there really is very little that can be done short of either going to Indiana and processing that on behalf of the customer or trusting that the customer will get there within the 30-day period. It's very rare that there is a situation where someone is deliberately doing something inappropriate, where the documents get stolen, or where the customer is simply never going to go in and title and register. It's more likely a delay or a problem. And after getting this occasional phone call and what do we do now, we looked at what other states did. Iowa had a terrific law that we simply copied. And I've talked to my counterparts in Iowa and Iowa regulators and it's working well there. We anticipate that it will work very well in Nebraska also. It is so procedural, sometimes it's surprising to people that we have to come introduce a bill and have it passed by the Legislature in order to make changes that are this obvious. But that is the situation, so we would appreciate your support of the legislation. [LB94]

SENATOR BRASCH: Very good. Are there any questions from the committee? Seeing there are none, thank you. [LB94]

LOY TODD: Thank you. [LB94]

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SENATOR BRASCH: Next proponent, please. Welcome. [LB94]

ROBERT HALLSTROM: Thank you, Senator Brasch and members of the committee. My name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, here before you today as registered lobbyist for the Nebraska Bankers Association in support of LB94. Senator Smith and Mr. Todd have accurately and adequately described the situation from our perspective. I think it just puts these types of transactions on equal footing with those that involve Nebraska residents. When a Nebraska resident is involved, the lien documentation can be submitted and the lien noted on the certificate of title, even if there is some delay in formally issuing the certificate of title to the new owner. In situations involving out-of-state buyers, we may have that delay purposefully or otherwise. This will simply insure that the lien is noted, even though the issuance of the certificate of title in the other state may be delayed for one reason or another. And we support the legislation. Would be happy to address any questions. [LB94]

SENATOR BRASCH: Thank you, Mr. Hallstrom. Are there any questions from the committee? Senator Seiler. [LB94]

SENATOR SEILER: Yes, in the paragraph above that, that 15 days after the owner's request. I've always wondered if that was too short of time for the processing. I know you're not changing anything there, but I was wondering if that has been a good business thing or... [LB94]

ROBERT HALLSTROM: I believe so, Senator. I have not received any comments or criticism with regard to that and we have electronic filing and notation and release of liens now. So that ought to even speed up the process more. [LB94]

SENATOR SEILER: Okay. [LB94]

ROBERT HALLSTROM: Thank you. [LB94]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, thank you. [LB94]

ROBERT HALLSTROM: Thank you. [LB94]

SENATOR CAMPBELL: Are there any other proponents that would like to come forward? Any opponents? Anyone in the neutral? Seeing there are none, Chairman Smith waives closing. That concludes the hearing on LB94. [LB94]