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Transportation and Telecommunications Committee
February 02, 2015

[LB231 LB312 LB313]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 2, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB231, LB312, and LB313. Senators present: Jim Smith, Chairperson; Al Davis; Curt Friesen; Tommy Garrett; Beau McCoy; and Les Seiler. Senators absent: Lydia Brasch, Vice Chairperson and John Murante.

SENATOR SMITH: Good afternoon and welcome to the Transportation and Telecommunications Committee hearing. I am Jim Smith from Papillion and I'm Chair of the committee. I'd like to introduce my colleagues that serve on the committee. To my far left is Senator Tommy Garrett from Bellevue. And the seat next to Senator Garrett is Senator Les Seiler from Hastings and he will be joining us here shortly. We have Senator Beau McCoy from Omaha. To my far right is Senator Curt Friesen from Henderson. Next to Senator Friesen will be Senator Al Davis from Hyannis and he'll...he just joined us here. Absent today is Senator John Murante from Gretna. And joining us shortly will be Vice Chair of the committee, Senator Lydia Brasch from Bancroft. On my immediate right is Mike Hybl, our legal counsel to the committee. And on my left is Paul Henderson, committee clerk. We have pages with us today: J.T. Beck from Centreville, Virginia; J.T. is a senior at UNL. And Kelli Bowlin from Cody, Nebraska, and Kelli is a junior 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's ready to hand to one of the pages when you approach the testifier table. For the record, at the beginning of your testimony, please state and spell your name. Please keep the testimony concise, and try not to repeat what has already been covered. I do not see a large number in attendance today, so we will not be using the light system. But we do ask that you try to keep your remarks, 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 as you came into the room. This will be 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 if you have a cell phone with you that you please silence it. We are an electronics-equipped committee and information is provided electronically, as well as in paper form to the members of the committee. Therefore, you may see us referencing information on our electronic devices throughout the course of the hearings. Also, please be assured that your presence here today and your testimony in front of our committee are both very important to us and it's critical to our state government. With that, the first item on the agenda is LB231. That is a bill that I will be presenting, so I'm going to turn the committee over to Senator Beau McCoy. Good afternoon, Senator McCoy and members of the Transportation and Telecommunications Committee. For the record, I am Jim Smith, and I represent the 14th Legislative District in Sarpy County. I am here today to introduce LB231. Modes of transportation are rapidly moving beyond

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traditional means and it is imperative that we keep up with innovation. Just last week, the Legislature recognized the evolution of the bicycle with the advancement of an electric-assist bike bill. Today, I am going to ask you to consider LB231 which would create the definition of an autocycle. Under LB231, an autocycle would be defined as a motor vehicle designed to travel on three wheels and is completely enclosed with a removable or fixed top in which the operator and passenger ride in a tandem-seating area. It is also equipped with an air-bag protection, a roll cage, and a three-point safety belt system for each occupant; having interlock brakes, and designed to be controlled with a steering wheel and pedals. So why is this necessary? Well, a number of three-wheeled devices are on the market today. Some are similar to motorcycles, while others are nothing like a motorcycle, but are really just a three-wheeled car or automobile. Unfortunately, at this point the National Highway Traffic Safety Administration is taking the one-size-fits-all approach and has determined that any three-wheeled device is a motorcycle leaving no room for the definition of autocycle. This causes particular problems in states, such as Nebraska, that have motorcycle certification and helmet laws. First, those many Nebraskans who have already preordered autocycles would be subject to the Motorcycle Safety Education Act. This makes very little sense. The Motorcycle Safety Act requires a person to demonstrate the ability to operate a motorcycle and an autocycle is not a motorcycle, but rather a motor vehicle with three wheels. Second, our law would require these drivers to wear a helmet. This poses significant safety concerns. Picture drivers of a traditional motor vehicle wearing a helmet. Vision obstruction would certainly be an issue and the weight of a helmet on somebody who is also wearing a seat belt can result in serious injury or death in the event of an accident. I know it may be difficult to picture what type of motor vehicle we are talking about in this bill, and I believe the testifier following me will be providing some visuals for you. As you will see from these pictures, we're talking about a motor vehicle. A motor vehicle that may look slightly different than what you see on the road today, but a motor vehicle nonetheless. Our definition of autocycle concentrates on safety, enclosed with air-bag protection, roll cage, a three-point safety belt system, and anti-lock brakes. The autocycle would be subject to the same licensing requirements, registration requirements, seat belt requirements, and Rules of the Road as any other motor vehicle. There are a few slight differences from the motor vehicle laws with respect to licensing and registration. I am completely open to adjusting these. I simply plugged in some numbers in the bill to make sure we covered every section necessary in this bill. Otherwise, LB231 very simply adds a new definition to the definition of motor vehicle to capture the three-wheeled motor vehicles that are now being developed and will soon be sold in the states across the country. I believe some of your questions may be answered by the testimony that follows, but I will certainly reserve my right to close in case there are some issues that will still need to be addressed. With that I'll take any questions or refer you to someone that follows me. Thank you. [LB231]

SENATOR McCOY: Thank you, Senator Smith. Are there any questions of the

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introducer? Senator Davis. [LB231]

SENATOR DAVIS: Thank you, Senator. So, Senator Smith, is this Elio vehicle bill that we talked about... [LB231]

SENATOR SMITH: Elio. [LB231]

SENATOR DAVIS: Elio, this summer? [LB231]

SENATOR SMITH: Yes. [LB231]

SENATOR DAVIS: All right, thank you. [LB231]

SENATOR SMITH: And good point, this bill is not intended to be only for one manufacturer products. [LB231]

SENATOR DAVIS: Right. [LB231]

SENATOR SMITH: I believe that there will be other products that will enter the market as well, and we want to make certain that it's broad enough to accommodate those as well. As long as they fit the other conditions of safety. [LB231]

SENATOR DAVIS: The Elio was the one that my friend had contacted me about, working with you on this bill. [LB231]

SENATOR SMITH: Yes. [LB231]

SENATOR DAVIS: So thank you. [LB231]

SENATOR McCOY: Any other questions for Senator Smith? If not, thank you, Senator Smith, and we'll move on to proponents of LB231. And as a point of aside, I might also mention the committee has been joined by Senator Les Seiler as well. [LB231]

DON WESELY: (Exhibits 1-4.) Senator McCoy, members of the Transportation and Telecommunications Committee, for the record my name is Don Wesely, D-o-n W-e-s-e-l-y. I am the lobbyist for Elio Motors and really pleased to be here today and talk to you about this piece of legislation. Let me begin by thanking Senator Smith for introducing the bill. Senator Watermeier is a cosponsor of the bill. It is...we had a hearing on this back in September during the interim, so we were in talking about this legislation at that time. There's only five states left that have the situation we have here in Nebraska and Elio is in all those states: Missouri is one of them, Mississippi, North Carolina, West Virginia. In those states, they still have helmet requirements that apply to a three-wheeled vehicle like this. And so they're trying very hard to get that legislation

changed, not only here but elsewhere. Here's the crux of the matter--Nebraska requires riders of motorcycles to wear helmets. The current definition of motorcycles in Nebraska includes what are essentially three-wheeled motor vehicles. LB231 creates a classification of autocycles in Nebraska for three-wheeled motor vehicles that meet the high standards set by the bill. Drivers and passengers in autocycles are safer not wearing a helmet. By passing LB231, the driver and passenger inside an autocycle would not be required to wear helmets and that is the key point of the bill. Now what does, as Senator Smith talked about, what does LB231 require in terms of safety with an autocycle? First off, air bags. You're not going to have those on a motorcycle. Second off, anti-lock brakes; three it's a roll cage, it's got a roll cage; so like a racecar or something, it's very safe. You look at those and the crashes and you see the driver jump out of them because they've got extra safety through the roll cages that they install; three-point safety belt system. So these are all required in order to qualify as a autocycle. And again, our feeling is that requiring a helmet will actually endanger the driver in one of these. They won't see as well, they won't hear as well. And again, in an accident the extra weight of the helmet can be harmful to their neck. Racecar drivers have something called a HANS Device which helps keep their head from going like that. But then that makes it awkward for someone actually driving a passenger car. So we just think the best solution is this bill and to identify what are called autocycles. Let me tell you a little bit about...you've got some pictures of the Elio. I thought, you know, it's kind of hard to visual, what are we talking about here. And you've got the standard shot that shows the three wheels, it's two in the front, it's much more stable having the two wheels in the front. And the reason they go to three wheels is to save on weight and also streamline it so that it saves a lot on gas mileage. You've got another side picture and it's got a hatchback in the back. But the size question is probably more important. You've got a picture of a Honda Fit and you can see it's not...not really that much different in size. It's a different configuration, but it's in that ballpark. And then you've also got the Elio parked next to some other cars. And its length is close to a regular passenger car. It's the width that is more narrow. But by doing these changes to the standard design for a motor vehicle, an Elio is estimated to get 84 miles per gallon. The pricing on this is \$6,800. And as was mentioned, I think there are now over 37,000 folks who have put money down to reserve an Elio in the country, 37,000 nationally. These cars have air conditioning, heat, AM/FM stereo, power windows, power door locks. So they're very similar to a motor vehicle, a car. And because of its enormous gas mileage, 8-gallon tank can achieve up to 672 miles on a tank of gas. So that's pretty amazing. So they think there's a market for these and they'd like to start production. They were going to start in the fall of this year, but it looks like they're going to swing over to 2016, but they will be available here probably in another year or so. So I think it's exciting. I've been around the block a few times here at the Legislature, and there's not a whole lot of new ideas or new issues that come around, but this is one of them. It's a really interesting concept. So with that I'd be happy to answer any questions. [LB231]

SENATOR McCOY: Thank you, Mr. Wesely. Senator Garrett. [LB231]

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SENATOR GARRETT: I'm curious, Department of Transportation or the actual Highway Traffic and Safety Administration certifications, have they tested it, crash studies, those kind of things? [LB231]

DON WESELY: That is an interesting question. Because nationally they can...you have to have four wheels in order to qualify as a motor vehicle and then meet the crash tests. This has got three, so they don't actually formally test at the federal level. But Elio has taken those standards and applied them all and exceed them in their own testing. So it's not federally tested, but they will exceed those safety standards on their own. It's kind of...because this is an in-between-type vehicle, it is causing problems not only at state level, but at the national level and they're looking at some changes about how they make definitions. But for now, the crash tests don't apply to this motor...three-wheeled vehicles. [LB231]

SENATOR GARRETT: What power is it? What's the engine that powers it? [LB231]

DON WESELY: It's an internal combustion engine. And because the weight is so much less, it's like 1,200 pounds instead of the normal 2,400 pounds per a regular motor vehicle. It's got 55-horse power and can reach a speed of over a hundred miles per hour. So it's pretty amazing. [LB231]

SENATOR GARRETT: That was my next question. It can do highway speeds? [LB231]

DON WESELY: Yep. Yep. [LB231]

SENATOR GARRETT: Okay. Thank you. [LB231]

DON WESELY: You bet. [LB231]

SENATOR McCOY: Any further questions for Mr. Wesely? Senator Davis. [LB231]

SENATOR DAVIS: Thank you. So, Mr. Wesely, where are they going to manufacture these? [LB231]

DON WESELY: Down in Louisiana; so they will be made here in America. [LB231]

SENATOR DAVIS: And I assume they...do they have to go through pollution-control tests and all those things? [LB231]

DON WESELY: Yeah. [LB231]

SENATOR DAVIS: Thank you. [LB231]

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SENATOR McCOY: Any further questions? Thank you, Mr. Wesely. [LB231]

DON WESELY: Thank you very much. [LB231]

SENATOR McCOY: Any further proponents for LB231 this afternoon? Seeing none, any opponents for LB231? Seeing none, any neutral testimony to LB231? Good afternoon. [LB231]

RHONDA LAHM: (Exhibits 5 and 6.) Good afternoon. Senator McCoy, members of the Transportation and Telecommunications Committee, I'm Rhonda Lahm, R-h-o-n-d-a L-a-h-m, Director for the Department of Motor Vehicles. I am appearing before you today to offer technical testimony on LB231. The DMV is interested in this bill because of the ever-evolving types of vehicles and how new vehicles impact the titling, registering, licensing, plating, and use of such vehicles on the roadways of this state. As new vehicles come onto the market, existing statutes are not a good fit. LB231 will distinguish legal requirements for autocycles, distinct from other motorcycles and other motor vehicles. The proposed definition of autocycle is very narrow and describes an autocycle manufactured by one specific company. In 2013, the American Association of Motor Vehicle Administrators published "Best Practices for the Regulation of Three-Wheel Vehicles." AAMVA recommended a broad definition of autocycle to include the various types of autocycles on the market and categorize autocycles as a type of motorcycle. The recommended definition of autocycle means "a three-wheeled motorcycle that has a steering wheel and seating that does not require the operator to straddle or sit astride it." It is clear AAMVA considers an autocycle to be a form of motorcycle. I have brought copies of the AAMVA publication for the committee. If the definition of autocycle is amended as recommended by AAMVA, other parts of the bill will also need to be harmonized. In the driver licensing sections of the bill there is language on page 21, lines 27 through 29, and on page 24, lines 3 and 4, and 23 through 25 dealing with tandem seats that will need to be amended for autocycles that do not have a tandem seat. On page 20, lines 16 and 17, the bill provides no driving test shall be conducted using an autocycle. DMV understands this language to mean that although a Class O license is necessary for the operation of an autocycle, a person must pass a driving skills test for a Class O license while operating a passenger vehicle or small truck, not an autocycle. The language might be more clear if the word "skills" was added after driving on page 20, line 16. As written on page 36, line 8, the narrow definition of motorcycle to the Motorcycle Safety Act eliminates DMV's ability to certify a training course specific to the operation of an autocycle. The act should allow for development and regulation of courses for autocycles and other two- and three-wheeled motor vehicles. Senator McCoy, at this time I'd be happy to answer any questions that the committee may have. [LB231]

SENATOR McCOY: Thank you, Ms. Lahm. Are there any questions? I might have one,

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if I may, it would appear then from your testimony, that you stand ready to...the department stands ready to help, assist, and this is very helpful, very detailed information as to what changes to harmonize the...is it AAMVA, is that (inaudible)... [LB231]

RHONDA LAHM: AAMVA, yeah, correct, yes. [LB231]

SENATOR McCOY: American Association of Motor Vehicle Administrators stand ready to work on that. [LB231]

RHONDA LAHM: And they do designate that it should be separate from a motorcycle. That we really need motor vehicle, autocytle, and motorcycle, and that those are three distinct and different things. And there are some pictures and samples of the differences in their publication. [LB231]

SENATOR McCOY: There are, thank you. Any further questions? Thank you very much. [LB231]

RHONDA LAHM: Thank you. [LB231]

SENATOR McCOY: Any further neutral testimony for LB231? Seeing none, Senator Smith. [LB231]

SENATOR SMITH: (Exhibit 7) Thank you, Senators. And I wanted to respond to just a couple of the items that Director Lahm brought forward. And I agree and appreciate DMV's willingness to work through some of these differences to make certain we can address those in the underlying bill. Director Lahm mentioned the American Association of Motor Vehicle Administrators, AAMVA, and the definition of a three-wheeled motorcycle that has a steering wheel and seating that does not require the operator to straddle or sit astride it. The problem with that definition is that it does not include safety belt requirements, air bags, anti-lock brakes, etcetera. The AAMVA definition would include the Polaris Slingshot devices, such as these including Harley-Davidson's Tri Glide and the Can-Am Spyder that you've seen advertised quite a bit on TV, are being sold as trike bikes. They are being marketed to motorcycle enthusiasts. If you look at the pictures that I passed around to you, you'll see the major difference between what we are defining as an autocytle and the other three-wheeled vehicles that, currently on the market, that are motorcycle related and should continue to be subject to helmet qualifications. So I hope that helps to clarify the difference between some of these that are trike bikes and what we are attempting to define as an autocytle. In terms of the narrowness of the definition of autocytle, I think there's some...certainly some room to modify the bill as long as we continue to meet the safety conditions of a typical automobile. And then in terms of the DMV not being able to test these vehicles, the operation of these vehicles, as they would a normal vehicle, keep in mind that our

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argument is that the autocycle will be like any other motor vehicle, and so in terms of testing can be done in any four-wheeled vehicle if they are to be operated the same as a autocycle. So with that again, I look forward to working with Director Lahm and working through those differences. And I'll take any questions you may have. [LB231]

SENATOR McCOY: Thank you, Senator Smith. Are there any questions? Seeing none, thank you for your closing, Senator Smith. And with that, at this time I will pass back over the duties of presiding over the committee hearing to Chairman Smith. [LB231]

SENATOR SMITH: Thank you, Senator McCoy. And with that we will continue our hearing and we will now hear LB312, which is a committee bill. It relates to the changing provisions relating to the letting of highway construction contracts. Thank you. Welcome. [LB312]

MIKE HYBL: Senator Smith, members of the Transportation and Telecommunications Committee, my name is Mike Hybl, I'm the committee legal counsel, and introducing LB312 on behalf of the committee. LB312 is a bill that was brought to the committee by the Nebraska Department of Roads. And it would provide an alternative method of letting contracts by the department for those contracts that the department estimates will cost \$100,000 or less. For such contracts, the department may solicit...or shall solicit at least three bids and the bidders are not required to be pre-qualified. A contract may be awarded if at least one responsive bid is received. The bill also provides that the department may allow a federal agency to let contracts for construction or maintenance on the state highway system when the department determines that such action would be in the public interest. For any contract with a cost over \$100,000, those bidders would be required to be pre-qualified by the Department of Roads. Senator Smith, that would conclude my introduction and I would take any questions the committee may have, otherwise I think...I'm sure the Department of Roads will follow me. [LB312]

SENATOR SMITH: Thank you, Mr. Hybl. Do we have any questions from the committee for Mr. Hybl? I do have one. Now, what happens if the bids come back more than \$100,000 now? [LB312]

MIKE HYBL: That I'm not sure of. I think that would be a question best made to the department. [LB312]

SENATOR SMITH: Okay, so I'm going to defer that to them. Thank you. All right, we...thank you, Mr. Hybl. We now move to proponents, proponents of LB312. Proponents, those wishing to testify in support of LB312. Welcome. [LB312]

RANDY PETERS: (Exhibit 1) Thank you. Good afternoon, Chairman Smith, members of the Transportation and Telecommunications Committee. For the record, my name is Randy Peters, R-a-n-d-y P-e-t-e-r-s. I'm the Director, State Engineer for the Nebraska

Department of Roads. I'm here to testify in support of LB312 and I would like to thank the committee for introducing LB312 on behalf of the department. The Department of Roads is asking for flexibility in awarding highway contracts in two limited purposes. First, we need a simpler process for small maintenance contracts, as opposed to the regular highway construction contracts. And second, it would be advantageous to allow a specialized federal agency to directly award a contract on the state highway system; and I'll elaborate on that a little bit more. My written testimony provides detailed justification for both aspects of LB312. Within the time allotted, I would like to highlight the key points starting with the need for flexibility on maintenance contracts. NDOR highway construction and large maintenance projects are advertised, competitively bid, and then awarded from our headquarters here in Lincoln, and this has served Nebraskans very well. Small maintenance projects, however, traditionally have been awarded in our eight field districts. That process also has served Nebraskans well by having small local contractors compete in a streamlined fashion to do the work. Both procedures, full bidding for construction projects and local awarding for maintenance projects, fit circumstances well and have proven to be cost effective. In 2013-2014, in an effort to make our small maintenance project awarding process more consistent across the field districts, NDOR conducted an intensive review of our bidding policies and procedures. We did this on our own initiative. The issues were complex and our statutes have different provisions for projects within the highway right-of-way than they do for capital facilities such as buildings and for the procurement of services. There are also requirements for pre-qualification of bidders. Last year, upon completing that review, we found that our small maintenance project awarding process was not adequately supported by statute. As it turns out, all highway projects, whether construction or maintenance, even small ones, must be centrally advertised, bid, and awarded. So we promptly changed our procedures for projects such as ditch regrading, fencing, mowing, small repair work, and the like. Since last summer, we have turned those small maintenance projects over to our headquarters for awarding purposes, imposing the same extensive advertising, prequalification, and bid-bonding procedures as for normal highway construction projects. The result is what brings me before you today. We have received far fewer bids, and in some cases, no bid at all. The bids we do receive have been coming in quite a bit higher. Examples are listed in the attachment to my testimony on the last page. And there's another point--if we can't find a contractor who is willing to get pre-qualified and submit a full-blown bid, we end up having to do the work with our own forces. And that's a problem because our resources are limited, resulting in having to reschedule and postpone other work. LB312 solves those problems by authorizing a simplified bidding process for maintenance-type projects under \$100,000. We will develop a new standardized process to bid those projects. As with all contracts, those awards and payments will continue to be posted on the state's transparency Web sites. Now I'll turn briefly to the other part of the bill. The U.S. Air Force and the Central Federal Lands Division of the Federal Highway Administration in Denver want to upgrade a culvert and a short section of Highway 30 in the Panhandle using their own funds. To do this, they need to let and oversee the

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projects themselves working closely with NDOR. Nebraska law, however, does not allow NDOR to delegate responsibility for the project to them. LB312 would give us that flexibility. That concludes my remarks. You'll find additional testimony on the following pages. Thank you very much. And I'll do my best to address any questions you may have. [LB312]

SENATOR SMITH: Thank you, Director Peters, appreciate it very much. Do we have questions for the director? Senator Friesen. [LB312]

SENATOR FRIESEN: Director Peters, when you're doing the projects, I know \$100,000 is not much in most projects anymore, but what oversight is there in your bid letting process then that makes sure that one company doesn't continually come in and get some of these bids without competition? You're going to allow accepting of bid, even if there was only one bidder, I guess I'm assuming that when you open up the qualifications there's going to be numerous bidders probably, but is there some oversight into how the system works if just one bidder shows up? [LB312]

RANDY PETERS: Sure. The key word there is "responsible bid." And so NDOR would have a district engineer and oftentimes a panel of one or two others from the department, they would have an estimate of what the item of work is estimated to cost. And then competition should ordinarily result in the low bidder. But if there is only one bid, then there are guidelines for whether that one bid is responsive to the engineer's estimate that was determined before the bid came in. [LB312]

SENATOR FRIESEN: Is there a set point where if the bid comes in too high that you reject the bids, or is it...are you flexible in looking at that? [LB312]

RANDY PETERS: There are mathematical formulas that say if it's within 10 percent and you can consider other factors by an analysis of the bid, then there also a panel. [LB312]

SENATOR FRIESEN: Okay. Thank you. [LB312]

SENATOR SMITH: Director Peters, I'm going to go back to your testimony and you mentioned that LB312 solves the problems by authorizing a simplified bidding process for maintenance-type projects in which your department estimates are going to be under \$100,000. So what happens if those estimates come back over \$100,000? [LB312]

RANDY PETERS: Well, first of all, we would go through this process to determine whether the bids were responsive or there was some reason in our analysis that they were...they were not correlating with what the engineer's estimates who thought we were...under \$100,000 category. If it's determined that the bids are responding to what the items of work we put out there and it went over \$100,000, then we would have to not

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award bids then and go back through the alternative regular construction. In that scenario, I would call that an engineer's bust, if they...they were thinking the item of work was under \$100,000 and through the competitive process, it came in more than that. [LB312]

SENATOR SMITH: Very good. Do we have additional questions for Director Peters? Senator Davis. [LB312]

SENATOR DAVIS: Thank you, Mr. Chairman. Welcome to Mr. Peters. In your discussion, you said county construction and maintenance projects costing \$100,000 or less are exempt from all bidding requirements. So at the county level, there's no bidding necessary for work that's under \$100,000, is that what you're telling me there? [LB312]

RANDY PETERS: My understanding...and I'm not the foremost authority on this topic, that a year or two ago, a number of years ago, the Legislature put a similar threshold in the county bidding procedures. [LB312]

SENATOR DAVIS: Okay, okay. [LB312]

RANDY PETERS: Basically, updated an older, lower threshold into this area. [LB312]

SENATOR DAVIS: And so what are the typical projects that fit into this mix? You mentioned fencing and mowing. [LB312]

RANDY PETERS: Exactly. [LB312]

SENATOR DAVIS: I suppose not much paving I wouldn't think. [LB312]

RANDY PETERS: No, no, no, we're talking work like litter pickup, small amounts of grading, fence repair, fence installation, mowing, those kind of contracts where you're responsive bidders are more likely to be local, regional companies that find it burdensome to go through a certified public accountant and have their finances reviewed to become prequalified. [LB312]

SENATOR DAVIS: And essentially, in many ways, what you're doing is just going back to the way things were done before you discovered that you weren't doing them properly? [LB312]

RANDY PETERS: That's correct. [LB312]

SENATOR DAVIS: So then with regard to the federal part of it, are there any restrictions that are put on Department of Roads by these federal rules and regulations? For example, the culvert that they're going to put in there, I mean, do they have...do you

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have to do the environmental studies and things for them or is that all taken care of?
[LB312]

RANDY PETERS: Yeah, Central Federal Lands would do all the environmental clearance, the preconstruction engineering, basically, they need to make an upgrade to the missile roads, we'll ensure that they meet state standards, but they have professionals there in that business. And it wouldn't impose any additional constraints on them. [LB312]

SENATOR DAVIS: So do you know why they have targeted this particular culvert for replacement? [LB312]

RANDY PETERS: I'm not sure we're talking about one specific culvert, but it's basically just the loading requirements of the missile carriers... [LB312]

SENATOR DAVIS: Going over the top. [LB312]

RANDY PETERS: Yeah, going over the top of them. [LB312]

SENATOR DAVIS: Thank you. [LB312]

SENATOR SMITH: Senator Garrett. [LB312]

SENATOR GARRETT: I can add a little clarification to that, having been a former missile operations guy. And they go out every spring and certify their roads. Up in North Dakota, when I was there, they actually had a culvert collapse on them and it rolled a missile into a pond, an entire missile with an erector, so it was...they do this pretty regularly. [LB312]

SENATOR DAVIS: We wouldn't want that to happen. [LB312]

SENATOR GARRETT: No. And those are the same roads they transport the nuclear weapons with as well, so, they're pretty heavy. [LB312]

SENATOR SMITH: It's great to have your expertise on the committee to answer questions like that. Senator McCoy. [LB312]

SENATOR McCOY: Thank you, Chairman Smith. I seem to recall, and no one has mentioned it yet, so, Director Peters, we had a similar piece of legislation a year or two ago, that I think former Senator Scott Price introduced that dealt with a similar situation at the county level. Are you familiar with that? Is this, essentially, the same...as I recall, very similar piece of legislation in ways, obviously, dealing with different entities, is that correct that...? [LB312]

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RANDY PETERS: That's the one I was referring to when I...with the caveat I'm not the foremost authority on. [LB312]

SENATOR McCOY: Okay, I wanted to make sure we're talking about the same. [LB312]

RANDY PETERS: Yes. [LB312]

SENATOR McCOY: Okay. (Inaudible) All right, thank you. [LB312]

SENATOR SMITH: I see no further questions. Thank you, Director Peters. We now continue with proponents of LB312. Proponents? Welcome. [LB312]

JOSEPH KOHOUT: Chairman Smith and members of the Transportation and Telecommunications Committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist for the Professional Engineers Coalition of Nebraska appearing today in support of LB312. Our board met and reviewed LB312 and a request was made to support it. And primarily the nature of that discussion was around the flexibility that this would grant to the department on those smaller contracts. With that I will try to answer any questions that you might have. [LB312]

SENATOR SMITH: Thank you, Mr. Kohout. Do we have questions for Mr. Kohout? Seeing none, thank you. We continue with proponents, those wishing to testify in support of LB312. Seeing none, we now move to opponents, those wishing to testify in opposition to LB312. Seeing none, do we have anyone wishing to testify in a neutral capacity on LB312? Seeing none, no closing on LB312. We now move to LB313. We conclude the hearing on LB312; we move to LB313 which is another committee bill. It relates to updating certain references to federal regulations regarding motor vehicles and motor carriers. [LB312]

MIKE HYBL: (Exhibit 1) Senator Smith, thank you again. For the record, my name is Mike Hybl, it's M-i-k-e H-y-b-l, legal counsel to the Transportation and Telecommunications Committee introducing LB313 on behalf of the committee. LB313 is, I guess, what's been known as the annual update legislation. This particular legislation has been coming before the committee, I believe, since 1987, the year immediately after we adopted the Federal Motor Carrier Safety regulations and hazardous material regulations. Over the years, there's been a number of other provisions of federal law that the Legislature, basically, makes reference to and adopts federal regulations as state law. What the bill does is update those regulations in the relevant sections of the bill as those regulations existed effective January 1, 2015. I've given you a handout that, basically, walks through what a number of those changes...or what the changes have been in those regulations since the legislation was last updated last year. I think probably the most significant regulation is that first one that's listed on

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the sheet that I gave you which is the...as part of the continuing appropriations act that the Congress enacted in December. The Federal Motor Carrier Safety Administration was directed to suspend the operation of what was called the 34-hour restart rule for commercial motor vehicle operators. There's been a lot of discussion about the appropriateness of the 34-hour restart. But with the enactment of this legislation, it will bring that suspension of the restart into Nebraska law, as well as for enforcement purposes. I believe we will have individuals from both carrier enforcement and Department of Motor Vehicles to talk about any of the specific provisions in the bill that you may have questions with. And with that I will conclude my introduction, Senator. [LB313]

SENATOR SMITH: Thank you, Mr. Hybl, for introduction of LB313. Do we have questions from the committee? Senator Davis. [LB313]

SENATOR DAVIS: Can you tell us what this actually means, Mr. Hybl, in terms of the 34-hour...I'm assuming that's the number of hours they can work or they have to...some rest period? [LB313]

MIKE HYBL: That was a...there was a requirement in the federal regulations that a...I believe there had to be a 34-hour period break before a driver restarted their 60- or 70-hour week that they're allowed under the regs. [LB313]

SENATOR DAVIS: Thank you. [LB313]

SENATOR SMITH: Do we have further questions? Seeing none, thank you. We now move to proponents, those wishing to testify in support of LB313. Welcome. [LB313]

RHONDA LAHM: (Exhibit 2) Thank you. Good afternoon, Chairman Smith and members of the Transportation and Telecommunications Committee. I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, Director of the Department of Motor Vehicles. I am appearing before you today to offer testimony in support of LB313. I would like to thank the committee for introducing LB313 on behalf of the Department of Motor Vehicles. This is a reference date update bill that's introduced each year to keep the Department of Motor Vehicles and Nebraska State Patrol consistent with federal laws and regulations which govern state laws administered by our respective agencies. In Section 1 of the bill, LB313 adopts into state statute the federal regulations relating to the regulation of low-speed vehicles as they existed on January 1, 2015. During calendar year 2014, there were no changes to federal regulation in this area. Section 2 adopts into state law the federal regulations regarding handicap parking as they existed on January 1, 2015; that also did not change during calendar year 2014. In Section 3 of LB313, the most recent provisions of the International Registration Plan, or IRP, are adopted into state law as they existed on January 1, 2015. During calendar year 2014, Ballot 384 passed which implemented a change to the agreement known as the Full

Reciprocity Plan. This change simplified the process for both motor carriers and state agencies administering the plan. Under the plan the carriers pay their registration fees to the base state, however all 59 jurisdictions are displayed on the registration certificate. There's 49 U.S. jurisdictions and 10 Canadian. This new process will provide the flexibility to motor carriers to operate where they need to and still ensure that jurisdictions receive their fair share of the registration fees. Nebraska has been an IRP member jurisdiction since 1975. Membership in IRP allows trucking companies in Nebraska to pay registration fees in Nebraska for all of the jurisdictions through which the company operates which are then distributed to the other jurisdictions on a prorate basis. Section 4 adopts into Nebraska law the provisions of Title 49 of the federal code as it existed on January 1, 2015, referenced in the Motor Vehicle Licensing Act. Those particular sections had no changes since last adopted into state law. In Section 5 of LB313, Chapter 6, part 37 of the Federal Code of Regulations is adopted as it existed on January 1, 2015. On December 29, 2014, the regulations established a deadline when federal agencies will be prohibited from accepting driver licenses and identification cards from states which are not REAL ID compliant. Nebraska has been REAL ID compliant since February of 2013. Section 6 of the bill adopts into Nebraska law the U.S. Patriot Act as it existed on January 1, 2015. No changes to the act have occurred since last adopted into state law. In Section 10, provisions of the Unified Carrier Registration Act of 2005 are adopted into state law as they existed on January 1, 2015. No changes have occurred to that act since January 1, 2014. It is important for Nebraska to remain in compliance with federal laws. Should Nebraska fail to comply with these laws, the Federal Motor Carrier Safety Administration has the authority to withhold funding for Nebraska's Motor Carrier Safety Assistance Program and federal highway funds. Other sections of LB313 relate to the laws and regulations administered by the Nebraska State Patrol and they can address those items in their testimony. Thank you for your time today. And at this time, Chairman Smith, I would be happy to answer any questions the committee may have. [LB313]

SENATOR SMITH: Thank you, Director Lahm. Do we have questions for the director? Senator Davis. [LB313]

SENATOR DAVIS: Just one; thank you, Mr. Chairman. Ms. Lahm, you talked about Section 3 and the registration fees and things; because I know somehow that works, can you tell us how...what Nebraska's prorated share of that would be then, I mean, how that's determined. [LB313]

RHONDA LAHM: Okay. There's a formula and it's based on miles that they drive. And so when somebody has a new truck, previously, they would have to estimate how many miles they're going to travel and in each state. So say, for example, that you were a new trucking company in Nebraska and you said--I'm going to travel 50 percent in Nebraska and 50 percent in Kansas. So they would figure out if you registered for a full 100 percent in Nebraska, you would pay 50 percent of that. If you registered for 100 percent

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of Kansas, you would pay 50 percent of Kansas. And then they would send Kansas money here and Nebraska's here. But let's say half way through the year you have an opportunity to expand your company and also go into Iowa. You have to come back and say, well, now I've decided out of...I was going to drive 100,000 miles and 50,000 in each, but now I'm going to drive 20,000 miles in Iowa. So now they would also assess you 20 percent of what Iowa's fee was so you really end up paying more as a start-up company. So the change said--we're just going to have the set rate and divide it equally amongst the states so that you can op...even if you say you're going to operate 50 in Nebraska and 50 in Kansas, we're going to put a sticker for every state on in your first year. So you're not going to have to pay that additional fee in the first year. So that's kind of in a nutshell. But it's all based on mileage. And it used to be estimated mileage, but then after you're in for one year, you give them the actual number of miles and then your fees are based on actual miles. [LB313]

SENATOR DAVIS: So this would be just for new trucking and it's not (inaudible). [LB313]

RHONDA LAHM: It impacts...it impacts like if a new trucking company, or if you got an additional truck. Maybe you're an existing company, but you got an additional truck. Yeah. [LB313]

SENATOR DAVIS: Thank you. [LB313]

RHONDA LAHM: You're welcome. [LB313]

SENATOR SMITH: Senator Garrett. [LB313]

SENATOR GARRETT: I have one question. On the Full Reciprocity Plan, it talks about the jurisdictions, 49 U.S. jurisdictions and 10 Canadian, do we have any that go to Mexico? [LB313]

RHONDA LAHM: Right now there aren't any in Mexico. In order to add Mexico, it takes a vote...that's been proposed, but it takes, as I understand it, 100 percent of the people to agree and that hasn't occurred yet of jurisdiction members. [LB313]

SENATOR GARRETT: Do we actually have Mexican trucking coming into the U.S.? Are they traveling on our roads? [LB313]

RHONDA LAHM: We're...we're not getting a share of them, because they're not part of the plan. But if they come in, they would have to get whatever the appropriate permits to operate in Nebraska. They would probably be specials, because they wouldn't be licensed here. It's probably a better question, maybe, for the carrier enforcement folks. [LB313]

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SENATOR GARRETT: Okay. [LB313]

RHONDA LAHM: We know, we don't get a share from people that are in Mexico. [LB313]

SENATOR GARRETT: Thank you, Director. [LB313]

SENATOR SMITH: I see no further questions. Thank you, Director. [LB313]

RHONDA LAHM: Thank you. [LB313]

SENATOR SMITH: We now continue with proponents, those wishing to testify in support of LB313. Welcome. [LB313]

GERALD KROLIKOWSKI: (Exhibits 3 and 4) Good afternoon, Chairperson Smith and members of the Transportation and Telecommunications Committee. My name is Gerald, G-e-r-a-l-d, Krolikowski, K-r-o-l-i-k-o-w-s-k-i. As Commander of the Carrier Enforcement Division, I'm here today on behalf of the Nebraska State Patrol to testify in support of LB313. When the United States Congress passed the Motor Carrier Safety Act, emphasis was placed on the states adopting uniform safety measures with the ultimate goal of a reduction in the number of commercial motor vehicle accidents. In order for the state of Nebraska to remain consistent and compliant with these federal requirements, it is necessary to update our commercial vehicle safety regulations annually. This legislation will enable Nebraska State Patrol to continue enforcing updated Federal Motor Carrier Safety Regulations and the Federal Hazardous Materials Regulations. On page 5, line 9, Section 7 adopts 75-363, Federal Motor Carrier Safety Regulations, and on page 9, line 3, Section 8 adopts 75-364, which is the Federal Hazardous Material Regulations which were in effect January 1, 2015. Every day our troopers strive to make our highways safe. In 2014, the Nebraska State Patrol conducted 28,652 roadside inspections; 8.7 percent of those drivers inspected were placed out of service. Of the 9,092 vehicles inspected, an average of 3.07 violations per vehicle were discovered, with 34.2 percent of the vehicles being placed out of service. The roadside inspection program has enabled the state to establish clear guidelines for commercial vehicle operators while ensuring a Nebraska State Patrol presence to assist in correction of operators who have vehicle or driver defects. These guidelines create a significant deterrent effect. Along with our enforcement efforts, public education is a valuable tool the agency uses to improve highway safety. In 2014, the Carrier Enforcement Division of the Nebraska State Patrol conducted 81 public education seminars and 13 town hall meetings across the state directed at commercial motor vehicle owners or operators. Please find attached handouts summarizing the latest Federal Motor Carrier Safety and Hazardous Material Regulations Final Rules that would be adopted through this update. And I believe they're probably the same as legal

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counsel provided you as well. I want to thank you for the opportunity to testify on behalf of this bill and I will be happy to answer any questions you may have. [LB313]

SENATOR SMITH: Thank you, Mr. Krolikowski, appreciate your testimony. Do we have any questions from the committee? Senator McCoy. [LB313]

SENATOR McCOY: Thank you, Chairman Smith. I do have one question, I just want to make sure...point of clarification on the first page of your handout where it talks about an FY2014, help me understand better those numbers. Maybe I'm just reading them incorrectly, where it talks about the number of roadside inspections and then it talks about 28,652 roadside inspections, but nine...later...next sentence, 9,092 vehicles inspected. Can you help me understand the difference of what that is? Am I not...(inaudible) clarify and understand that. [LB313]

GERALD KROLIKOWSKI: Certainly, I'll try my best there. The roadside inspections we have...well, actually seven different levels of inspections now, but primarily the top five...or the main five are Level 1 inspection which consists of inspection of the driver, their hours of service, their medical certificate, all their qualifications. But then a full-full inspection of the vehicle including crawling underneath and inspecting the brake components, suspension, and everything else, it's a full-full inspection. Level 2 is an inspection of the driver and walk around of the vehicle, so any components that the trooper can see or touch as they walk around the vehicle. Level 3 is driver only. And then when you get into Level 4 and 5, there are special operation-type inspections. So our primary focus anymore is on the driver because driver behaviors cause accidents. However, we do still find the need to inspect the vehicles. So, essentially, you're looking at Level 1s and 2s. The difference there between the total and the 9,000 would be all directed towards Level 3s. [LB313]

SENATOR McCOY: Thank you. I appreciate that clarification, that's helpful. [LB313]

SENATOR SMITH: Senator Garrett. [LB313]

SENATOR GARRETT: Thank you, Chairman Smith. I'll follow up with the question I had about the Mexican trucks... [LB313]

GERALD KROLIKOWSKI: Yes. [LB313]

SENATOR GARRETT: ...traveling in the U.S., do we have that occurring? [LB313]

GERALD KROLIKOWSKI: We're starting to see some. Still on the south border, mostly, but they have opened it up to certain carriers that can come into the rest of the states, but very few, very few right now, Senator. [LB313]

SENATOR GARRETT: And then the Canadian provinces, the drivers from those Canadian provinces, are they required to comply with the same hour requirements that we have for drivers and rest? [LB313]

GERALD KROLIKOWSKI: Yes, sir. They have different rules as they travel within Canada. But once they cross that line there, they have to comply with our hours of service regulations. [LB313]

SENATOR GARRETT: Okay. Thank you. [LB313]

SENATOR SMITH: Mr. Krolikowski, are the roadside inspections that take place, are they strictly random? [LB313]

GERALD KROLIKOWSKI: It can be a mixture, Senator. Certainly random, have a trooper out there working a road or a weigh station, they're doing inspections today, they do an inspection on a vehicle, the next one comes along, they're going to do an inspection. But also we have tools and computer software anymore that we try to focus on those carriers that need our attention mostly, do more with less as much as we possibly can. So while we have a system that each carrier has a...if they're established carrier for some time have a ISS score and that score is based on their...well, the inspections, their history on the inspection, enforcement actions and so forth, accidents. And so if they're high or have a bad ISS score, we certainly would tend to look at them more than a good carrier. [LB313]

SENATOR SMITH: Very good. Thank you. I see no...oh, Senator Friesen. [LB313]

SENATOR FRIESEN: Speaking of inspections of trucks, farm plated vehicles come to mind, do you...just a percentage of farm plated trucks, do you check them also, because I see some of the stuff that's on the road and I'm sometimes concerned. Just wondering if that's a percentage of vehicles stopped or if you do some programs sometimes where you target? [LB313]

GERALD KROLIKOWSKI: No, not necessarily though, we don't target farm vehicles nor do we set aside a certain percentage focused or dedicated to farm trucks. Keep in mind that Statute 75-363 that we just talked about here, in that a section exempts farm plated straight trucks that operate wholly within the state if they're registered for 16 ton or less. So you're looking at your smaller straight trucks, okay. They're exempt from the inspections altogether. The semis owned and operated by farmers, they're still...the vehicle is still subject to inspection, drivers-no... [LB313]

SENATOR FRIESEN: Right. [LB313]

GERALD KROLIKOWSKI: ...because of MAP-21 that passed on the federal level here

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adopted through state level. [LB313]

SENATOR FRIESEN: Well, it's been a few years back, but there was a farm truck...and I drive a farm plated truck also, but he had failed to maintain his brakes and so he rolled through a stop sign and I took him out of service. Just curious how many inspections are done on farm vehicles and what the percentage are placed out of service. [LB313]

GERALD KROLIKOWSKI: I'll have to look into that and get back to you if you desire. [LB313]

SENATOR FRIESEN: Thank you. [LB313]

SENATOR SMITH: All right, thank you, Mr. Krolikowski, appreciate your testimony. We continue with proponents, those wishing to testify in support of LB313. Proponents. I see no further proponents. We now move to opposition, those wishing to testify as an opponent to LB313. Seeing none, those wishing to testify in a neutral capacity on LB313. Seeing none, we waive closing on LB313. And that concludes our hearings for today. Thank you. [LB313]