

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 24, 2022

FRIESEN: OK, if we could have everybody's attention? Welcome to this afternoon's public hearing of the Transportation and Telecommunications Committee. Can we have your attention, please? I'm Curt Friesen from Henderson, Chairperson of the committee, and I represent the District 34 and we are going to be waiting a little bit for the recording device to get rolling, but we're going to get the meeting kind of rolling here with these procedural items. Please ask that you silence all your cell phones and other electronic devices. We'll be hearing the bills in the order listed on the agenda. Those wishing to testify on the bill should move to the front of the room and be ready to testify. We have set aside some chairs up front here for on-deck chairs, so you're ready to go when the next person is, is coming up to testify. If you will be testifying, legibly complete one of the green testifiers sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required, but if you do have a handout, we need ten copies. One of the pages will assist you if you need help. When you begin your testimony, it's very important that you clearly state and spell your first and last names slowly for the record. If you forget to do this, I will stop your testimony and ask you to please do so. Please keep your testimony concise. Try not to repeat what has already been covered. We will use the light system here and I do believe we'll be going with five minutes for your testimony. Yellow light indicates you have one minute left and when the red light comes on, it's time to wrap up and finish your testimony. Those not wishing to testify may sign in on a sheet by the door to indicate their support or opposition to a bill and I'd like to introduce the staff. We have Mike Hybl to my right and Sally Schultz to my left as the legal counsel and the committee clerk and we have Sophia and Thomas as our pages today helping us out, so I appreciate them coming out to help us. And with that, we'll start with introductions to my right.

HUGHES: Dan Hughes, District 44, eight counties in southwest Nebraska.

BOSTELMAN: Bruce Bostelman, excuse me, Bruce Bostelman, District 23: Saunders, Butler, and Colfax Counties.

ALBRECHT: Joni Abrecht, District 17: Wayne, Thurston, and Dakota and a portion of Dixon.

GEIST: Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

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DeBOER: Hi, everyone. Good afternoon. I'm Wendy DeBoer. I represent District 10, which is in northwest Omaha.

MOSER: I'm Mike Moser. I represent Platte County and parts of Stanton County.

M. CAVANAUGH: Machaela Cavanaugh, District 6, west-central Omaha, Douglas County.

FRIESEN: OK and with that, we will open the hearing on LB771 and since Senator Day can't make it, staff will-- Sam, I believe. Welcome to T&T.

SAM HUPPERT: Good afternoon, Chairman Friesen and members of the Transportation Committee. My name is Sam Huppert. That's S-a-m H-u-p-p-e-r-t and I'm Senator Day's legislative aide and I'm here to read her introduction into the record. LB771 came about when a constituent reached out after being frustrated at the lack of access in certain areas for his electric bike. In researching this issue, we found that Nebraska lacked specificity that many neighboring states currently have. E-bikes have exploded in popularity over the last ten years. As recently as 2012, e-bikes were just 1 percent of the U.S. bike market. However, in 2019, sales have grown to 15 percent and continue to increase. Reasons for purchasing an e-bike vary, with some using them as an easily encycle-- easier cycling commute and others looking for a less physically demanding bike, biking option. Among those who have benefited most include elderly and disabled populations who benefit from the assist that e-bikes provide. Nebraska first passed an e-bike statute in 2015 and e-bikes are currently treated in the same manner as bicycles. At the same-- or at the time, this placed Nebraska as one of the most forward-looking states on e-bike access. Under this definition, all bikes with an electric motor not exceeding 750 watts, which produce no more than one brake horsepower and can go no more than 28 miles per hour, are considered e-bikes. However, in the last several years, there's been a nationwide effort to adopt a more uniform national standard of e-bike classes and 36 states have adopted a three-tier standard for e-bikes. In terms of the three-tier system broadly, class I e-bikes involve pedal assist while riders have a motorized boost, giving riders a gentle push while still relying on human propulsion. The second class, throttle, allows the rider to move up to 20 miles per hour and will propel them forward without the same level of pedaling. class III e-bikes have a greater capability and can go up to 28 miles per hour. So you might see hobbyists and leisure bikers use a class I e-bike where class III e-bikes would be more commonly used for a short commute or as a delivery bike. Where these

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tiers come in handy is giving municipalities and state agencies greater flexibility and to maintain access for e-bikes in places where a class I e-bike would not encroach on the enjoyment of a bike path or trail for traditional bikers, but where more powerful bikes might not be appropriate. All three tiers would fit under the current definition of e-bikes in Nebraska, so LB771 simply adds greater specificity to the statute, as opposed to a broad rewrite of Nebraska's e-bike laws. An example of how creating these classifications can improve e-bike access recently happened in Wyoming. Previously, e-bikes were banned in all Wyoming state parks. However, after the state passed a three-tier system in 2019, Wyoming state parks allowed it or decided to allow class I e-bikes anywhere a traditional mountain bike is allowed and even opted to conduct a class II pilot project. Similar changes have happened in Virginia and Arizona. By creating more flexibility to tailor specific regulations to bikes' capabilities, we can allow greater access for e-bikes here as well. We would not have brought this legislation if it were not supported by biking enthusiasts and today you'll be hearing from a number of testifiers about their experiences with e-bikes and how they are not seen as an encroachment on traditional biking, but rather a complimentary device that can increase ridership and get more people involved in this activity. As e-bikes become more common, LB771 is a small update to statute, which will bring us into line with other states, increase information for consumers, and give our state additional tools to regulate access in ways that best match the capabilities of these bikes.

FRIESEN: OK, thank you. Since we won't be asking any questions of the staff, thank you. And you're going to stick around for clothing if there needs to be any or--

SAM HUPPERT: Yeah, I'll probably waive, but if anything comes up, yeah.

FRIESEN: Proponents wish to testify in favor of LB771, come forward.

ROCKY GOODWIN: Good afternoon.

FRIESEN: Afternoon.

ROCKY GOODWIN: My name is Rocky Goodwin, R-o-c-k-y G-o-o-d-w-i-n. This is actually kind of exciting. I never got to do something like this before and I called Senator Day in November, scheduled a lunch, and we talked about this. My wife and I are both in our mid-sixties, wanted to start riding bikes again like we did when we were kids. Both of us,

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between knees, hips, backs, and age, find riding a normal bicycle to be difficult. We purchased a couple of e-bikes. The bike that we own is actually on the front, so you can kind of see what one looks like if you've never seen one before. And we're excited to use them, ride them in our neighborhood, and our neighborhood has some trails, ride them on our neighborhood trail. However, we found out camping this summer-- because that's what we do in the summertime is pull our camper and stay in Nebraska state parks. We found out that they're actually illegal in Nebraska state parks, so it kind of defeated part of the purpose for us and was kind of surprised to find that out. So one of the things I attached in that packet is from the Secretary of Interior and this was either last year or the year before. And what they did is they kind of adopted a lot of the same rules everybody else is with the class I, II, and III, as is in this proposal, on electric bikes and passed it and then the part that I liked the best-- and I have no idea how government works totally here in this state, but they also basically then informed the rest of-- you see here the fish and wildlife, lands and minerals, water and science, and some of the other open areas and kind of said, hey, you will adopt these rules so that people can go out and enjoy our public lands. And I was hoping that we could do the same thing and say, hey, parks and commission-- or the Parks Commission, you need to adopt these rules so our residents can go out and enjoy the public lands because I know there's state parks even close by that actually have bike trails. So Sam covered a lot of the stuff that I would have said already, so I won't get redundant. I did find that back in 2015 was the last time this was visited. The rules have been fine-tuned across the country to this class III systems. I also noticed the company that I ordered my bike from-- by the way, bikes are selling probably ten times what they were, if not more, than in 2015-- electric bikes are, e-bikes. But the, the changes, I guess, that I see being the most valuable are especially the class I and II. And the difference, as Sam said, if you didn't hear him, he spoke pretty fast trying to cover it all. Class II or the difference between a I and a II is a class II bike has some kind of a throttle to it, whether it be a thumb throttle or a twist handle, most of them have a thumb throttle. That thumb throttle is not for you to go play motorcycle with. The thumb throttle is to help get started on an uphill climb, climb. The bikes are heavy. My bikes are 65 pounds each and for my wife and I to start, if we had to stop on an uphill and had to restart on an uphill, it would be pretty difficult even for that first push on that pedal so a throttle can help start you in places like that. It's not to turn the bike into a motorcycle. Both of them are capped at 20 miles per hour and the 750 watts, but there are plenty of bike trails. If you notice, this spike in the

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front has fat tires. It's made on a suspension. It's made to ride trails. It's not made to race on trails and-- but it would give me an opportunity, especially-- I like riding in the woods and I would like to ride on a trail in the woods. But right now in the state parks, I can't unless I get caught, but anyway, we won't go there. But we did ride a little bit up at Lewis and Clark and I can tell you that basically when they told me they were technically illegal-- nobody was going to give me a ticket or anything on them-- but I said, why? And they said, because of the fact that I have to-- or they're scared of the, of the-- somebody getting hurt. And I'm thinking to myself, have you ever ridden in a boat with watercraft on our lakes? I mean, the personal watercraft are way more dangerous than these bikes are. We were tootling along about nine miles an hour through the park and most people who are riding them, by the way, are my age. So anyway, in a nutshell, that's-- I'd like to see this as a start. Fine-tune the, the legislative and the, the bills and the rules and so that the Parks Commission has something really to hang their hat on and can-- we can go from there. Anybody have any questions?

FRIESEN: OK. Thank you, Mr. Goodwin. Questions? Senator Geist.

GEIST: I like to ride just a normal, nonmotorized bicycle a lot and so I wonder is the reason that they told you that it's illegal because it's motorized?

ROCKY GOODWIN: I think it is. I think they hit, I think--

GEIST: Because I think the signs say no motorized vehicle or, or--

ROCKY GOODWIN: And I--

GEIST: So I wonder--

ROCKY GOODWIN: But they said e-bikes had been addressed--

GEIST: Uh-huh.

ROCKY GOODWIN: --at the commission level. And I think that that motorized thing, you know, the mini bike with a gas motor--

GEIST: Right.

ROCKY GOODWIN: --is still ingrained in everybody's brains because it's new enough, but it's grown fast enough--

GEIST: Uh-huh.

ROCKY GOODWIN: --that no-- they just really haven't addressed it.

GEIST: Yeah, yeah.

ROCKY GOODWIN: They just really haven't--

GEIST: I'm sure they weren't thinking that when they listed motorized. One other question is do you wear a helmet with that bike?

ROCKY GOODWIN: Actually, we do.

GEIST: Is it required?

ROCKY GOODWIN: Most states-- I actually had a printout, but I didn't want to inundate you with a tree. Most states have rules yes or no. I found most of them on the class I and II had-- was pretty much followed right along whatever the rules were for bicycles. They were identical for e-bikes--

GEIST: OK.

ROCKY GOODWIN: --until you hit class III. And then some states had helmet laws. Some of them had minimum-age laws and things like that because they could get up to 28 miles an hour. And like Sam said, that there used more for commuting and deliveries and things like that in the-- for the most part.

GEIST: OK.

ROCKY GOODWIN: And bike companies, by the way, are even-- have come to the party and started putting their classifications on their bicycles. That wasn't done two years ago, either, so--

GEIST: Thank you. That's all.

FRIESEN: Thank you, Senator Geist. Any other questions from the committee? Senator Moser.

MOSER: This may be out-- you're-- be outside of your scope of inf-- of knowledge, but from my reading of the bill, this isn't going to tell the Department of Natural Resources or Game and Parks to allow e-bikes so is there going to have to be separate legislation?

ROCKY GOODWIN: And see, that's the part that I don't know about how this all comes about. I don't know if we need to get-- if this has to happen and be voted on first and then somebody puts some pressure on Game and Parks or whether the State Legislature can actually tell the

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Game and Parks what kind of rules they have to make. I have no idea. They may not even be able to--

MOSER: And what would be the reason for having three categories? Why couldn't you just consider them all e-bikes and--

ROCKY GOODWIN: I, I think the Fed kind of led the way on this. It seems like in the reading that I've done-- and I may be wrong, but it seems to kind of-- it's just kind of adoption that everybody took on it. I don't think they went up to 28 miles an hour when they originally were being made is part of it, but--

MOSER: Twenty-eight miles an hour is pretty fast.

ROCKY GOODWIN: It's pretty fast. It is-- yeah, it is pretty fast.

MOSER: If you went upside down at that speed, you would have--

ROCKY GOODWIN: It would hurt.

MOSER: --some damage, yeah. OK, thank you.

ROCKY GOODWIN: You're welcome.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? So I think by what you envision happening is now we've got classifications of bikes and different entities. Whether it's a city or Game and Parks, they can take and say, OK, we're going to allow class I bikes on this trail. Maybe class II and III bikes can go on this trail. So they're going to specify what types of bikes?

ROCKY GOODWIN: I guess I foresee-- as Sam said, even on-- one of the states who just recently adopted this for their state parks-- was it Wyoming? OK. In Wyoming, they, they went the step further and just said class II. Also, South Dakota, I believe, is class II. Iowa now is class II also on public trails, public grounds, state parks, things like that because I and II are so close and the same and I think people are realizing that the-- again that the throttle is used intermittently. It's not used to turn it into a motorcycle. That's what you can say, you turned it into a motorcycle.

FRIESEN: I think what you're going to find is what we do here is we will maybe classify the different bikes, but it's still going to be up to those entities whether or not to allow them. So they can--

ROCKY GOODWIN: Sure.

FRIESEN: --either do it by rules and regulations or statute.

ROCKY GOODWIN: And of course, they leave private owners to make their own rules too, whether they're allowed or not, so--

FRIESEN: Right. Senator Albrecht.

ALBRECHT: Can I just ask a quick question? Thank you, Senator. When you purchase the bike, do they give you an idea of what the laws are in different states?

ROCKY GOODWIN: They do not. We purchased our bikes almost--

ALBRECHT: Online or--

ROCKY GOODWIN: --a year ago. Yeah, almost exactly a year ago online. Part of that was because the bike shops tended to carry-- bike, they're expensive. But a lot of the bike shops were carrying \$3,000 and \$4,000 and \$5,000 bikes. And so we, we did-- I did a whole lot of research and I picked this one. A lot of it's-- if you look at the bike, it's an easy step over. It's got the seat-- old fart like me.

ALBRECHT: I'd have to have a bike just like that.

ROCKY GOODWIN: So I can just step over, but anyway, there was nothing in the information anywhere about hey, you better check your state and the classifications. Nothing was involved and day before yesterday, I went back on again and that's where I-- for the first time I saw on our bike the actual classification of what the bike was in the listing for the sic-- in the sales information. So it's-- like I said, it's, it's an evolving situation. I like-- I'd just like to see Nebraska be in the front of the evolving situation.

ALBRECHT: So when you say it's electric, do you have to plug it in when you get home?

ROCKY GOODWIN: Yes, you got to recharge the battery. Battery is good-- that's a good question. Battery is good typically for 30 to 40 miles, at least on ours. Typically good, good for 30 to 40 miles and then you have to recharge it.

ALBRECHT: And what happens if it just stops?

ROCKY GOODWIN: You're pedaling all the way. They have pedals on them, eight speeds. That one you see there is eight speeds so it's like a

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regular bike. It's just a heavy regular bike, but it can be pedaled anywhere you need to go.

ALBRECHT: OK.

ROCKY GOODWIN: Yep.

ALBRECHT: Thank you.

FRIESEN: Thank you, Senator Albrecht. See-- Senator Moser.

MOSEER: One quick one, just nosiness. How much does a bicycle like that cost?

ROCKY GOODWIN: The bikes you see in front of you were \$1,499 just like it's equipped there in the picture.

MOSEER: Thank you.

FRIESEN: Thank you, Senator Moser. Seeing no other questions, thank you for your testimony, Mr. Goodwin.

ROCKY GOODWIN: Thank you.

JULIE HARRIS: Good afternoon. I'm Julie Harris, J-u-l-i-e H-a-r-r-i-s. I'm the executive director of Bike Walk Nebraska and happy first day of hearings. LB771 should be a very straightforward, noncontroversial bill to advance for you. As mentioned previously, this bill will merely bring Nebraska statutes up to date by clarifying the definition of e-bikes. It will not address enforcement, access, or any of the other issues related to the use of e-bikes. As an advocacy organization, we can work with Game and Parks and whomever else to address the rules related to legal access in state parks or help cities that are trying to determine where e-bikes should be on their trails. We've evolved our statutory language for electric vehicles, self-driving vehicles, and other technology advances in transportation and the same is needed now with e-bikes. As Rocky outlined, they are pedal assist, not pedal replace. They are not mopeds. They're still bicycles. The three-tier classification system that's been proposed in this bill has been adopted by several other states already and is also endorsed by the League of American Bicyclists, who we see as sort of our North Star with regards to advocacy and laws and education for bicycling. The local bike shops in Nebraska will appreciate having this upstate-- updated statute that they can point to as, I think, a question before about what information did you get from your bike shop when you bought this bike? They will appreciate having some more

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updated information that they can point to because these bikes are flying off their shelves. These-- a local bike shop owner in Omaha told me recently that 50 percent of the new customers that are walking in his door are asking about e-bikes. So we know that they are going-- growing in popularity like gangbusters, for sure. In the bigger picture, Nebraska-- Bike Walk Nebraska supports e-bikes. I am an owner of a class I e-bike myself. They expand access to biking to a wider range of people for whom hilly terrain and physical limitations may present a barrier and I think Rocky and his wife are perfect examples of that. We are delighted that they are able to continue to bicycle and get good, healthy activity, enjoy the out of doors, you know what-- that little extra oomph that they get every time they, they turn their pedals. Again, these are not mopeds, so this is very simple and straightforward. It merely changes the definition and that's it and we hope that you will advance this without further ado.

FRIESEN: Thank you, Ms. Harris. Any questions from the committee? Senator Bostelman.

BOSTELMAN: Yeah, thank you. Just curiosity, do other states doing this, do they make them register or license these? Just asking.

JULIE HARRIS: No, that's not usually-- if, if those things are on the books, they're very antiquated. Those programs cost much more to enforce and to administer than they bring in in fees, so-- and they're also a barrier to use. So we, we don't support that, but that's a pretty antiquated way of-- the older way of doing things for most cities.

BOSTELMAN: Right. I'm just-- I just don't know so I just wanted to ask the question.

JULIE HARRIS: Yeah.

BOSTELMAN: And if these-- are ve-- are bicycles then-- can go on the roadways? Are they primarily off-road use? Are they on site? You know, that's--

JULIE HARRIS: They can be used anywhere that a bicycle is legal. I, I use mine for going to the grocery store. I think he said, get a little extra oomph going up the, up the hill when you got two gallons of milk in the back, it really helps.

BOSTELMAN: Thank you.

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FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? So I'm going to-- a couple of questions here maybe.

JULIE HARRIS: Sure.

FRIESEN: So by classifying the three different levels of bikes, is there any one classification where you feel they should not be on the bike trails?

JULIE HARRIS: No. I think that's-- it's up to the user because they're-- certainly, there are a lot of very skilled bicyclists in Nebraska that are racing, that are going at least that fast, if not faster, on their regular bicycle. So it's not a matter of the motor, it's a matter of the user and it's up to the user to operate that bike within their capabilities. And certainly, there are many very fast and fabulous racing types that can go just as fast under their own, under their own power.

FRIESEN: OK, so if, if none of these classes of bikes should be banned from trails, I guess why are we classifying them? Because I see once you create these classifications, I see the opportunity there for somebody saying, hey, well, this class III bike that goes 28 miles an hour, we don't want them on our trails.

JULIE HARRIS: I mean and that, that would be on a case-to-case basis, really. That would be up to that particular situation, that particular environment, that particular city to have that conversation. I think that's a, that's a, a decision better made in a specific context than-- rather than in the bigger picture.

FRIESEN: OK, thank you.

JULIE HARRIS: Um-hum.

FRIESEN: Seeing no other questions, thank you for your testimony, Ms. Harris.

JULIE HARRIS: Thank you.

FRIESEN: Other proponents. Welcome.

BENJAMIN FOLTZ: Hi. Thank you. Benjamin Foltz, B-e-n-j-a-m-i-n F-o-l-t-z. I'm here in support of LB771. I serve on the board of directors for Bike Walk Nebraska, the Nebraska Trails Foundation, and the North America Bikeshare and Scootershare Association, but I'm also the executive director of Heartland Bike Share and we're a 501(c)(3)

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organization that exists for the development, promotion, and operation of bike-sharing programs throughout the heartland region for the benefit of the general public, aimed at promoting health and quality of life, as well as mitigating climate change and promoting the use of sustainable and equitable forms of transportation. We currently operate three bike-sharing programs across Nebraska. I'm sure you've seen the BikeLNK ones here in the city, the white and green bikes. In Omaha, we're called Heartland B-cycle. And then I have my third program in Valentine called Valentine Bike Share, which is North America's most rural bike share station. I do not have e-bikes in Valentine, but at the other two programs, I do. Everything we do is about transporting people from point A to point B and that has dramatically changed since we introduced e-bikes a few years ago. We provide e-bikes now at nearly-- we have about 100-- 103 station-- bike share stations now across the two cities and they're available for anyone to use 12 or 16 and over, depending on what city you're in. Over the last few years, as we've been adding them-- and we have class I e-bikes, only Class I. And as the definition says, it's up to 20 miles per hour, but our class I bike share bikes only go up to 17 miles per hour with the pedal assist. We now have slightly over 200 e-bikes available to the general public, with another 120 coming this year. We did about 100,000 bicycle trips in Nebraska we provided last year alone. Thirty-five percent of our fleet are e-bikes, so the remaining bikes are acoustic bikes or classic bikes, as we call them in the industry, but over 70 percent of all those trips were done on e-bikes. And the primary reason the classic bikes were ridden when they were selected was because the e-bike wasn't available to them. So the extreme use of e-bikes by long-term riders has shown us the importance of bike share in local transportation. You know, it mitigates traffic congestion and creates better air and provides exercise. But as we continue to expand with e-bikes, we have a focus on ensuring the systems provide accessible transportation to all communities. And we've started providing free bike share memberships through nonprofits in these cities and we call them our equity riders and more than 90 percent of their trips are all done on e-bikes now. So I just want to stress the importance of how people are using e-bikes now to get around as a form of transportation, not so much just exercise and recreation anymore. And lastly, I'd just like to offer-- if you haven't been on an e-bike, I'd encourage you to reach out to me. I can provide a demonstration for e-bikes so you can see how they ride and operate.

FRIESEN: OK, thank you, Mr. Foltz. Any questions from the committee?
Senator DeBoer.

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DeBOER: Thank you, Senator Friesen. This is sort of following up on a question that Senator Friesen asked the last testifier. Do you think that there is any distinction between these three classifications of bikes in terms of what they should be-- where they should be allowed to go or what they should be allowed to do?

BENJAMIN FOLTZ: I think for bike share, which is what I'm an expert in, class I does make the most sense. And so if, if this was to pass, you know, I would encourage that class I is, is definitely allowed. I think it will be specific to the organization or the area that they can then choose to allow e-bikes. And if they only want class I in that area, then they could have that, but that's significantly better than them just saying no e-bikes allowed.

DeBOER: So do you-- have you found that there is somewhere where they say no e-bikes allowed in terms of the ride sharing or the bike sharing?

BENJAMIN FOLTZ: No, not for bike sharing yet, no, thankfully.

DeBOER: So is it-- what is it that this bill will do to help bike sharing?

BENJAMIN FOLTZ: I don't know if it'll actually do that much for bike sharing specific. I was just demonstrating the popularity of e-bikes and that we may need to move forward with this so there's more a uniform across the country. And it would be-- you know, like as Rocky was saying at that state park, then we would be able to have a classification that would allow an e-bike, even if they only choose the one or two classes.

DeBOER: So-- I'm sorry, do you have-- you're all in Nebraska, right? Do you have any--

BENJAMIN FOLTZ: And southwest Iowa. I have Council Bluffs.

DeBOER: Oh, you have a little bit in Council Bluffs?

BENJAMIN FOLTZ: Yeah.

DeBOER: So on the map, I think Council Bluffs is one of the ones with the three-tier classification. Is there any distinction in terms of your business model for Nebraska versus Iowa because of the differences in the law?

BENJAMIN FOLTZ: Huh-uh.

DeBOER: OK.

BENJAMIN FOLTZ: No, they work uniformly across the two.

DeBOER: All right, thank you.

BENJAMIN FOLTZ: Uh-huh.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? Seeing none, thank you for your testimony, Mr. Foltz.

BENJAMIN FOLTZ: Thanks.

TODD STUBBENDIECK: Chair Friesen, members of the Transportation Committee, my name is Todd Stubbendieck. That's T-o-d-d S-t-u-b-b-e-n-d-i-e-c-k and I'm the state director of AARP Nebraska. AARP is a nonpartisan, nonprofit organization that helps strengthen communities, promote healthy living, and empower people to choose how they live as they age. On behalf of our members, AARP Nebraska supports LB771 because we believe it will help older Nebraskans live healthier lives through promoting cycling through the use of e-bikes. The popularity of e-bikes is growing rapidly. According to the consumer research firm NPD Group, there was a 240 percent growth rate for e-bikes in the 12 months leading up to July 2021. We should have all bought stock. For older Americans, e-bikes offer that opportunity to start and for many, restart a passion for cycling. The small, battery-operated motors of e-bikes make riding less strenuous than conventional bikes while maintaining both the need to pedal and the health benefits of cycling. This is important because research has shown biking can boost mental health, strengthen the immune system, and slow the aging process, all important factors in helping people age 50-plus maintain healthy lifestyles and age in place. Promoting cycling is an important component of AARP's Liveable Communities work. In support of this, AARP Nebraska was pleased to fund a grant request submitted by BikeLNK, as mentioned previously, the bike sharing program here in Lincoln, through the AARP Community Challenge Grant Program in 2021. This grant purchased an e-bike and mobile docking station that will be used to help educate Lincolniters about e-bikes, the bike share program, encourage more people in the city to bike, including those aged 50-plus. The growing popularity of e-bikes has caused many states to pass legislation to clarify their definition. LB771, as mentioned, would implement the three-tier classification system for e-bikes that has been adopted by more than half the states. This system allows states to distinguish e-bikes from other motorized vehicles, such as mopeds and scooters and encourages jurisdictions to

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allow for greater e-bike access. The example of Wyoming has been given before that adopted the three-tier e-bike classification, classification system and the Wyoming State Park System decided to allow class I bikes in all places where traditional bikes are currently allowed, thus expanding not only the number but the diversity of trails accessible to e-bikers. AARP Nebraska hopes passage of LB771 would have a similar impact in Nebraska and boost the acceptance of e-bikes to match their growing popularity. Thank you to Senator Day for introducing the bill and Senator Hilkemann for sponsoring. AARP of Nebraska encourages the member of the Transportation Committee to support the bill and advance it to General File. Thank you.

FRIESEN: Thank you. Any questions from the committee? Seeing none--

TODD STUBBENDIECK: Thank you.

FRIESEN: --thank you for your testimony. Any other proponents for LB771? Seeing none, anyone wish to testify in opposition to LB771? Seeing none, anyone wish to testify in a neutral capacity? OK, we have one proponent letter on LB771. With that, I'll close the hearing or you wish to close and make some comments?

SAM HUPPERT: And just two small factual items. Senator Moser, you are correct that this would not direct any state agencies to do anything. It would just add a definition. And then, Senator Friesen, your question about what-- you know, what capabilities wouldn't be appropriate for state trails? I know we've cited Wyoming a few times, but they did, after they, after they passed a three-tier system, did kind of triage access. So they did only allow class I bikes on their, on their trail, so this would just leave it up completely to state agencies, but give them a tool if they wanted to, wanted to use it.

FRIESEN: OK, thank you.

SAM HUPPERT: Thanks.

FRIESEN: With that, we'll close the hearing on LB771. Next, we will open the hearing on LB934. Patiently wait for Senator Cavanaugh. Not back yet, huh?

M. CAVANAUGH: It's a license plate bill too.

MOSER: Mr. Chairman, is it inappropriate to move the agenda and go to the next subject and--

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FRIESEN: If I knew the next one was here and he's not here. Same with Senator--

MOSER: Oh. How far do we have to go to get to fresh testimony?

FRIESEN: I think he's on his way. Really glad you could join us, Senator Cavanaugh.

J. CAVANAUGH: Thanks for the invitation.

FRIESEN: OK, we'll open the hearing on LB934.

J. CAVANAUGH: Chairman Friesen, members of the Transportation and Telecommunications Committee, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB934, which would make certain license plate registration and decal provisions a secondary violation and change the penalty for the violation to a Class IV misdemeanor. Making registration and decal provisions a secondary offense speaks to reorient-- reorienting the duty of police departments around public safety and less ministerial enforcement. It will limit the number of pretextual stops and still provide for enforcement in the event of an act that endangers public safety is committed. Making the penalty a Class IV misdemeanor is far more in line with the types of offenses that failing to renew a properly registered-- displayed registration decal is. Right now, the offense is a Class III misdemeanor, an offense that carries a maximum penalty of three months in jail and a \$500 fine or both. Making it a Class IV misdemeanor would make a maximum penalty of \$500 fine and it's my firm belief that driving on an expired registration should not be a jailable offense and that-- a \$500 fine is sufficient deterrence. I'm aware of the concerns expressed by the Department of Motor Vehicles that the language in this bill was meant to continue to allow primary enforcement for fictitious plates or altered license plates inadvertently conflicted with the grace period allowed for license plates to be transferred to a new vehicle. I would be open to language from the department to suggest the remedy-- that the department suggests that would remedy that because that was not my intention with this bill. I want to thank the committee for your time and ask for your favorable consideration of LB934 and I'd be happy to take any questions. And I could probably clarify that part about the fictitious plate versus the-- so basically, there's two penalties under the statute right now; one is expired plate and one is if you have a plate from a different car, which they call a fictitious plate. My intention in this bill that I was referencing there is to make the expired plate

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a secondary offense, a Class IV misdemeanor, not the fictitious plate and that was-- which we did do, but the DMV has pointed out that in doing that, we actually eliminated a grace period of 30 days that is allowed for a carryover plate from an old car to a new car and they've-- we're working out with them to get language that would clarify that.

FRIESEN: OK, thank you, Senator Cavanaugh. Senator Moser.

MOSER: So what problem does your bill solve?

J. CAVANAUGH: Well, one, that we have a statute that allows people to be incarcerated for three months if their license plate is expired, which is, I think, a problem, a fundamental problem that we are incarcerating people for things that are not violent, not a risk.

MOSER: Have you seen anybody ever get jail time for having a expired plate?

J. CAVANAUGH: I have, I have-- I've--

MOSER: They must have had some other problems beyond that.

J. CAVANAUGH: I mean, you-- have they had other encounters with law enforcement? Sure. I've seen people that have been incarcerated on that charge solely before as well. Not that they haven't had any other encounters with law enforcement or with the criminal justice system besides that, but on-- when that was the only offense they were facing, I have seen people get jail time on that offense.

MOSER: What about those covers that make your hard-- license plate hard to read by cameras? Is that, is that addressed in your bill?

J. CAVANAUGH: It is not. I wouldn't be changing that section of the statute or wouldn't be attempting to change anything pertaining to that. This is merely changing when your license plate expires and you haven't gone to the DMV or sent your thing back and gotten new tags and put the new sticker on saying that you renewed your license plate, it's merely addressing that situation. So saying--

MOSER: If you paid your registration and didn't put the sticker on or the sticker fell off, are you guilty of the same infraction or--

J. CAVANAUGH: You are technically supposed to affix the sticker, but the police-- and I think we'll have some people from law enforcement answer this. They, they will run the plate and see and they can see

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whether it's up to date or not on their system generally. So my guess is if you are up to date and the sticker is not on there, I would-- again, they can probably answer this better than I, but I would think they may not pull you over for that, but you are supposed to affix the decal as well.

MOSER: If they check the plate and it says it's supposed to be a pickup and it's really on a Volkswagen--

J. CAVANAUGH: Right.

MOSER: --is that illegality addressed by your bill?

J. CAVANAUGH: That is the section I was talking about with what we call fictitious plates versus not registered or expired plates. And so a fictitious plate, under the current statute, they are in the same section and I'm bifurcating it into two sections; one where a fictitious plate is still that Class III misdemeanor and the failure to reregister is a Class IV misdemeanor.

MOSER: And the lower number of misdemeanor is a more serious crime than the larger number?

J. CAVANAUGH: Yes. I had to think about that one.

MOSER: Yeah, well, sorry I asked it.

J. CAVANAUGH: No.

MOSER: And does this have anything to do with in-transit stickers and making your own in-transit stickers, which for some reason or other is illegal, I understand?

J. CAVANAUGH: No, it would not address that either. This would just address basically the carryover plates. So I believe license plates are affixed to a car for a certain number of years-- three or five years, I can't remember which-- but-- and then every year, you just get the new decal that you talked about and failure to pay your taxes and get your new decal and driving around in that period between when your last year has expired and that you-- and renewing the new year, that is what we're talking about with this Class IV misdemeanor, so.

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Senator DeBoer.

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DeBOER: Thank you, Senator Friesen. Senator Cavanaugh, for the, the expired plates portion, what would be the enforcement mechanism then for someone to make sure that, generally speaking, people in a community were getting their plates renewed on time and paying the fees that they needed to?

J. CAVANAUGH: Well, that's-- I mean, the DMV is the-- is generally the enforcement agency for getting license plates to the Treasurer's Office. And so you have to go to the treasurer and get your license, but-- and the police could still enforce this as one-- a secondary offense. So maybe if they stop you for a turn signal violation or anything else, a moving violation, broken tail light, they can add this to that. What this bill is saying is that this, this ministerial objective of making sure people are paying their vehicle registration tax does not rise to the level of requiring a law enforcement stop of someone. And so saying this doesn't, doesn't meet that standard so we should stop stopping people with that because we know (1) law enforcement is overtaxed, overburdened with having to stop people and, and we should take things off of their plate and (2) when law enforcement comes into contact with people unnecessarily, those are types of situations we want to just diminish the number of times that that's happening. And so that's what this seeks to do. So it would, it would not-- it would-- it would still be under the same situation. I mean, the treasurer sent me a letter. When I needed to renew my plate last year, they sent me a letter that said I needed to renew my plate and then if you don't renew it they're-- you know, I think there's additional costs associated with that if you're delinquent. And so that's-- same as any other-- the-- like, like with your property taxes or like with your income taxes that we don't send the sheriff to your house, you know, if you're a month overdue on your property taxes. It goes through an administrative procedure with liens and with, you know, the land sale and those sorts of things. So we don't have a law enforcement contact for tax delinquency in other situations. We have-- we ideally have law enforcement contact in issues of public safety.

DeBOER: OK.

FRIESEN: Thank you, Senator DeBoer. Senator Hughes.

HUGHES: Yes, thank you, Chairman Friesen. Thank you, Senator Cavanaugh. So did you-- did I understand you correctly that you were going to bring language to make sure that we're only dealing with plates that have-- are not current and not the plates that are on another vehicle?

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J. CAVANAUGH: The language is already in there, but inadvertently in making that distinction and correction, I actually made-- took away a grace period that the DMV includes for when you get a new vehicle and you have old plates on it for 30 days before you get the new plates. And so that, that is, something the DMV has spoken to me about, making sure that we reinclude that distinction, but we are still-- it's, it is still the same level of offense, a Class III misdemeanor, for putting plates that are not associated with your vehicle on your vehicle. That would remain the same.

HUGHES: So are you bringing that language to this committee or how is that-- how are we fixing this?

J. CAVANAUGH: Oh, for that correction, I would-- well, we're still working on it with the DMV. But yeah, we will bring language to make that correction that they asked for.

HUGHES: OK, but you are bringing in to--

J. CAVANAUGH: I will bring it--

HUGHES: Chairman Friesen?

J. CAVANAUGH: --to the committee. I will--

HUGHES: OK.

J. CAVANAUGH: Yes.

HUGHES: So then just, just so I'm clear, so making the we'll call them expired plates as a secondary offense similar to not wearing your seatbelt. I mean, it's not a primary offense that the law enforcement can pull you over for, but if you are pulled over for some other violation than that, that can be tacked on. Is that-- that's correct?

J. CAVANAUGH: That's correct.

HUGHES: OK, thank you.

FRIESEN: Thank you, Senator Hughes. Any other questions from the committee? So over the years, I've had probably a few more emails from Omaha people saying, why don't we make people register their cars? They're driving around with expired plates. And if we do this, I think it multiplies the problem because that-- how do, how do we enforce it then? Because again, it will be a secondary and if people are not licensing their plates-- getting their cars licensed now-- I mean,

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I've had suggestions we impound the car if they're not up to date, you know, much less send someone to prison. But you know, they're not paying their fair share of the revenues, they're not paying their taxes--

J. CAVANAUGH: Yeah.

FRIESEN: --and, and nobody does anything, even though it's a primary offense now already. Is there a way to fix that?

J. CAVANAUGH: I think that there are ways to fix that. I just think that when we're talking about traffic stops, which is what we're talking about here, that is (1) as you're pointing out, is not solving the problem currently and (2) is not an appropriate remedy for a ministerial problem. And we need to get away from using law enforcement to solve all of our problems. We're asking law enforcement to, you know, make us safe, to handle our mental health issues, to help with our homelessness issues, to help with all these things and we're asking them to be our tax collector essentially in this situation.

FRIESEN: Should we just authorize tow trucks to tow any truck that isn't licensed?

J. CAVANAUGH: I'm not proposing that, but--

FRIESEN: I'm just asking.

J. CAVANAUGH: --but I do think that there is, is room to work with the county, the treasurer's office, the DMV to enhance their enforcement mechanism.

FRIESEN: OK.

J. CAVANAUGH: But I do think we should get away from using police to do that.

FRIESEN: OK, thank you. Senator Geist.

GEIST: I just thought of something-- and you can just comment-- just a scenario that could possibly happen, that if a law enforcement officer needed to pull someone over of suspicion of something, they have good intel that this vehicle could be have been involved in whatever, but what they do have-- they have the thought that maybe this could be, but they see that tag and it's expired. So if it's primary, it gives them a reason to pull that vehicle over to investigate further on

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their suspicion. This would take that away, correct, unless they did a turn signal improperly or whatever?

J. CAVANAUGH: So the scenario you're laying out happens every day and it's called a pretextual stop and it's where law enforcement does not have a reason to pull somebody over and so they pull the person over for some other lesser offense and then try to build from that. And that is exactly the reason that we should, we should have this bill is to stop that situation.

GEIST: But is that not sometimes a valuable tool?

J. CAVANAUGH: I suppose it depends on your perspective. If you think that we should be pulling people over on gut for not--

GEIST: Well, it could be more than gut.

J. CAVANAUGH: Well, if you have probable cause to pull somebody over to stop them, then you have probable cause to stop them. You don't need a pretext to stop them and then continue the search after that.

GEIST: OK.

J. CAVANAUGH: And so I think I--

GEIST: So it's just a difference of perspective, I think.

J. CAVANAUGH: So-- yeah, we shouldn't be infringing people's rights of movement. We shouldn't be stopping and detaining people without a good reason and what I'm saying is--

GEIST: Well, but that--

J. CAVANAUGH: --the failure to pay your taxes is not a good reason.

GEIST: --wouldn't be a detaining. I mean, that's--

J. CAVANAUGH: Well, a traffic stop is a stop.

GEIST: Right.

J. CAVANAUGH: And the detention.

GEIST: OK. We just have a difference of perspective.

FRIESEN: Thank you, Senator Geist. Senator Moser.

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MOSER: You know, if, if police are not, you know, overly taxed at the particular time that they see somebody with an expired sticker, might they follow them around and wait for him to cross a line or wait for them to forget to signal? I mean, there's certain profiling-- well, there may be certain profiling in some drug stops. You know, they see them forget to signal or they're speeding or they're whatever and then they look at the car and search it and they find drugs in the car. Maybe they would start doing-- watching for other infractions just so they could give you a ticket for having expired stickers. I mean, it might-- your bill might cause more problems than it solves.

J. CAVANAUGH: I'd be surprised if they follow people for a turn signal violation to get the tail-- the ticket or the-- get them a ticket on that.

MOSER: It might have to be a slow day.

J. CAVANAUGH: You know, they-- the scenario you're, you're laying out, it also happens every single day where they follow people until they touch the center line or until they make a right turn without a turn signal.

MOSER: I think you got to have your wheel all the way over the line technically, but yeah.

J. CAVANAUGH: Well, we-- I-- in my previous life, I could have shown you quite a few videos where it's less egregious line crossing than that, but yeah, I mean, your point is exactly right that there-- that we can't solve every scenario, right? We can't solve, prevent every stop and I have no interest in preventing every stop. What I'm saying with this bill is that we shouldn't be stopping people for-- particularly for a thing that is not a risk. We shouldn't be stopping people, making traffic stops. A turn signal violation is a moving violation, which means there is an inherent amount of you don't signal, you could cause harm to somebody crossing-- in the crosswalk, somebody oncoming, or whatever, right? But a license plate merely means that the car has not been-- the registration has not been updated with--

MOSER: They haven't paid their tax.

J. CAVANAUGH: They paid their tax within a timely fashion, which is not a moving violation and therefore is not a danger to anyone else on the road and so it's not--

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MOSER: But the officers have discretion. They are not required to pull somebody over if they see an out of date sticker.

J. CAVANAUGH: Oh no, they're not, they're not required to pull something over if they would turn signal violation either.

MOSER: Yeah, I'm-- because I forget to signal and I don't get pulled over much, so. Thank you.

FRIESEN: Thank you, Senator Moser. Senator Cavanaugh.

M. CAVANAUGH: Thank you. These questions have sparked maybe some clarification from you. I know we've discussed this previously, but when I was looking at this bill, I have wondered why it wasn't in Judiciary because it changes crimes and you keep talking about it being administrative, yet the questions here continue to be, I guess, crime related.

MOSER: Judicial.

M. CAVANAUGH: Judicial, thank you. And I just wanted to give you sort of an open ended if you wanted to speak to that.

J. CAVANAUGH: Well, I appreciate the comment and the interest from everybody, of course. Yeah, so this is currently a criminal statute and I'm not taking it out of the criminal statute of course. I'm just lowering the threshold from a Class III to a Class IV misdemeanor, which is still a criminal penalty, still a misdemeanor, but the enforcement of it, I think, is more akin to other tax problems, which is ministerial and that we should not-- we should get away from using law enforcement for that purpose. And we all have, I think, been paying attention in the last two years, particularly about how we are interacting in our society with law enforcement, and this is one of those ways in which we can diminish the necessity for law enforcement to have to take action and diminish the, the obligation for, for them to feel that way, though, as Senator Moser pointed out, they're not obligated. They don't-- they aren't going to have to pull over everybody they see with an expired plate, but we just take it off the table and then it's not even a question of discretion in that situation. And we're making a statement as the Legislature to say, we don't think that people should go to jail, one, for not paying, not paying their license plate on time and that people shouldn't have-- be detained, which is what a traffic stop is, is a-- a brief detention is a detention because you are not free to go when you get pulled over by law enforcement-- be detained for that same minor infraction and

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offense. And so I do think we should push this more into the realm of ministerial as opposed to law enforcement.

FRIESEN: Thank you, Machaela Cavanaugh.

M. CAVANAUGH: Thank you.

FRIESEN: Senator Hughes.

HUGHES: Thank you, Mr. Chairman. Do you, do you have any kind of numbers or anything that would indicate the number of traffic stops that are initiated because of expired tags versus other-- I mean, does this-- is law enforcement using this to excess? Is that where this is coming from or--

J. CAVANAUGH: No. Well, I, I, I don't think they're using it to excess for sure. I mean, I think that they are probably-- I mean, everything-- on a case-by-case basis, I think it- you know, some people may, you know, a particular officer or whoever it may think, oh, this is the thing I'd like to use or whatever they may rely on in that sort of situation. Well, for one, that kind of data I think it may be hard to collect, but I'll look and see if I can find it for you.

HUGHES: Just curious.

J. CAVANAUGH: But no, I-- this is more of a philosophical question, I think, than it is about the actual pure number of offenses, at least for me. Maybe if anybody else testifies after me, it may be more data driven than philosophical. But to me, this is-- just falls into the category of things we don't need to be doing and so why do it?

HUGHES: Thank you.

FRIESEN: Thank you, Senator Hughes. Seeing no other questions, I just assumed we were the better committee.

J. CAVANAUGH: I'm sorry?

FRIESEN: They sent it here because we're just better.

J. CAVANAUGH: Well, I love coming to TNT. I'm here for the next bill as well.

FRIESEN: We're more friendly.

DeBOER: They're both equally good, right, Senator Geist?

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M. CAVANAUGH: You, you forgot. That's a statement he's telling you, you forgot to make.

J. CAVANAUGH: Oh, that this is the best committee?

M. CAVANAUGH: Yeah.

FRIESEN: OK. Proponents for LB934. Are you going to come back for closing or staying?

J. CAVANAUGH: I will be right back.

FRIESEN: Welcome.

MATT KOSMICKI: My name is Matt Kosmicki, M-a-t-t K-o-s-m-i-c-k-i.. I'm testifying today on behalf of the Nebraska Criminal Defense Attorneys Association in support of this bill. This bill does two things that we support. First of all, it moves something which is probably more of a negligent type of behavior and making it non-- well, no jail time to-- for it and moves it down into the Class IV range, which was more appropriate and I think probably better policy. The primary offenses, I think, are probably better suited for kind of safety issues like speeding, failing to save-- or lane change, signal a lane change, driving a car that doesn't have the right equipment on it like a bad tire or missing a bumper or those kind of things versus something like this, which is negligent, which is where we already have secondary offenses like that, which is negligent for using your cell phone or a seatbelt or something like that. I don't think that this takes away some of the community's concerns about law enforcement not having a tool. I've, I've been a lawyer 22 years in April. I have looked at thousands of these kind of traffic stops and these kind of failure to license your car is always accompanied with other offenses. It's not hard for officers to develop reasonable suspicion to pull thing-- people over. I think you've alluded to some; failing not to signal, I think your tires has to touch.

MOSER: Is that, is that the rule?

MATT KOSMICKI: The bottom line is that's enough to pull someone over. There's the ever-elusive following too closely, which is a very subjective one. So there's lots of other things that if an officer is diligent enough, most people-- I'm afraid to say Nebraska drivers are bad about that. They violate the rules of the road somehow. If, like, Senator Geist, you said they have some intel out there, they can still follow a car. If they don't see any traffic violation, they can walk up to those people and still talk to them and do kind of Terry type

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stop, you know, and ask them information and they can-- usually a reasonable suspicion is developed that way. So I don't think it takes away anything as far as developing, if you're following up on leads, using this to pull someone over. What really happens is-- and one of the things I think is really sad is, is for people who are poor, like the single mother, marginalized people who get into this cycle of they can't get their license and get legal like we want them to do. Because they're going to get this ticket, they don't know enough to go-- or they don't have money and they're trying to get a job. I can think of one. There was a woman-- and not to pull any heartstrings here, but she was driving across the country to get away from a domestic violence situation in another state, broke down here, you know, got some assistance, got some place to live, but had a hard time getting her car licensed and everything and get her kids to school. And I think that what it does is just they get these kind of tickets, they ask for a time to pay, they still can't raise up those funds to get, you know, the car licensed and tagged and everything else they got to do and so they just-- and then they get another ticket and another ticket and we're-- all we're trying to do is get them up on their feet. You know, these-- it's just is the cycle of not getting their-- being able to get their car legal is a real problem and we want them to do that. And a lot of people are really trying. They really are. So I think this does what-- it's a good policy decision on the state's behalf. Moving something that isn't an intentional thing, like swapping plates-- that's definitely criminal. That's still in this bill. But move something that's not probably intentional decision like the swapping the plates in those kind of things and moves it to a secondary offense which they will cite them for. They're not going to-- they're going to put that on there. They-- I think most law enforcement thinks that the prosecutor can use that discretion and not filing that ticket or not, but I think most prosecutors will, so it's-- and it's always-- there's other reasons, trust me, so--

FRIESEN: Thank you, Mr. Kosmicki. Any questions? Senator Geist.

GEIST: Just one quick question. It's good to see you.

MATT KOSMICKI: Good to see you.

GEIST: In your scenario, that could happen if it's secondary as well, right?

MATT KOSMICKI: In what scenario? I'm sorry.

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GEIST: In your scenario of the woman driving across the country and-- I mean, she can still get cited if it's secondary and that cycle--

MATT KOSMICKI: Right, right.

GEIST: --happens, so--

MATT KOSMICKI: But, but she's not going to be the higher felony where the penalty is higher. You know, and they could get jail time. Now, I haven't personally seen that. But I had one case where I caught-- where a judge really-- I thought she was going to give this guy some kind of jail time because she said, you had this in your past, you know, like 10 or 15 years ago, and he has like three or four work trucks and he-- and took the one truck that he-- because the other one broke down, he didn't use that often and forgot about it and got a ticket and I thought this is no big deal.

GEIST: But that would typically be a one-off. I mean, our judges are not incarcerating the masses of people because they haven't--

MATT KOSMICKI: Not that I, not that I've seen. But, you know, they still get that tick-- they get the higher fine, right, and there's still-- these are people that are shoestring budgets. You know, they're, they're--

GEIST: Yeah--

MATT KOSMICKI: --trying to get by.

GEIST: --I, I understand that.

MATT KOSMICKI: Yeah.

GEIST: That-- I was just making that--

MATT KOSMICKI: Yeah.

GEIST: --other point. OK.

FRIESEN: Thank you, Senator Geist. Any other questions? Senator DeBoer.

DeBOER: Thank you, Senator Friesen. This is Transportation and Telecommunications. Can you help give some context-- I thought maybe you might-- and maybe you don't have this memorized-- first, what are the fine levels for Class IV misdemeanors?

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MATT KOSMICKI: I thought I looked it up before and I thought Class IVs were \$100, but I might be wrong.

DeBOER: OK.

MATT KOSMICKI: I thought a Class IV moved it to \$100, but could be wrong.

DeBOER: And then Class, Class III?

MATT KOSMICKI: Class III I think is \$500--

DeBOER: Five--

MATT KOSMICKI: --I know that for sure, yep.

DeBOER: And do you know, what are some other Class III misdemeanors and Class IV misdemeanors so we can kind of get some context.

MATT KOSMICKI: Well, a Class III misdemeanor would be something like disturbing the peace. I can't think of another example because that's the one I see the most. It would be a disturbing the peace. Other Class IVs, I think that's, you know, that's usually a traffic stuff. I think it's a \$100 fine.

DeBOER: OK.

MATT KOSMICKI: I'm pretty sure, but I can't give you a specific example off the top of my head.

DeBOER: No, thank you.

MATT KOSMICKI: Yep.

DeBOER: That's helpful.

MATT KOSMICKI: Um-hum.

FRIESEN: Thank you, Senator DeBoer. Senator Cavanaugh.

M. CAVANAUGH: Thank you. So my first question is how long have you been practicing as a defense attorney?

MATT KOSMICKI: The entire time.

M. CAVANAUGH: I mean, like, what year did you start? Sorry.

MATT KOSMICKI: Well, I started in 2000.

M. CAVANAUGH: OK because-- I was looking this up. So for five-- the first five years you were practicing as a defense attorney, this was not in statute.

MATT KOSMICKI: Right.

M. CAVANAUGH: And are you seeing a-- that the-- our roads are safer than they were from your first five years now that we have this in statute or--

MATT KOSMICKI: Well, I don't know that this-- that they are that safer. I mean, I mean, I think that, you know, you see traffic deaths are down year from year to year and I think that-- I don't see how this plays into that. You know what I mean?

M. CAVANAUGH: Sure.

MATT KOSMICKI: It's, it's a, it's a-- the ones--

M. CAVANAUGH: Do you see more people coming into the courtroom then--

MATT KOSMICKI: More people, yeah, yeah more people.

M. CAVANAUGH: --as a result of this.

MATT KOSMICKI: Yeah, I see-- well, I see more people with these kind of tickets, yes.

M. CAVANAUGH: And--

MATT KOSMICKI: And driving under suspension, there's just-- it seems there's a large group of them that are coming in on these lower traffic offenses and it's just a revolving door.

M. CAVANAUGH: Yeah. Could you take us through that? So somebody comes in on just this traffic offense alone--

MATT KOSMICKI: Right.

M. CAVANAUGH: --and then typical-- what's a typical two years of that person's engagement with you as a public defender?

MATT KOSMICKI: Well--

M. CAVANAUGH: A defense attorney, I'm sorry.

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MATT KOSMICKI: Defense attorney. Well, I know-- you know, they can't come to me-- I mean-- that much, but what they-- what they'll get is they'll get a fine. You know, they have to pay it, time pay. Something always comes up that they can't--

M. CAVANAUGH: Yeah, a \$500 fine couldn't be much more than the actual--

MATT KOSMICKI: Right. Something comes up, they forget to ask for an extension, then they get sent a notice or failure to comply to DMV. You know, they didn't comply with traffic ticket, those kind of things. And they have to, you know, they have to take care of that. I don't-- I'm not sure if this suspends their license or not. It's a nonmoving violation. Some-- a lot of moving violations will suspend their license if they don't take care of it. Then they got to go through that mess will-- and reinstate and all that kind of thing. But, you know, they keep-- they'll keep getting these tickets. I mean, when-- it wouldn't be just people like this, but when I see people sentenced on other crimes and we get the presentence reports and you read their prior criminal histories, it's surprising how many times, you know, almost regularly improper registration, improper registration, improper registration or fictitious plates, those kind of things. They get a lot of them and, you know, it just adds up.

M. CAVANAUGH: If you were to get this violation now, you would have to show up in court.

MATT KOSMICKI: Right.

M. CAVANAUGH: OK. And this bill would not require you showing up in court unless there was additional--

MATT KOSMICKI: As I understand it, yes.

M. CAVANAUGH: It would just be paying a fine.

MATT KOSMICKI: Right.

M. CAVANAUGH: OK, thank you.

MATT KOSMICKI: Yep.

FRIESEN: Thank you, Senator Cavanaugh. Senator Geist.

GEIST: OK. I was just looking up the Class III and Class IV and they're both \$500 actually, but a Class IV, there's no--

MATT KOSMICKI: No jail.

GEIST: --opportunity of jail.

MATT KOSMICKI: Right.

GEIST: It could be a IIIA, which would have seven days in jail, a maximum of seven days, and a III would be a maximum of three months.

MATT KOSMICKI: And a \$500--

GEIST: And then the Class IV, there's just no jail time. They're-- but they're both \$500--

MATT KOSMICKI: OK.

GEIST: --so. Anyway, it's a Class V that's the \$100.

MATT KOSMICKI: I rarely see a Class IV misdemeanor.

GEIST: A Class V misdemeanor?

MATT KOSMICKI: A Class IV and we talk about moving this from a Class III to--

GEIST: No, a IV is actually \$500--

MATT KOSMICKI: Right, OK.

GEIST: --and a III is \$500. The only difference between the two is the, the jail time--

MATT KOSMICKI: Right.

GEIST: --the potential of jail time, so anyway.

MATT KOSMICKI: Thank you.

GEIST: I just thought I'd throw that out there--

FRIESEN: Thank you, Senator Geist.

GEIST: --for the record.

FRIESEN: Thank you, Senator Geist. Senator Moser.

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MOSER: Does the officer that does the traffic stop have the discretion to just give a ticket that they can just pay instead of going to court?

MATT KOSMICKI: I don't think they have any discretion on making it an infraction. It's-- I think there's a schedule for infraction versus the court thing. I don't think they have that discretion.

MOSER: Well--

MATT KOSMICKI: I mean, they can do a discretion like a fix-it ticket, like that kind of thing.

MOSER: Yeah.

MATT KOSMICKI: Yeah, they could do that for sure.

MOSER: Yeah because I was going to say I've gotten pulled over for that.

MATT KOSMICKI: Yeah.

MOSER: I didn't have to go to court.

MATT KOSMICKI: No. Yeah, you can do a-- yeah, a fix it-- like a fix-it ticket is what we call that.

MOSER: Yeah, I just figured out I had to pay my tax.

MATT KOSMICKI: Right, right. One other thing I don't know as far as enforcement that you said one time-- I-- one-- I think that-- this was a while ago, but I thought we had in Lincoln here kind of parking enforcement walking around and handing out tickets. I could be wrong for improper-- you know, like the ticket that are plates that have expired and that was a notice, just like a parking ticket put on their window, you know, to take care of that. But I haven't seen that in a while, but that was a while back.

MOSER: Thank you.

MATT KOSMICKI: Yep.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? The only comment, again, is typically people that don't have a vehicle that's properly registered, they also probably do not have insurance. And so that starts to bother me a little bit when an officer can't stop a car because of their expired tags and now, you

know the insurance probably expired also and, and now we have a liability on the streets and that part. I mean, is there, is there a better way to address this? There doesn't seem to be any to me, I-- than, than leaving it a primary offense so that people have-- know there's going to be somebody looking.

MATT KOSMICKI: Well and that's true. Sometimes they don't have insurance. You're right. But a lot of times, you know, they may have-- that may be the-- they may have insurance. I don't know that it's always together with that. I mean, some-- a lot of times, it is and sometimes it isn't. I think at this-- leaving it where it is captures those people who do have insurance, but just get this, this improper ticket or improper registration ticket. They have to take care of that, but. And so then it's another financial burden on top of them-- that that takes-- well, then they don't have money for insurance, you know, and then that's a way they will get suspended for no insurance.

FRIESEN: OK. Seeing no other questions, thank you for your testimony.

MATT KOSMICKI: Thanks.

FRIESEN: Any other proponents?

SPIKE EICKHOLT: Good afternoon. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska testifying in support of this bill. We want to thank Senator John Cavanaugh for introducing the bill. I'm not going to be repetitive, but I just want to summarize there's two things the bill does. One is it, in our opinion, rightly makes a distinction in the law for someone who does a deliberate, intentional, fraudulent act in the form of fictitious plates or, I think the example that Senator Moser gave of taking one plates that's properly registered off of a vehicle and putting it on a vehicle that's not properly registered. It keeps that as a Class III misdemeanor, which as Senator Geist mentioned, is a possible jailable sentence. And in many respects, that-- perhaps that penalty, that level of criminality ought to have at least some actual consequence. And it makes a distinction between someone who does not register their vehicle either because they have lost their insurance or they can't afford to pay the registration fee and their plates are expired and right now, there is no distinction. As, as Mr. Kosmicki mentioned, when you look at someone's record, a lot of times the entries are interchangeable, say improper registration/fictitious plates, improper registration/no-- and no insurance, those kind of entries that you see on the record. In our opinion, there ought to be some sort of proportionality, if you will,

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for those two levels of offenses. The second thing this bill does that I think the committee is sort of maybe grappling with or debating a little bit more is it moves an expired registration citation offense to a secondary offense. Generally, the law is any traffic infraction, no matter how minor, no matter how petty, is probable cause to stop a moving vehicle unless the Legislature extends protection for the driver, which the Legislature has done in cell phone usage and the Legislature has done that in seatbelts, at least for adults having-- adults and seatbelts. This would put this secondary offense-- this crime as a secondary offense as well. There is a certain utility, if you will, for law enforcement to have this as a primary offense, as Senator Geist alluded to. The problem with that, we would submit, is that what that means is that people who are poor are more likely to be stopped because of that. And that unfortunately seems to match people of color and that's why, in our opinion, you have-- for some of these infraction-like offenses, you have that scenario where you have an incident of racial profiling. This is what we mean when we talk about it being systemic. It's not necessarily because individual officers are racist. I would submit many of them that are not, but they are tasked with these jobs of basically operating as a sort of a armed collection entity for the local county treasurer's department. And they tend to hit people who are more likely to be poor and therefore more likely to be people of color. It does lead, when someone is stopped [INAUDIBLE] crime, many times a discovery of other actual crimes that are maybe more serious and that is also maybe another function, if you will, of this. But there's a lot of instance where people are stopped, people are given a warning ticket, and they're just let go or they're just cited for this alone. And what does that mean? That means you have a population that is perennially overpoliced in this, in this setting. And that's something that bothers us and that's one thing we urge the Legislature to look at or this committee to look at. To answer Senator Hughes' questions, I looked at the-- the Crime Commission does a sort of assembly of racial profiling stops and what they include in their annual summary of the number of traffic stops in Nebraska. And last year, it was just a little bit less than 300 stops, traffic stops for various infractions. That was actually a 23 percent lower than the year before because of COVID because many law enforcement agencies just sort of tried to minimize the amount of in-the-field interaction between their officers and people in the community. So we're talking about, if I did the math right, about 350,000 stops a year in Nebraska for traffic offenses. I couldn't tell you how many are for improper registrations. I'd say a lot of them are, just being anecdotal in the time that I've practiced. If the committee is reluctant maybe to lower this to a secondary offense, I

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still think there is a lot of merit in what Senator Cavanaugh has done in making the two-- and splitting the crime itself because right now, it's just sort of lumped in as one offense. And I'll answer any questions if you have any.

FRIESEN: Thank you. Senator Moser.

MOSER: I don't know if this is something that you're-- if you have an opinion on, but if a person gets pulled over for something more serious and they look at their record and they have prior offenses of fictitious plates or unpaid plate tax or whatever, does that get them a more serious sentence to whatever else they're accused of? I mean, does your prior record weigh upon the judges or the jury's decision about what penalty they give you?

SPIKE EICKHOLT: I think it does. It's usually not ever going to get in front of a jury. It's typically-- someone's going to end up in front of a judge and what they see sometimes-- and the judges do express-- and I think it's more frustration on the judge's part because they have-- they see somebody in front of them who's got multiple offenses for improper registration, not having proof of insurance when they're stopped, driving on a suspended license. A lot of times the judges, particularly in Lancaster County, are very charitable, if you will, about giving more time for people to get their license reinstated. But a lot of times, people, simply because of financial inability, just can't keep up and that was that cycle that Mr. Kosmicki was talking about before. They can't afford the insurance, they get a citation, they got a fine. If they don't pay the fine by a certain date, their license is suspended. If they manage to get all these back fees paid for, court costs and get insurance, they still have to pay a reinstatement fee to get their license. So I do see frustrations when judges see a lot of people with those kinds of entries.

MOSER: You're really not supposed to be judged on prior convictions, correct?

SPIKE EICKHOLT: Oh, not at all. That's one of the main factors that courts are allowed-- explicitly allowed to consider, a history of law-abiding conduct, and that translates as basically their prior record.

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? Senator DeBoer.

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DeBOER: Mr. Eickholt, I think you'll probably be able to answer this question. Are there other Class IV misdemeanors that you can think of--

SPIKE EICKHOLT: Yes.

DeBOER: --or were you able to think of any? Yeah.

SPIKE EICKHOLT: You see a lot of Class IV misdemeanors for regulatory offenses. I'm going to be testifying in front of another committee today against an increase in penalty, but when I was looking at the related statutes, I saw a lot of Class IV misdemeanors. So if someone has got a duty, say, as a condition of their public office and they fail to do that, it's a Class IV misdemeanor. It's a fine, there's no possible jail with it, and that's kind of the level of offense. Class III misdemeanors are your lowest level state law violation, which jail is a possibility. Disturbing the peace is a common one, minor misrepresenting age like a fake I.D. is another one. Disturbing the peace is kind of a catchall, default crime that assaults and other things are often reduced to. So that can be kind of a serious level of crime and I think it would make some sense to make a distinction, again, as I-- as we explained before, between someone who neglects a duty under statute versus perhaps someone who intentionally violates a statute.

DeBOER: Yeah, this goes to the-- so if we're talking about it-- in crime, we talk about the intent factor in a crime and it seems that the Class III misdemeanor has an intentional aspect to it. I'm just not sure what all was is in Class IV misdemeanors and it sounds like maybe that's more of a negligent or something intent factor that's a little less than intentional.

SPIKE EICKHOLT: That's right.

DeBOER: OK, thank you.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? Seeing none, thank you for your testimony. Any other proponents for LB934? Seeing none, anyone wish to testify in opposition to LB934?

MICHELLE WEBER: Good afternoon. My name is Michelle Weber, M-i-c-h-e-l-l-e W-e-b-e-r, and I'm testifying in opposition to LB934 on behalf of the Nebraska County Attorneys Association. LB934 would prohibit policing license plates and registration fees. As this committee has rightly questioned, why would anyone in Nebraska

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continue to license their vehicle and pay registration fees if this was no longer a law that could be enforced on its own? Enforcement of this law is what ensures that vehicles are properly licensed and registered and that can, in some instances, be an intentional decision. Enforcement of 60-399 does in fact have valuable public safety benefits. It's primary enforcement of this very law that often leads to discovery of stolen vehicles. It leads to enforcement of other laws related to drug possession and the like. Enforcement leads to removing impaired drivers from the roads and stopping possession of illegal weapons. Advancing this bill would essentially be saying that we want less policing in Nebraska and for that reason, the County Attorneys Association urges you to oppose LB934.

FRIESEN: Thank you, Ms. Weber. Any questions from the committee? Senator DeBoer.

DeBOER: Hi. Thank you, Senator Friesen. So it sounds like the, the main portion of your testimony regarded the-- making it a secondary offense as opposed to a primary offense. Do you know-- do the county attorneys have a position with respect to changing the late payment of their, their fee-- their sticker fee to a Class IV misdemeanor from a Class III?

MICHELLE WEBER: They did not take a position on that penalty classification change.

DeBOER: OK, thank you.

FRIESEN: Thank you, Senator DeBoer. Senator Cavanaugh.

M. CAVANAUGH: I had a similar question. So just for clarification, the county attorneys are fine with it being a fine?

MICHELLE WEBER: I would say that they didn't take a position with changing the penalty classification.

M. CAVANAUGH: OK.

MICHELLE WEBER: They were more concerned about using this as a primary enforcement mechanism.

M. CAVANAUGH: And do they currently use improper displaying of a house number as a primary offense enforcement mechanism?

MICHELLE WEBER: I'm, I'm not aware if they do or don't, if that's a reason that law enforcement would--

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M. CAVANAUGH: Maybe law enforcement can answer that.

MICHELLE WEBER: Yeah.

M. CAVANAUGH: Thank you.

FRIESEN: Thank you, Senator Cavanaugh. Any other questions from the committee? Seeing none--

MICHELLE WEBER: Thank you.

FRIESEN: --thank you. Any others wish to testify in opposition to LB934?

JIM MAGUIRE: Senator Friesen, senators of the Transportation and Telecommunications Committee, good afternoon. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police and we are here to oppose LB934. Before I start getting in too far into the weeds, it sounds like some of the-- there may be some amendments that are going to be made. Our primary opposition has to do with the fictitious plates. I have been a law enforcement officer for over 30 years. I did the majority of my career with the Douglas County Sheriff's Office and I'm currently an Omaha police officer. I have pulled over probably over 1,000 cars in the course of my career. If you see somebody with fictitious plates, these are going to be the three primary culprits: it's either a stolen car, the plates are either stolen, they're just not reported. The other part is the driver is suspended or the car simply isn't insured. And I know how many car accidents where we have to go to where people don't have their vehicles insured and that is a big problem within this state. I know that they're talking about making it a secondary offense and giving a 30-day grace period on everything else, so just so that everybody is aware. When we pull somebody over for expired plates, we will inform them they have ten days to go down to the county attorney or city prosecutor's office, show them that they-- their plates are properly registered, and they void the ticket. So they're already beyond the, the expired plate kind of criteria. So if they don't want to-- if, if, if they're not going to get it registered within 12 months, what makes you think they're going to get it done in 13? They're not going to do it. I understand the dilemma that everybody has with policing the poor and everything else, but when people call us up and say, can you please go to this house because they have four unregistered cars and I have to, I have to make do paying my taxes, why can't they pay theirs? There's a wheel tax in the city so that they can maintain those streets and it, it is, it's all inclusive. We have to, we have to

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figure out a way to pay for it somehow and this is one way the city of Omaha does it. But no matter what, I mean, you will tell us how you want us to police and everything else and we absolutely will. But in this instance, this is a-- it's an unnecessary bill when it comes to fictitious plates. Regarding whether or not it should be a Class IV or what have you, that's, that's up to you folks. It's not up to us. We will enforce the rules that you tell us to do. Thank you very much.

FRIESEN: Thank you, Mr. Maguire. Any questions from the committee? Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here, Mr. Maguire. It's nice to see you again.

JIM MAGUIRE: You too.

M. CAVANAUGH: OK, so is this something that the police feel should be their responsibility? Is this something that they want to be their responsibility, enforcing administrative fees?

JIM MAGUIRE: Administrative fees? No, I mean, we'll-- we're just tasked with doing it. That's, it--

M. CAVANAUGH: Sure.

JIM MAGUIRE: That's part of our responsibility, but you're-- somebody is going to have to do it--

M. CAVANAUGH: Well, normally--

JIM MAGUIRE: --or else you're going to have all-- there's going to be no-- there's no reason to get it done.

M. CAVANAUGH: Well, normally the entity that levies the fees is in charge of collecting the fees. And so if the DMV is requiring that you pay this fee, wouldn't it be incumbent upon them to follow up with individuals who are not in compliance?

JIM MAGUIRE: Well, what the DMV in the past-- and I'm not saying that every time. It happens more with the Treasurer's Office more than anything else. They will, they will send letters to-- when I was at the sheriff's office, they would send us letters from people filing a complaint saying, hey, this person, their plates are expired. We used to get a bunch of complaints with apartment complexes where you've got all these cars that don't have-- that are all from out of state and they're, they're doing it to avoid the tax. So they would have us go

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out there. It's never our intent to just write a ticket. If we can just get them in compliance, that's all we want. We're not, we're not trying to make it, you know, uncomfortable for them and they're not going to jail for an expired plate. If they go to jail, because-- it'll most likely be because they forgot to go to court and they've got a failure to appear.

M. CAVANAUGH: So from your perspective, it, it doesn't matter-- you said it doesn't matter if it's a Class III or a Class IV. You'll enforce what you enforce. So then it would assume that it doesn't matter if it's a primary or secondary because you'll enforce what we think needs to be enforced.

JIM MAGUIRE: Well, I think for fictitious plates, I would absolutely say that--

M. CAVANAUGH: Sure.

JIM MAGUIRE: --needs to be a primary.

M. CAVANAUGH: I guess for this conversation, based on Senator Cavanaugh's opening, I would take fictitious plates out of the conversation that we're having.

JIM MAGUIRE: Yeah, I mean, if you say 30 days, we would, we would prefer that it's all consistent and everything else. But just keep in mind, even when we notify them and write them the ticket, they're getting a ten-- they're getting the opportunity for a ten-day grace period to go down there and get that taken care of.

M. CAVANAUGH: I guess I'm asking for having expired plates. Do you view it as a problem for the police force to have that as a secondary offense?

JIM MAGUIRE: Yeah. For--

M. CAVANAUGH: As--

JIM MAGUIRE: I, I would say that we need to be out there enforcing that, absolutely, because it's-- the reason why they're-- a lot of the reasons why they're not getting the-- their, their registration taken care of is because they don't have insurance.

M. CAVANAUGH: So do you then enforce, as a primary offense, having house numbers improperly displayed?

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JIM MAGUIRE: That is, that is not against the law. I have, on numerous occasions where somebody won't put their, their, their numbers on their house, I'll tell them if they have a medical emergency and time is of the essence, that fire department or emergency squad isn't going to find them in a timely manner and it might be their undoing.

M. CAVANAUGH: So taking this to its logical conclusion, if we're going to use this as a tool for policing and allowing people to discover potentially other crimes, which we have heard from others this afternoon, shouldn't we then make it a primary offense to not have your house number properly displayed so that the police can go into your house as a primary offense if somebody suspects some malicious activity?

JIM MAGUIRE: We can't pull over somebody's house. We can do a search warrant on if we have probable cause.

M. CAVANAUGH: But you-- this would remove the need for the search warrant and probable cause if--

JIM MAGUIRE: No.

M. CAVANAUGH: --we make it a primary offense.

JIM MAGUIRE: There's no primary offense for a house or anything else. That is just-- that, that's beyond the scope of this bill.

M. CAVANAUGH: I guess my question is they're both property, why is one a primary offense and one not?

JIM MAGUIRE: Because the Legislature has told us there are certain requirements if you're going to be on the road. You have to have a driver's license, you have to have insurance--

M. CAVANAUGH: Sure.

JIM MAGUIRE: --and--

M. CAVANAUGH: And my--

JIM MAGUIRE: --this is just-- and, and we have to maintain the roads.

M. CAVANAUGH: I'm sorry. My, my question to you is if-- they're both property and why do the police view it as an important tool to have this be a primary offense, but not this?

JIM MAGUIRE: Our-- but if you're talking about the fictitious plates portion--

M. CAVANAUGH: I am not.

JIM MAGUIRE: OK. If you're just talking about what the--

M. CAVANAUGH: The fee.

JIM MAGUIRE: The, the fee should be-- I-- you know, my personal view is I don't care. I don't care if it's, if it's a \$10 fine or if it's a \$35 fine. And no matter what, when that law enforcement officer decides to make a traffic stop, they still have the, the discretion to decide whether or not they're even going to issue a ticket because somebody may come up to them and say, oh my gosh, I forgot.

M. CAVANAUGH: Right.

JIM MAGUIRE: Let me give them a fix-it ticket or something like that or just a verbal warning. Just saying, hey, just-- you forgot? OK, fine. Here you go.

M. CAVANAUGH: Sure.

JIM MAGUIRE: But there may be other issues that are--

M. CAVANAUGH: Yeah.

JIM MAGUIRE: --that are going on as-- I can't look beyond this.

M. CAVANAUGH: I was trying to get to-- and I think I understand, but we will be having to decide if we think that it should be a primary or secondary offense and also if it's a-- what class of misdemeanor it is and so I wanted to make sure we were making an informed decision on how that would impact your work and what the think-- thought processes is for that.

JIM MAGUIRE: Well, our organization would recommend that you maintain it as a primary offense when it comes to enforcement and when it comes time to what the, the penalties will be, absolutely. That's up to you.

M. CAVANAUGH: OK, thank you.

FRIESEN: Thank you, Senator Cavanaugh. Senator DeBoer.

DeBOER: Thank you, Senator Friesen. I just want to clarify because I'm, I'm wanting to make sure that I, I'm understanding your

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testimony. The fictitious plates is when you take something off of one car and put it on a different car. When you're saying you-- so with respect to that, I don't think that's covered by the bill is my understanding at all.

JIM MAGUIRE: It's, it's, it's on the second page here when they talk about fictitious plates. That-- I, I believe Senator Cavanaugh, John Cavanaugh is going to maybe make some amendments to that portion--

DeBOER: I think--

JIM MAGUIRE: --but that's--

DeBOER: No, I think what I understood is that he inadvertently got rid of the grace period for that, but that he didn't actually touch that portion of fictitious plates. I think what he's referring to-- and maybe this is just a semantics thing-- is the, the expired plates as opposed to fictitious plates. So I'm just wanting to make sure--

JIM MAGUIRE: Well, there-- in here, the way that I'm reading it, unless there's-- I'm sure there's plenty of other people here who are a lot smarter than I. The way I'm reading this, fictitious plates or altered plates is a secondary violation under, under this current--

DeBOER: OK, well--

JIM MAGUIRE: --current statute.

DeBOER: Let me just ask then your opinion so I can--

JIM MAGUIRE: Sure.

DeBOER: --make sure I've got it. So with respect to fictitious plates, which is taking one plate from one car and putting it on another or, I don't know, inventing a plate, I don't know how you do that, then it's the position that you are coming forward that you don't want to make that a secondary offense, correct?

JIM MAGUIRE: Correct, yeah.

DeBOER: Now, with respect to expired plates or, you know, overdue plates and with respect to whether or not there should be a secondary offense, what's your opinion on that one?

JIM MAGUIRE: I, I, I'd be very careful going beyond-- I-- personally, I'd like to just see it the way that it is because you're--

DeBOER: OK.

JIM MAGUIRE: You know, people are going to complain saying, if I have to pay the taxes, why don't they?

DeBOER: Sure.

JIM MAGUIRE: So that, that's-- you will tell us how you want to enforce these, these rules, but just to be consistent with everything else, we would prefer that it would remain a primary offense.

DeBOER: OK. I just wanted to be sure that I understood your testimony because I was trying to follow fictitious and not fictitious.

JIM MAGUIRE: Yeah.

DeBOER: Thank you.

JIM MAGUIRE: You bet.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? So the one real simple solution is get tags on your car and you won't get stopped.

JIM MAGUIRE: Correct.

FRIESEN: And you're saying a lot of the driver who are not having renewed plates is probably because they couldn't afford the insurance and now they just couldn't license their plate because they couldn't provide proof of insurance.

JIM MAGUIRE: Correct.

FRIESEN: OK.

MOSER: Did I miss my chance?

FRIESEN: Senator Moser.

MOSER: Thanks. You wouldn't know if plates are fictitious unless you ran them, right?

JIM MAGUIRE: Correct.

MOSER: So you would have to have some reason-- I mean, you wouldn't just go watching every plate that goes by and, and call in dispatch and ask them if this plate matches this car.

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JIM MAGUIRE: Yeah, I generally don't have that much time to, to run every plate. Now, there will be times where it might be a little slow and you're just checking to see if certain cars are, are stolen or anything else because we get a lot of complaints saying, hey, in this area, we've had a lot of stolen cars and we will also get complaints about the fictitious plates. People in Omaha, sometimes we've had a run where they will steal the, the stickers to try and trick us saying, well, that car is supposed to be registered or expired in June and, and that tag says December. So, you know, it's, it's just always a game. And there are times, sure, where we're just running plates, but generally it's for a reason.

MOSER: So they'll-- sometimes they'll peel the sticker off of another plate and put it on theirs?

JIM MAGUIRE: Oh yeah.

MOSER: I can't even get them to stick to my plate.

JIM MAGUIRE: I know. Yeah, but there, there-- it has, it has been an issue in the Omaha/Douglas County area.

MOSER: OK. Thank you.

FRIESEN: Thank you, Senator Moser. Seeing no other questions, thank you, Mr. Maguire.

JIM MAGUIRE: Thank you very much.

FRIESEN: Any others wish to testify in opposition to LB934? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, we have one letter in opposition and one in neutral capacity. Senator Cavanaugh, you may close.

J. CAVANAUGH: Thank you, Chairman Friesen, and thank you, Transportation and Telecommunications Committee. I do appreciate the robust conversation we're having here today and I do want to clarify for the record-- Officer Maguire, obviously, I have tremendous respect for him and he and I get along a great deal and have worked together in the past and so I appreciate him coming down here and testifying even when it's against me. But just to clarify, the way the statute is written, we did bi-- we bifurcated that fictitious plate-- which actually Senator Moser, your example, that would also be a fictitious plate, taking the tag off another car and putting it on there. We bifurcated that and that created a new subsection that is subsection 4 and then the section that is the secondary offense is just -- it says

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just making Section 2 and 3 a secondary offense and Section 4 would remain a primary offense. So that, so that's why the fictitious plate would be-- still be a primary offense, whereas the expired plate is a-- would be a secondary offense, but just kind of points that came up while people were talking or while other people were giving their testimony, it is-- Senator Geist was correct. It is a \$500 fine. I believe that was what I said in my testimony unless I misspoke, but-- and then Mr. Eickholt, I think, did a great job of talking about kind of that, that part where we are saying the culpability or the, you know, responsibility for this action should be treated differently. That if you are purposely taking the tags out of somebody else's car and putting it on your car or taking a plate off another car, that should be treated differently than forgetting or failing to pay. And so that is the nature of changing the level of the offense and bifurcating there. And then the-- so it's kind of two justifications, two reasons why I made these changes in this bill, but they apply to the same thing. And then the other is that making it a secondary offense, which goes exactly to this just doesn't need to be done by law enforcement as a traffic stop. So we had-- there was some reference to going to cars parked on the street and things like that. You could still ticket a nonmoving car. It just would not be a reason for-- to initiate a traffic stop. It still would be enforceable, still would be able to ticket just like a parking ticket or something like that, but is not-- be a reason to pull somebody over and stop them while driving. And again, Ms. Weber was-- testified and of course, I have worked with many of our county attorneys in this state and have respect for their opinion and perspective on things, but I disagree and I-- that's the reason for this bill-- that the justification for a primary offense stop for a license plate is that they will discover other evidence as to other crimes. It's not-- we shouldn't criminalize behavior because we think it will help us solve other things that we want to investigate. And that's kind of the reason that-- the stick, I guess, the sticky wicket or whatever you want to call it, the thing the problem in this conversation is. It is a convenience factor for law enforcement to get a search, a pretextual search to get other evidence and find other, other crimes. But that's not a good enough reason for the-- that to be the law and that is the reason that I proposed this change here today. And then as to whether or not you can discover stolen vehicles, if a vehicle is reported stolen, that-- they run the license plate and that will tell you that that vehicle was stolen. And Senator Moser, I think you're probably remembering older movies. They don't call --like radio in. They have like a little computer there that-- I was hoping that Mr.-- Officer Maguire would get to that. They kind of-- when I have watched cruiser cam-- and I've

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watched quite a few of them-- not as many as I'm sure he has participated in, but the officers can lean over and type on a little computer that's kind of in the front shotgun seat or whatever you want to call it and run the license plate. And that will tell you, one, whether it's expired when it has that other tag on it, if they have the wrong tag, as Officer Maguire pointed out, that will still tell them that it's-- they didn't actually renew it or it will tell them whether it's been reported stolen or it will tell them if it belongs to a different type of car. And so that's where all that information comes from and they can run a license plate of a car in front of them at a stoplight or one that drives by. They can do it pretty quickly and so just because-- if we took away the ability to make it a primary stop, that doesn't mean they aren't going to run plates and that's a distinction I think that's important. So I-- again, I appreciate everybody's time here and I, I think this was a really good conversation and I'll take any other questions that are left.

FRIESEN: Thank you, Senator Cavanaugh. Any questions from the committee? Seeing none, we'll close the hearing on LB934 and we will open the hearing on LB731.

J. CAVANAUGH: Ready for me?

FRIESEN: Yes. Go ahead and begin.

J. CAVANAUGH: OK. Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB731, which would amend the Small Wireless Facilities Placement [SIC-- Deployment] Act to provide certain requirements for the placement of facilities and installation of modification of utility poles. I brought LB734 [SIC] in response to a constituent concern that occurred last summer when a wireless provider placed a utility pole directly in the middle of a sidewalk outside of a residence near 55th and Poppleton in Omaha. I had a number of conversations with the city officials and constituents about this particular site, and we agreed that a change in law was necessary to prevent this sort of thing from happening again. First, LB731 provides that a political subdivision may require reasonable notification to adjacent property owners prior to installation of a small wireless facility. This requirement is permissive and not mandatory. Understanding the variety of political subdivisions that are subject to this act, we know that what works for Omaha may not work the same as it works in Henderson. Second, LB731 provides that prior to the installation or modification of a utility

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pole, a political subdivision shall require that the wireless provider certify that the installation complies with the Americans with Disabilities Act and relevant regulations. This does not obstruct or hinder usual travel of public space, public safety on such right-of-way and does not obstruct the legal use of such right-of-way by any utility or impede the safe operation of such utility system or provisions of its services. The wireless companies will say that both of these provisions are unnecessary. That it will provide unnecessary delay, but also that is already within the city's discretionary authority to do so. But numerous conversations with the city of Omaha, they have made clear to me that they feel they have little authority to reject any installation of wireless facilities, even those that fail to notify property owners or, as in the case of the pole, the pole in my district, place a pole in the middle of a sidewalk. The certification requirement puts both the political subdivision and the wireless provider on notice that these are not discretionary requirements. They are a necessary component of any plan and they ought to be a necessary component of any plan from the beginning. Let me stress again in particular, that compliance with the Americans with Disabilities Act should not be a discretionary requirement. I have spent a lot of time on this issue in the last several months, and while I believe the city could have done more to come up with an alternative, I also believe them when they tell me that they believe their hands are tied by the current state of the law. They don't feel that they have the authority to reject any egregious examples such as this. This bill is not meant to require anything of a wireless company that they should not already be doing as good corporate citizens. Notifying property owners or residents before they tear apart a sidewalk in front of their home or dig up their yard, ensure that they-- that when you place a pole, you aren't obstructing traffic or making it impossible for those with disabilities to use the sidewalk. If you've seen these plans for small wireless facilities, you know that they are incredibly detailed and precise about the need for each location to be exactly where it is. All we are asking is for at least a fraction of the same attention to detail to be devoted to the neighborhoods and communities that the wireless companies say these poles are intended to serve. I thank the committee for your time and I'd ask for you to advance LB731. And I'd be happy to take any questions.

FRIESEN: Thank you, Senator Cavanaugh. Are there any questions from the committee? Senator Moser.

MOSER: Typically, sidewalks are on the right-of-way.

J. CAVANAUGH: Yes.

MOSER: So why would the city allow them to put a pole in the middle of a sidewalk on the right-of-way? It's the city property, they should be in control of it.

J. CAVANAUGH: Well, that is specifically allowed in the previous iteration that this, this bill is amending a statute that was enacted by this body two years ago, I think, that said the city has limited discretion to deny placing those poles in the right-of-way.

MOSER: You would surely think that limited discretion would cover putting a pole in the middle of a sidewalk.

J. CAVANAUGH: I generally would agree with that.

MOSER: Wouldn't there be an ADA committee in Omaha too, that would address this?

J. CAVANAUGH: Well, this-- sorry, maybe it would be better for my closing because my city councilman is here and he is going to present you with the pictures, I think, of what happened. I could talk about it then. But the reason for that ADA part that I brought in this bill specifically has to do with how this went down, where the city approved the-- putting the pole in the middle of the sidewalk with the intention of curving the sidewalk around to the south. And then once the ADA review was done and after that, after the sidewalk was torn up and the pole was put in, they discovered that would not be ADA complaint and the pole-- the sidewalk needed to go to the north. And so what I'm saying is they have to make that decision about where the sidewalks can go before they place the pole is what-- that's what I'm asking to be done here, so that we don't get into that sort of situation. So they did consider ADA, they just considered it poorly.

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Would you agree that if there would have been two adults standing there, this would have never happened?

J. CAVANAUGH: Well, I can tell you if the two adults were myself and Councilman Begley, it certainly wouldn't have happened. But we didn't find out until the pole was already in the street. Or in the sidewalk.

FRIESEN: I mean, it was like two kids arguing over a candy bar.

J. CAVANAUGH: Yeah, it's not a, it's not a good look.

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FRIESEN: You're asking this body now to settle a, a dispute that should have never happened.

J. CAVANAUGH: Well, I'm asking the body to just put a little bit more teeth in the ADA requirement and the notice requirement.

FRIESEN: Anybody with common sense would have never let this happen ever. Thank you. Thank you, Senator.

FRIESEN: Proponents to LB731.

DANNY BEGLEY: Good afternoon, Senator Friesen. My name is Danny Begley, D-a-n-n-y B-e-g-l-e-y, and I am the proud Omaha City Council representative for district 3. It's great to be here today. As I look around, I see a couple of friends, Senator DeBoer; and if John left, my favorite Senator Cavanaugh, Machaela. Good to see you today. Committee members, it's my honor to be here today in support of LB731 introduced by my good friend and my state Senator John Cavanaugh and cosponsored by Senator Hunt on behalf of the city of Omaha. So those pictures that are going around today that, that speak a lot of words to the two that are there, I'll paint a picture. By July 1, 2021, I was fresh into my first months being elected to the Omaha City Council and the fire hose that I'm drinking out of was going pretty fast still, as I'm learning my new job, as all you have being newly elected at one time or another in your careers. I got a text message from a constituent showing-- advising that the corner of 55th and Poppleton had a pole in the middle of the sidewalk. So of curious nature, I drove up there myself and spoke to the property owner who lived there by the name of Jane. And I called my friend Senator Cavanaugh, and we both went back later on to speak to the constituent. You see before you a picture of the unintended consequence of the original bill, LB184, that was passed and signed by Governor Ricketts in 2018 [SIC]. The purpose of LB731 is to have communication companies who are providing the tools for all of us to communicate, constituents and property owners, when these poles are going to be installed should have some notification of the installment instead of getting home and seeing a backhoe in their front yard. Having a name and a contact person to call should be a simple requirement. This by no means is a criticism of the original bill, which was well-intended and necessary to enable our citizens to enjoy the cutting edge technology that all of our kids are always telling their parents about, like myself. And then the ever-growing workforce that is working from home, this is a tool that enables people, especially during the pandemic, as well as students that are studying at home, that can use this technology. Transparency and communication by the communication companies is what

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I'm asking for today. And if you think of a good marketing slogan, communication companies that are providing communication should communicate to people when they're putting poles up, whether it's in the middle of a sidewalk or in other places. Again, I appreciate being here today as I know you have a full schedule, and I again ask for your support of LB731. And I will be happy to try and answer any questions.

FRIESEN: Thank you for your testimony. Have you ever heard of the phrase: You can't fix stupid?

DANNY BEGLEY: I have.

FRIESEN: Any questions from the committee? Senator Moser.

MOSER: Does the right-of-way end right where this pole is?

DANNY BEGLEY: So if Senator Friesen-- or I'm sorry, Senator Moser, if you look at this picture, I'll just kind of give you a little backdrop on what we're looking at here. So the pole in the middle of the sidewalk, to the right of that between the curb where the grass is there, in a perfect world, you can't fix stupid, Senator Friesen. You're right. The reason they didn't put the pole there is because there is a water line running right in the street there, so they couldn't put the pole on that side of the sidewalk. They couldn't put it on this side, which is in the property of the homeowner, Jane, that lives there because there was some telecommunication lines running there. So you think, hey, why not put it on the corner? Which I'm sorry, I don't have that. If you look at the other picture right on the other side, you see the overhead power lines there. There's an OPPD power pole, and they couldn't put it on there, either. And as one of the many things I've learned during this great month into my city council seat, a radio frequency engineer with Verizon, they thought about putting it on the east end of the property, which is the far side of this picture on the other side of the property. But the radio frequency engineer with Verizon, who I got no reason not to believe, said it will do something with the signal that it won't be a receptive signal. So back to your phrase, you can't fix stupid, and the right-of-way issue, Senator Moser, it was just like the perfect storm of there was no good place to put it. So then they put it in the middle of the sidewalk because that bill passed a couple of years ago allowed it. And then they couldn't put the sidewalk on this side of the-- to the parking, to the sidewalk because the ADA issues arose. So they ended up swinging it to the north side of this so it's ADA compliant. So it met the requirements that were under the law. But I

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think the intent of LB731 for communication companies to communicate would be that they go knock on the door or they give the notification so Jane, the homeowner, or adjacent property owners, have a contact communication person at Verizon or wherever. And the Verizon folks, by the way, were really good. They met with us at the city and we worked through a process with them, with the ordinance we passed. But for me, it's about communications--

MOSER: Let's, let's-- you're getting back into more testimony here. How would notification changed anything here. If this is the only place it can go, it's going to go there anyway. You're just going to make another hoop for the communication companies to jump through and then it's still going to wind up in the middle of the sidewalk.

DANNY BEGLEY: Fair point, Senator Moser. But I believe that it's not a hoop, but it's, it's good government, it's good communication. It's-- if a property owner gets home like happened here, there's a backhoe in her yard digging this up. And to me, having a contact person

MOSER: It's not in her yard, it's in city right-of-way?

DANNY BEGLEY: Correct.

MOSER: OK.

DANNY BEGLEY: But as a property owner, you're thinking they would like to have--

MOSER: You think it's your property, even though it's not.

DANNY BEGLEY: Exactly, exactly right.

MOSER: Now what's the spacing of these small cell towers supposed to be? Aren't they supposed to be half a mile apart or something?

DANNY BEGLEY: I'm not, I'm not sure what the proper spacing is, but it was-- this corner they couldn't, there was on the back end of the property, like I said, they didn't want to put it there because of the radio frequency. The corner where the OPPD power pole was, they couldn't put it there. So this was the only space that they told us it could be placed.

MOSER: OK, thank you.

DANNY BEGLEY: You're welcome,

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FRIESEN: Thank you, Senator Moser. Thank you. Senator DeBoer first, then Senator Hughes.

DeBOER: So where is the pole? What does it look like now?

DANNY BEGLEY: It looks right like this in that big picture--

DeBOER: Uh-huh.

DANNY BEGLEY: --that you have, the far away. That's what it looks like now.

DeBOER: But the sidewalk is to the--

DANNY BEGLEY: The sidewalk--

DeBOER: --the house side?

DANNY BEGLEY: Yes, that's exactly right. It goes around it. So it's got a curve around it and meets the ADA requirements.

DeBOER: And the-- ostensibly the, that is the property owner's area where the sidewalk goes into now?

DANNY BEGLEY: It's in her, it goes into her yard now. That's correct. And the city does have the right-of-way going on that part. That's a good point, Senator DeBoer. The city of Omaha, they told me, does have the right-of-way on that side in, in her property, if you can see that. But they didn't want to infringe going into her yard because it's, it's just that woman that lives there, it was her mom and dad's house that she bought and lived there her whole life. It was just the less of all evils would be putting it where they did and wrapping that sidewalk around it.

DeBOER: So they-- so, I'm sorry. So the city does have a right-of-way in that area where the sidewalk now is?

DANNY BEGLEY: That's correct.

DeBOER: OK. So theoretically, let's say, they could have put the pole and, you know, a few inches to the left or a few inches, a foot, whatever it would be, and then left the sidewalk the way it was. But then it would be just this pole all of a sudden grows up in her yard. Is that right?

DANNY BEGLEY: I think based on what I was told and everything I've learned in this, Senator DeBoer, I don't think they could have put it

any closer to the street because of the water main that's running there.

DeBOER: Right.

DANNY BEGLEY: So it could have been maybe six inches or a foot to the north, which is towards her house, but that is where the permit was issued and the sidewalk got wrapped around it after that, so.

DeBOER: Do you have others in your area of the city? I haven't noticed them in my area of the city, but do you have others in your area of the city where they're just sort of small cells on poles that are kind of out on their own and not attached to some other already-existing pole?

DANNY BEGLEY: Yeah, they have placed many of these around, Senator DeBoer, in the last several weeks. Most of them aren't like this. Some of them, they will pull out an OPPD pole and put this pole in there with the OPPD street light on it is my understanding.

DeBOER: OK. Have you seen others where it's just the small cell?

DANNY BEGLEY: There are some. Yes.

DeBOER: OK, that's interesting. Thank you.

DANNY BEGLEY: You're welcome.

FRIESEN: Thank you, Senator DeBoer. Senator Hughes.

HUGHES: Thank you for coming in today. I guess my question is simple, and I'm kind of in the Senator Friesen camp on this. Did anybody get fired over this? Somebody should have.

DANNY BEGLEY: I don't believe--

HUGHES: Absolutely.

DANNY BEGLEY: I don't believe, Senator Hughes, anyone was fired. I think my-- and again, I'm not a lawyer like a lot of smart people are, including my friend Senator Cavanaugh that introduced the bill, but it was my understanding that under the law and the restrictions under it, they-- my understanding was they couldn't deny putting the pole in there based on the state law. And Senator Cavanaugh can clean that up for me. But and the answer your question, nobody was fired. I, I wouldn't want anyone fired for this. I just want an education process

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where property owners know they have somebody to call instead of the council member, fair point, to get a call a month into his job. And I was in disbelief when somebody told me this was there, so I went and looked. It's the craziest thing you ever saw.

HUGHES: Well, clearly I have sat on this committee long enough and we've had serious battles between telecommunication providers and cities jealously guarding their right-of-way. And I cannot believe that a communications company would have planted this pole if somebody from the city hadn't okayed it. But, I mean, this, this is just beyond stupid, and I certainly don't think it rises to the level of the State Legislature passing a law to fix that. Thank you for coming today.

DANNY BEGLEY: Thank you. You're welcome.

FRIESEN: Thank you, Senator Hughes. Any other questions? Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here. I'm just trying to pull up the documents from LB184, that was my freshman year. And I guess I would argue it is our responsibility to fix it because we passed that bill that required that. I wasn't able to get to it fast enough to see what the city's opposition was, but I believe it was similar to what happened, which is the cities, municipalities believe they didn't have the authority to stop something like this from happening, which is what the testimony was in 2019. And now you're coming back and asking us to give you that authority back. Correct?

DANNY BEGLEY: That's correct, Senator Cavanaugh. And I believe the unintended consequence of that bill, if it's corrected, this wouldn't happen and it would be notifying property owners so they could talk to their Verizon representative or whoever, at least to have the dialogue of good communication on what's going on. And does it stop-- and a fair question that I've been asked, does that stop the pole from going up? And the answer is no. But what it does, it allows the communication company to meet with the property owner and answer the questions. I think that's just fair and good government. I really believe that.

M. CAVANAUGH: Thank you.

DANNY BEGLEY: Thank you.

FRIESEN: Thank you, Senator Cavanaugh. Senator Bostelman.

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BOSTELMAN: Thank you, Chairman Friesen. My question is, if you put a water line down that road, if you put a, a telephone line down that road, if you put a power line down that road in that right-of-way, is that on all those, every one of those examples is the property owner notified?

DANNY BEGLEY: When there is a one-call ticket made the--

BOSTELMAN: If they're going to run, if they're going to run a water line where you said there's a water line running right down through here, are they called-- that property owner called and told them who has it and those--

DANNY BEGLEY: I can tell you the Omaha Public Power District, when they're doing cable replacement, they do have an outreach to customers that are impacted by [RECORDER MALFUNCTION]. I can't speak for the other utilities but--

BOSTELMAN: MUD?

DANNY BEGLEY: --other than-- I think the notification is, if you see a blue flag or a yellow flag or paint, red flag, orange, that's the notification process for One-Call that signifies there's going to be excavation. Now whether or not, to your direct question, I know OPPD notifies when there's cable replacement. I don't know what the processes are for other utilities. I don't.

BOSTELMAN: Yeah, I guess again, my comment is, and I appreciate what Senator John Cavanaugh's-- his bill was, what he's trying to get. But to me, it seems like there's a simple solution that is within the city itself, that you have a-- it's in-- in your checklist or whatever; when there's an application, this is just a part of that-- that process. It seems to me that if-- if someone within the city, it's your right-of-way, there should be something there just like the rest of them, because I'm not so sure that every time someone works in that right-of-way, that property owner is going to be notified. And-- and if we do this, if we have it as part of that, no matter which one of those, if it's part of that process, we're trying to find that solution, if you will, or-- to something here, if it's-- if it's in that process that the city has as to notify, you know, does it comply or not? You wouldn't have a pole in the middle of the sidewalk, so just a comment, so thank you.

DANNY BEGLEY: Thank you.

FRIESEN: Thank you, Senator Bostelman. Senator Albrecht.

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ALBRECHT: I hate to belabor this, but whether we made a state law or not, you know, city ordinances tell you what you can and can't do. Even if you've made that sidewalk go around this, I mean, who-- I hope they have major liability because, I'm telling you, if-- if a kid is riding his bike down that sidewalk and it's at night and I don't know-- I don't see a light on that corner in these pictures, but you could just run right into that pole. I mean, why would you not just tell them to take it out and move it? I mean, and what-- why is this pole so important to that neighborhood? Is that-- is it new, like is it-- is it for phones and internet? What is-- what is that pole for?

DANNY BEGLEY: It-- it was just for the 5G Verizon.

ALBRECHT: Uh-huh.

DANNY BEGLEY: Yeah, that's-- that's what--

ALBRECHT: And they couldn't hang that anywhere else in that neighborhood but to put it in the middle of a sidewalk?

DANNY BEGLEY: Senator, great question, and I was in disbelief when I saw it there. And the answer I was told, the radio frequency engineer with Verizon, that was the only place at that location on 55th and Poppleton that they could put that pole. In order to have these-- whatever voodoo these things do on 5G bouncing off these poles, I asked-- asked that question July 1 when I got there, and I would have loved to have grabbed a chain and put it on my bumper and yanked that out and solve the problem, but that wasn't any option that I could do.

ALBRECHT: Right, so I should still consider it, but I appreciate you going to all this work.

DANNY BEGLEY: Thank you.

FRIESEN: Thank you, Senator Albrecht. So you were told that the city couldn't do anything about permitting that pole there.

DANNY BEGLEY: That was my understanding based on the statute, that we cannot deny Verizon from putting that pole in.

FRIESEN: And I will disagree with that statement, and maybe somebody can clear that up, but they have the ability to deny any pole. And again, if somebody planted a flag there, even the solution, I got a picture of it here. If I was a homeowner there, I wouldn't be happy with this either. There's got to be a better fix, and it goes back to the city and the telecommunications working with each other. And I

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know we fought long and hard for cell phones here, and I still think there's a-- I'll call it a pissing match between the two. And somebody better get it cleared up because I don't think it's our responsibility. And I think we work long and hard to work on these pole placements, and so I guess I would like some clarity from you if you want to check back.

DANNY BEGLEY: Sure.

FRIESEN: I would appreciate you checking more in depth in this because I-- I think both parties are very responsible here, and there are alternatives, I think, because I wouldn't be happy with this solution and I've got a picture of it.

DANNY BEGLEY: Senator, that-- I have my pictures as well, and seeing that and speaking as Senator Cavanaugh and I did with the constituent that lives there is both of our constituents. She is John's District 9 and my District 3 for the city council. And your characteriz-- characterization is correct, Senator, that she was not happy. And I think the city, that we did as much as we could on the ordinance we passed after that on the notification process. I really don't think, in my view, and-- and respectfully there are some that disagree, that the communication companies communicating shouldn't be that hard of a thing. And I-- I know you-- you guys all did your work back in, I think, 2019, when the original bill was passed. No dispute that it was-- something was needed, but I think it's just the unintended consequence for notification. I don't think it's asking too much to have property owners know these things are going in.

FRIESEN: Well, part of, though, you're-- you're on the city's right-of-way and even if a property owner was notified, is there anything they could have done to stop this?

DANNY BEGLEY: The city?

FRIESEN: No, the property owner.

DANNY BEGLEY: I don't believe so, Senator. Again, I'm not a lawyer, so I--

FRIESEN: [INAUDIBLE]

DANNY BEGLEY: --would have to defer that to the city attorney.

FRIESEN: There are a lot of things that cities and villages do in the right-of-way that maybe homeowners are not happy with. But in the end,

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by notifying them, you're not giving them really an opportunity to object or do anything else. It's still going to happen, so.

DANNY BEGLEY: It-- it isn't. But I-- I believe that if somebody has a contact number, you're not giving it to 100. It's just adjacent property owners to where these are going in. And if they're removing a pole and putting one in the same spot, they don't have to be notified. It's just like here, where they're putting a new one in, that you have a phone number of somebody to call. At least you have dialogue. I think that's just good government. I-- I don't think it's overreach. I just think it's property owners, even if you're well-- you're right to say it's not going to stop the pole going in, but at least you'd have somebody from Verizon. They were good folks that I talked to, smart, articulate. They can explain it. Even if the property owner can't stop it, it's a good thing to have at least somebody to explain what's going on so they understand.

FRIESEN: OK. Senator Moser.

MOSER: I think Senator Bostelman had a good point that the notification is something that the city of Omaha could do. Anytime there's something going to go in a-- in a right-of-way in front of somebody's house, the city of Omaha could require that the homeowner be notified rather than have a state law that says they have to be notified. And-- and the second thing, I think there is some black magic in the placement of some of those poles. I've been involved in some placement disputes when I was mayor of Columbus, and I found out later, after the poles were in, that some of the arguments that were used to place those poles where they went were questionable about whether it was engineering or whether it was monetary, you know, the fit was-- these towers probably have to be closer together because this technology is a higher frequency and it's multichannel and multi-antenna. It's got like eight antennas and it broadcasts information on eight channels at once, and so it is more complicated.

DANNY BEGLEY: Sure.

MOSER: But I wouldn't take the assurance of-- of every industry person as being gospel. I would-- I would check that with somebody else and-- because this is really silly.

FRIESEN: Thank you, Senator Moser. Any other questions? Seeing none, thank you for your testimony.

DANNY BEGLEY: Thank you, Senator. Thank you.

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JULIE HARRIS: Hello again. I'm Julie Harris, J-u-l-i-e H-a-r-r-i-s, here on behalf of Bike Walk Nebraska. We are here to strongly support LB731 after having seen the result of what can happen with these loopholes in a statute that was passed before. The fact that a company could construct a utility-- a utility pole in the middle of a sidewalk, as we have all said here today, is just maddening. I-- I think our point is that good Wi-Fi, whether-- what the signal is coming off of that pole, good Wi-Fi should never come at the expense of safe walking, and I think that's what we're dealing with here. There is some requirement for the amount of speed of the Wi-Fi and, therefore, the pole needs to be put wherever it is. Our concerns about the poles are obvious. And, Senator Albrecht, I appreciate what you said about kids on bikes and so on because it's absolutely true. But we have some other issues as well. In Omaha, at least, the homeowner's responsibility-- is responsible for maintaining their own sidewalk. So if the utility company comes in and if they don't have enough common sense or whatever to put-- to stop them from putting a pole in the middle of the sidewalk, how well are they going to construct that work-around, and is it going to crumble and is then that homeowner going to be responsible for paying to make that better? In the meantime, now we have a unfortunate route to walk or ride or use a wheelchair, now we've got a crumbling one, and now who is going to pay for it? Secondly, we're concerned about the smaller communities across Nebraska. At 55th and Poppleton, Jane was very fortunate to live in the same neighborhood a couple of blocks from Senator Cavanaugh, very fortunate to have a responsible city council person to talk to, also lucky enough to have a state bike and pedestrian advocacy organization in town who's paying attention and getting on the phone and trying to figure out what's going on. But, you know, there's a lot of communities in-- across Nebraska, small communities that don't have that, those advantages. They don't have full-time staff to be able to check to see if a sidewalk put in has been put in well or if it meets the requirements or whatever. So we're concerned about all the other places in Nebraska that may be dealing with this, that a utility company could come in and just say, you know, with the black magic comment from Senator Moser earlier, you know, we're-- we have to put it here and there's-- nobody has the ability to have any recourse. Yes, this is just-- it's common sense. It's just-- it is maddening. But having been sort of a-- a fly on the wall to all of the back-and-forth happening over the summer with trying to untangle how to stop this from happening, including a complete streets policy in Omaha that requires that our streets be built to be safe for all users, which includes sidewalks, it didn't seem to be able to stop what was happening. So we just need-- I appreciate that you're saying

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that this doesn't seem to rise to the level of a state law, but obviously, if it happens in Omaha down the street from a state senator, then it's going to happen all across the state and we gotta stop that from happening.

FRIESEN: Thank you, Ms. Harris. Seeing no questions, thank you for your testimony.

JULIE HARRIS: Thank you.

LASH CHAFFIN: Good afternoon, my name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities. Today I'd like to offer the League's support for LB731. I'd like to thank Senator Cavanaugh for introducing the bill, and-- and I want the committee to consider a couple kind of global things that are going on. And-- and I think when you take those into consideration, you need to take bills like this very seriously because there's a couple things going on all across the world, and every deliberative body sees these things. Congress sees it. The Legislature sees it. City councils see it. Planning commissions see it. Legislative committees see it. Every level sees everybody coming to them to say, we need to do it faster, we do it bigger, better, faster, bigger, better, faster. And as they say that, the implication is the only way we can do it bigger, better, faster is: (1) not have to ask permission; (2) not have to ask a bunch of questions; and third, not have to deal with the situation locally. We want to deal with-- with it in just a broad sense. We don't want to have to go to that hole and look at it. And those are the three ways everybody offers to-- to the Legislature, to Congress, to the city council, how they can get something done faster. And-- and as a result of that, there are consequences, and consequences come from bigger, better, faster, and-- and I think what-- what's happening in Omaha is a consequence and-- and-- and I hope you would-- you would-- you would take that seriously. As a result of the bigger-better-faster mentality, new terms have entered-- have entered legislative process at the local level, the federal level, terms like "shot clock," terms like "deemed approved," terms like "batch-- batch applications." These are all things that go away from deliberately looking at an individual situation. And, you know, and-- and so things like this begin to happen when-- when-- when a city is-- is under the gun with shot clocks and the threat of this is automatically approved if we don't get to it in the time prescribed in the-- in that small cell law. And-- and, sure, the city-- the city has some authority, but that authority is-- is preempted to the extent that the small cell law preempts it. And they can deny permits, but only for a laundry list of

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reasons. And-- and this-- I don't know if this was a reason or not. I'm not familiar with the application. I'm not quite sure where 55th and Poppleton is, but it seems like these type of ramifications come from this mentality that we just have to get it done fast. And then I think the second global thing that's going on is-- is when I started working for city governments, and several of you have done it, a pass at working with city government, every utility had a local office. Gas company had a local office. It may not have been in that town, but it was 15 miles away. The gas company, the phone company had a local office, the water, you know, the-- every-- electric utility had a local office. With globalization, there are-- there are companies, utility companies that don't really have any construction or real estate staff in the entire state. So the-- the concept of you can't fix stupid, completely agree with it. But with-- what happens is if it's a local company with a local office in Central City, Chris and Sid, they walk-- they walk over and go, knock, knock, knock, hey, can we-- you want to walk down here with us and look at that? You know, the-- you know, Jesse or someone in McCook says the same thing. They go, come over here, let's go look at that. But tell me, if you can't even figure out what country you need to call to get a construction representative with a company, then those-- those-- that kind of common sense just goes away. You know, I mean, we're seeing it not only in telecommunications. You know, I think city governments see it with every-- every entity they deal with. You know, they just-- if there's no one to talk to locally, then bad decisions start to happen and if you have to call seven people to get ahold of a-- a real estate person who deals with these issues at the company, then these-- these consequences are going to happen, so-- but so I would encourage you to move LB731 forward and-- and be-- recognize that this-- this mentality is going to creep its way into a lot of your decisions, as every other committee and every legislative body across the state, so I would certainly answer any questions.

FRIESEN: Thank you, Mr. Chaffin. So you're telling me this, that when somebody first saw this, if they would have made a phone call to city hall and said something about, hey, we got a problem here, we couldn't fix this?

LASH CHAFFIN: Well, I tell you what, it would be a lot easier to fix if someone saw it, OK, if the phone company had a local office and they could go over to--

FRIESEN: I don't-- I don't care who's-- I don't care who's doing it, but you look at that--

LASH CHAFFIN: No--

FRIESEN: --and anybody with half a brain can see that you're not going to do that.

LASH CHAFFIN: It's-- it's-- yeah, it's-- it's embarrassing. It's--

FRIESEN: So do we have to babysit every pole? I mean, there's hundreds of poles being put in right-of-ways all over the state.

LASH CHAFFIN: You don't have to babysit them.

FRIESEN: You've got one here.

LASH CHAFFIN: Got one, but then again, I think there are going to be consequences to the speed that this stuff happens and--

FRIESEN: OK. Any questions? Senator Moser.

MOSER: So I would say-- I would surmise that subsection (10) is the section that you like, more so than the notice in subsection (9), because that gives the city more leverage in where the pole goes?

LASH CHAFFIN: Senator, yes, yes.

MOSER: And so if this was in force at the time that this pole was being considered, you think this would have given the city of Omaha more leverage against the cell phone company as to where it went?

LASH CHAFFIN: It's a good question. I'm not sure. I've-- I've thought about that a lot. I-- I wish-- I wish it had never happened. Clearly, someone was feeling the pressure to get this done fast and [INAUDIBLE].

MOSER: I think there's-- this technology is so complicated in how it works, and so I doubt if people in city government fully understand exactly how it works. And so I wonder sometimes whether the people who are wanting to put these poles in are being-- choose my right word here-- well, truthful about where it has to go, because I-- I've seen examples where I don't believe that in cases that I had seen, that-- that the tower either was a consultant putting the tower in and leasing it or selling it to a cell phone company or it was a cell phone company themselves. But after it was done, I-- I was led to believe that some of those things that they said were not necessarily requirements, they kind of bent the rules to get what they wanted to get, and that's how we wound up where we were, so.

FRIESEN: You have a question?

MOSER: Yeah, kind of [LAUGHTER]--

LASH CHAFFIN: Well-- well, I think--

MOSER: --maybe.

LASH CHAFFIN: I will say, and I don't want to get into the truthfulness, but I do think it's fair that a city regulator be allowed time to ask questions about that, you know, and-- and do their own research.

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. So does municipalities, cities have to abide by ADA?

LASH CHAFFIN: Yes.

BOSTELMAN: So then why isn't it that you can't put something in the checklist, in the process when they apply for this, that they have to be ADA compliant?

LASH CHAFFIN: I su-- I suspect it was in there. You'd have to-- I haven't seen the application, but--

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Seeing no other questions, thank you for your testimony. Any others wish to testify in favor of LB731? Seeing none, anyone wish to testify in opposition to LB731? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, we have one letter in opposition to LB731. Senator Cavanaugh, you wish to close?

J. CAVANAUGH: Thank you, Chairman Friesen. And thank you, Transportation and Telecommunications Committee, for your interest and attention to this issue. And I would thank the testifiers for coming today. And, Senator Bostelman, I can answer your question about this particular issue. The-- this was approved for a different location, so Councilman Begley passed around. It was approved for between that spot and the side-- between the sidewalk and the street, and then they discovered the underground wire, so then they had to move it to the

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inside and they discovered another underground wire, so they moved it to the sidewalk. And that was done over email and not with the-- with the actual permit. And that is kind of-- so I understand. I mean, I know you all worked so hard on LB184 and all of these interests and all those things. And you're right pulling the thread, and should we have to police every single one of these towers? And, certainly, no, and that is a-- that would be a terrible situation. The Legislature shouldn't be involved in that. The city shouldn't be involved in that. But the-- what the statute or this-- this bill does is proposes a structure under which individuals will have a little bit more ability to police the tower in their yard and they can go to the city. And in this situation, I think what may have happened if she'd gotten notice that they were going to put it where they put it, is that she would have called her councilman, would have called the city, would have called somebody and said, does it really need to go there? And to Senator Moser's point that there is the-- I don't-- the city does not review the radio frequency information. The-- what happens is this company applies. I think this application had like 13 other towers on it all at once. It was a bunch of towers and specs and things and the city just goes and says, OK, the-- it basically almost rubber-stamps them without that kind of review. And I think if we put in the notice requirement and somebody says, well, does it really need to go there, they may dig a little bit deeper on the radio frequency and see if it really needs to go there or go somewhere else. As to the ADA requirement, they are required to be ADA compliant. And what I'm saying in this situation, this specific problem was caused by the fact that they didn't consider ADA before they put in the tower because the original approval didn't implicate ADA. It was off of the sidewalk. So they are required to comply with ADA. That's why they had that problem after the fact. This is a situation where they're able to move the sidewalk around into her yard. As you can see, there's a good amount of space, but there are other places. And one of the reasons Senator Hunt signed on this bill is there's a few in her district that were not in the middle of the sidewalk, but abutting the sidewalk in such a way that narrows the-- the path, and that also implicates ADA if you narrow the sidewalk to a certain amount that wheelchairs can't pass and things like that. And so I think that is one of the reasons the ADA component of this is important, is just to say it doesn't actually change their standard of anything that anybody's required to do other than to say up-front how they're going to comply so that if it does-- if the plan does not comply, then they would have to find a different approach. And the notice requirement, I think, puts more onus actually on the city to do the things that you've empowered them to do under the bill. I think it was LB184, the previous bill. I think that it

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actually-- the problem we have here is no one is responsible. You said the-- that it can't fix stupid, but the problem is when you can't find out who's the stupid person, it makes it a lot harder to fix it. And this is one of those deals where the ball is just kicked all over the place, back and forth, and no one is ultimately responsible. So the notice requirement, I think, actually puts a little bit more onus on the city to inform their constituents and then do the things that they are empowered to do to avoid this situation. So I attempted to narrow-- make this as narrow as possible not to undo all the work that you've done previously, but just to make it a little bit clearer how someone can raise their objection and make sure that we are respecting the federal law under the Americans with Disabilities Act and make sure that all of these projects do comply and that people would be able to object under that once it's put in writing how it's going to comply. So thank you for your time. I-- if there are any questions left, I'm here.

FRIESEN: Thank you, Senator Cavanaugh. Seeing no questions, thank you for your testimony.

J. CAVANAUGH: Thank you, Committee.

FRIESEN: With that, we'll close LB731. Senator Geist, take over as Chair.

GEIST: Do you want me to say-- are there letters and stuff-- do I need to read the letters? OK. All right, we will go ahead then open with your bill, Senator Friesen, LB747.

FRIESEN: Thank you, Vice Chair Geist and members of Transportation and Telecommunications Committee. I'm Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent District 34. I appear today to introduce LB747. LB747 removes the requirement the director of the Division of Aeronautics at the Nebraska Department of Transportation receive legislative confirmation. It makes sense that the director of an agency has the ability to appoint the right person or persons to lead department divisions in order to appropriately carry out the mission of the department. Thank you for your consideration of this and I'd be happy to answer any questions.

GEIST: Are there any questions from the committee? Are there any committee members among-- no. Senator DeBoer.

DeBOER: I'm trying to remember, Senator Friesen, the Department of Aeronautics came under the-- is it its own-- somehow, I know it used

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to be under the Nebraska Department of Transportation or now it's no longer under, which is it?

FRIESEN: It was a separate department at one point and we merged the two departments.

DeBOER: So now it's under the Nebraska Department of Transportation?

FRIESEN: Yes.

DeBOER: OK. And so is it-- I don't know if you know this. Is it customary that subchairs of agencies are appointed kind of--

FRIESEN: I don't-- the original bill did not include the approval of the Legislature, but there was a certain member of the Legislature who wanted it that way and a compromise was made to get the bill done and so we made it so that the Legislature would approve. There was serious concern back in the day of keeping a firewall between the Department of Aeronautics and the Department of Transportation. There was a lot of concern that we're going to move funds back and forth and do things like that, but I think appropriate firewalls are put into place that that is not going to happen. Those two departments are very different and funds do not transfer back and forth. So that was, that was a concern back then and I think they've shown that they're working well together and there really isn't a need for the Legislature to approve that person. I mean, we do approve the DOT Director and we-- I feel at least that that's enough.

DeBOER: So if this is a subdepartment, then what would it matter whether funds were going back and forth anyway?

FRIESEN: Oh, you don't want to take-- if there's funds that have been raised through the fuel tax on the airplanes.

DeBOER: Oh, sure.

FRIESEN: You don't want those suddenly being used for roads--

DeBOER: OK.

FRIESEN: --or vice versa.

DeBOER: I see what you're saying.

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FRIESEN: I mean, we-- they were separate departments. That was a big concern back in the day and so we wanted to make sure that those funds didn't go anywheres else.

DeBOER: OK. Well, I'm not sure that the confirmation by the Legislature will have anything to do with funds anyway, so thank you.

GEIST: Any additional questions? Do you plan to stay to close?

FRIESEN: I'm going to stick around. We've got more fun yet.

GEIST: Are there any proponents who would like to testify? Any proponents? Are there any opponents who would like to testify? Anyone in opposition? Anyone in the neutral capacity? Well, seeing none, Senator Friesen, you're welcome to close on your LB747 and he waives closing. And let's see, we have no letters for the record, so that will close the hearing of LB747. I have to say I love that its-- LB747 is about aeronautics. That is perfect. Now LB874. You may open on that, Senator Friesen.

FRIESEN: OK. Thank you, Vice Chair Geist and members of Transportation Committee. My name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I represent District 34 and I appear today to introduce LB874. The intent of LB874 is twofold; first, to create a mechanism for approval of any fees created or imposed by an airport authority created by a city of the metropolitan class on any form of ground transportation and to set aside any such fees imposed since July 1, 2021. The bill prohibits the imposition of a fee on gross receipts. The second, the bill defines ground transportation as any person who transports passengers to or from an airport (a) for hire or for cons-- compensation by a taxi, limousine, bus, or van or personal vehicle that is operated under the authority of a transportation network company or by a hotel shuttle, parking shuttle, or other shuttles transporting hotel guests, parking customers, or other customers or passengers on a courtesy basis. LB874 was introduced by me following action by the Omaha Airport Authority last summer following our adjournment sine die. Last summer, the Omaha Airport Authority adopted a resolution imposing a 10 percent fee on the gross revenues of all offsite parking companies, which transport those who use their lots. This fee, or, in my opinion, the tax, is imposed on the gross revenues of the company. What concerned me about the situation is there did not appear to be an openness to receive the concerns of companies who were opposed to the fee. The process from start to finish imposed this 10 percent tax in three months. It seems to me that it was done quickly and with no oversight by any board or other entity accountable to the

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voters. Second, I'm concerned there's no recourse for those who may be negatively impacted by a fee of this kind. While one such company whom we'll hear from today, Park 'N Go, has filed a lawsuit, there were two others that were negatively impacted by this action. Of those two, one has it decided to pay the tax and the other has decided to close after 40 years of business. All of us have flown in and out of Omaha airport and we all know there have been a lot of construction at or around that facility over the last few years. What is particularly concerning for me is that the largest recent construction project was a parking garage. This means that the airport expanded its role into the parking business. Following completion of that project, it has chosen to raise the cost to its competitors, who will then in turn pass those costs on to travelers who utilize their lot. As you can imagine, this concerns me and following the testimony today will be Dan Williamson, and representative Park 'N Go and an individual who appeared before the Omaha Airport Authority in opposition to this tax. Mr. Williamson is very familiar with how this business works not just in Omaha, but also around the country so I hope you will ask him some questions. And again, it goes back to the fact that you have here an entity that was not elected and there's no recourse, there's no appeal process other than to go to court. And they, they seem to have the ability to just levy a tax on property that is not located on airport grounds, but they do serve the airport. And for a 10 percent gross revenue fee, I just thought it was excessive. Without some sort of means for them to negotiate a settlement, I think that as you ask questions, you'll, you'll understand more of probably where we're going with this, so. If you have any other questions, I'd be glad to answer them.

GEIST: Are there any questions on the committee? Oh, I have a couple, sorry. Just a couple. I'll ask the really hard ones to the people behind you, but I think it's important for the committee to know if the airport authority in Douglas County or Omaha, is that elected by the people?

FRIESEN: No. I believe the Eppley Airfield is controlled by the city, which appoints the board--

GEIST: OK--

FRIESEN: --to operate--

GEIST: --because in a lot of communities, it's different than that--

FRIESEN: Yes, I think--

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GEIST: --and their airport authority is actually elected.

FRIESEN: It varies across the state as to how they operate. I agree. I think Lincoln Municipal Airport is different.

GEIST: OK.

FRIESEN: They have an elected board.

GEIST: OK. Yeah. All right, thank you. Any proponents? Good afternoon.

DANIEL WILLIAMSON: Good afternoon, Vice Chairman Geist and members of the Transportation and Telecommunications Committee. My name is Daniel Williamson, spelled Daniel, D-a-n-i-e-l, Williamson, W-i-l-l-i-a-m-s-o-n. I am vice president of-- and head of development and public relations for Park 'N Go. I appear before you today to support LB874 and we appreciate Senator Friesen's introducing of that LB874. Park 'N Go is a surface parking company that is located close-- in close proximity to Omaha's Eppley Field. Our facility is at 1515 East Fort Street on private property about one mile from the airport. Our customers park at our facility. We then assist them with bags and other kinds of services and transport them to and from the airport. We've been in business since 2000 and we've always enjoyed a good working relationship with the Omaha folks and continue to try to operate that way across the country. However, last summer, we faced a sharp difference of opinion on an action taken by the airport authority board. Last summer, as Senator Friesen stated, the board instituted a 10 percent tax on our gross revenues of business. You heard me right, 10 percent. We're a volume-based business and if you know how volume-based businesses work, the margin is slim. So 10 percent is more than a normal amount to have to introduce into your business platform on a sudden basis. They're under-- their basis, as we understand it is, to recover costs associated with our access to the Omaha airport grounds. OK, what does that mean? That means wear and tear on the asphalt, gate transaction machines that lift the gate and let us in and out. I, on behalf of Park 'N Go, objected to the fee at the time of the hearing before the board that was back in July. But it became quickly obvious to me in the board's response to me that they were not interested in my objections and they were going to move forward and vote that day, which I was a little surprised. I've worked with many airports across the country and usually there's a dialogue and a process to try to negotiate a win-win agreement. We objected to the fee at that time based on the following five points. First, the use of a percentage gross tax is not standard throughout the industry, even though it's portrayed that way. Park 'N Go has operations all

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across the country, some of them have zero fees much like Omaha did. Some of them have a trip fee and some of them have a percent of gross fee, which ranges-- all different percentages. The con-- the consistent idea is to contribute to the general maintenance and the welfare of the airport. We all want a healthy airport. We all want a vibrant airport, airport. We all succeed better when they are such. Second, the Omaha airport is a competitor. Can you imagine Burger King calling McDonald's and saying, I want to see your books and I want 10 percent of your gross revenues and then by the way, I'm going to use those revenues to market against you and compete with you? There's no reasonable way to receive that well. As Senator Friesen noted, the Omaha Airport Authority just completed a major construction of a parking operation, a big expansion, and they did that during the COVID event. Third, speaking of the COVID event, the travel industry has just begun to recover from one of the worst economic events that we have seen historically and most of the airports are predicting about a 2023 recovery, so we're still not there yet. Now the Omaha airport wants to tax us 10 percent on our gross revenues. One of our other competitors, which was Stewart Parking, made it clear at the meeting that this would put them out of business and they have since relinquished their business. A free market is important to the American system and a free market means that a monopoly is not beneficial to a free market. We believe the public gets better service and a better value when there are multiple competitors. We have many cities where there's four or five, six different parking operations competing with the airport and what I like about that is it, it makes us all service you better, provide a better rate, and frankly, it helps the airport do the same thing. We know airports that have raised their tax on the parking facilities to 20, 30 percent and frankly, the service at that airport is very, very, very poor. We've also sat at meetings or at restaurants and been eating and a guy behind us suddenly says, gee, we're going to just keep raising those rates till we put that parking operation out of business. And we of course turn around and say, by the way, with Park 'N Go. We just overheard that conversation and would you like to say that again? So we know sometimes there's method that's not as polite as we'd like it to be. Fifth, all we're really looking for is dialogue. We would have liked a dialogue like we've done with many, many other airports where we've negotiated a fee structure that would have worked for us and the airport.

GEIST: Sir, your light is red.

DANIEL WILLIAMSON: Oh, does that mean I have to stop? I'm sorry.

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GEIST: It does, if you'd wrap up quickly.

DANIEL WILLIAMSON: I will wrap up quickly. Parking 'N Go wants to first of all just thank you here at the committee for hearing our, our testimony and I'm here to answer questions.

GEIST: Thank you. Thank you for your testimony. Are there any questions on the-- yes, Senator Hughes.

HUGHES: Thank you for coming in today. So it-- was there-- I guess I'm looking for the numbers of parking slots in-- at Eppley. Was there a critical shortage? I know they, they just built the new parking garage across from the terminal. Was, was that indicated before COVID or can, can you share any numbers with me that would indicate the, the capacity versus the need of parking?

DANIEL WILLIAMSON: The demand on parking appears to be growing across the whole country. It just appears to across-- I mean, Minnesota just added their Silver Ramp, which was, I think, 7,000 spaces. I'm going to let the Omaha folks-- since I know they're in the back there watching the back of my head. I'll let them answer that question directly. I know that we expanded our facility. We doubled our size with the anticipation of the demand on parking. So we had increased our parking at Omaha.

HUGHES: When, when did you do that?

DANIEL WILLIAMSON: We did it prior to the COVID experience.

HUGHES: So--

DANIEL WILLIAMSON: Let's say four years ago.

HUGHES: OK so 2017-ish?

DANIEL WILLIAMSON: Yeah, roughly.

HUGHES: OK. So the company that went out of business, how big of a parking lot was that and was that on private, on private property?

DANIEL WILLIAMSON: Private operator, Senator Hughes, and smaller than ours. I want to say they were under 1,000 cars.

HUGHES: OK. So currently you don't pay any access fee to the, to the terminal?

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DANIEL WILLIAMSON: Up to the date that they passed that resolution, we did not.

HUGHES: But you do now?

DANIEL WILLIAMSON: We-- I believe we are now, yes.

HUGHES: In addition to the 10 percent of the gross--

DANIEL WILLIAMSON: No, the 10 percent only.

HUGHES: Oh, so you-- that is your access fee.

DANIEL WILLIAMSON: That is our access fee.

HUGHES: So you're not paying a fee to-- every time you--

DANIEL WILLIAMSON: Nope.

HUGHES: --go to the terminal.

DANIEL WILLIAMSON: No, we don't have that right now.

HUGHES: OK. So if you-- as you stated, your company is based off volume.

DANIEL WILLIAMSON: Yes.

HUGHES: So the margins are thin. So in order for you to recoup this, you've got to raise your prices and that in turn raises the tax for the Epp-- for the airport authority.

DANIEL WILLIAMSON: That's right. We would have to pass that price on to the customer.

HUGHES: That is, that is a double tax, if you will, or a win-win for the, for the Eppley. OK, very good. Thank you for coming.

GEIST: Thank you, Senator Hughes. Any additional-- yes, Senator Moser.

MOSER: Do some airports just charge so much for every trip you take through the airport?

DANIEL WILLIAMSON: That is correct. That's what we have in Minnesota as an example. We have a trip fee.

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MOSEER: So somebody who stays-- goes on vacation for two or three weeks, they're going to have a \$100 parking bill?

DANIEL WILLIAMSON: Depending on which airport, in Minnesota, if you--

MOSEER: Well, I mean, in your-- let's say in your lot where you know what the deal is, I mean, it's 10 bucks a day, at least, right?

DANIEL WILLIAMSON: At least, yes.

MOSEER: Yeah and so you're going to pay 14-- if it's 14 days, 10 bucks a day, you're gonna pay 10 percent of that, you're going to have \$14 you pay the airport--

DANIEL WILLIAMSON: That's right.

MOSEER: --whereas if you got 5 bucks every time you charged, every time you drove through, you'd be charged for what you actually wear and tear on the streets and--

DANIEL WILLIAMSON: That's correct.

MOSEER: --and all those sorts of things rather than on your gross.

DANIEL WILLIAMSON: Senator Moser, that is correct.

MOSEER: But other airports do charge a gross tax?

DANIEL WILLIAMSON: Some do. Yes, that is correct.

MOSEER: Are they as high as 10 percent?

DANIEL WILLIAMSON: Some are as high as 10 percent.

MOSEER: So this bill is just-- it's not going to guarantee that you get a better deal, it's just going to give you a little leverage.

DANIEL WILLIAMSON: The idea with this bill would be that we-- they would-- the airport would have to come to us and work on a negotiated fee.

MOSEER: But still, if they want 10 percent and you don't want to pay it, then you're kind of back right where you are.

DANIEL WILLIAMSON: Then we have to fulfill our court case, yes.

MOSEER: OK, thank you.

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GEIST: Are there any-- yes, Senator Albrecht.

ALBRECHT: Thank you, Vice Chair Geist, and thank you for being here. I just want to point blank ask if you were in court over this with that operation.

DANIEL WILLIAMSON: Yes, we are. I didn't read that part because I was cut a little short, but I'll just read it quickly to make sure I got it correctly. We currently have a-- in Douglas County District Court and we've gotten relief on this case, which means it's going to go to a court case, OK? The dismissal didn't occur. In other words, it's got to move forward. That is correct.

ALBRECHT: OK. And some of these other airports that you-- that Park 'N Go are at, do they have the ability to do what, what Omaha has asked of you, to, to charge an extra amount?

DANIEL WILLIAMSON: Airports that have tried to do this after the fact, we've had to either negotiate or we've had to go to court. And I think the difference that needs to be clarified, is when we go to develop a piece of property, just like any business, you look at the cost of the land value, the availability of the land, the costs of operating your business in that particular community, the possible revenue stream. So when we go into a city and they say here is our fee structure at the airport, we know that. We, we build it into the program and we go, OK, this can be a successful business. When it comes after the fact. There's no way to mitigate that. It just has to be handed off either to the customer--

ALBRECHT: OK, so real quick. How long have you been there and have been a service to the Omaha airport How many years--

DANIEL WILLIAMSON: We've been there since 2000.

ALBRECHT: 2000 and how many stalls?

DANIEL WILLIAMSON: We have about 880 in the one lot in another 700 on the second lot.

ALBRECHT: OK, thank you.

GEIST: Any additional questions from the committee? Yes, Senator Hughes.

HUGHES: Yes. Thank you, Senator Geist. So how-- is, is there any kind of a distance from an airport that you could build a parking lot that

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they wouldn't come after you or say that regardless of what, what you're providing parking for or whether you're providing parking for and transportation to Rosenblatt-- or not Rosenblatt, what is it now-- the ball field or to UNO or to the airport or to the casinos in, in Iowa? You know, does, does the airport have any distance requirement from their facility that they can't--

DANIEL WILLIAMSON: None that I know of and because they're auditing our books and taking gross receipts, even if those customers used other services to go to other locations, they still would be accessing that tax-- 10 percent tax from us.

HUGHES: OK, thank you.

GEIST: Any additional questions? I have just-- oh.

MOSER: Do you have an agreement to use the access to the airport now without a tax and you're saying that they instituted this tax after you had an agreement to operate?

DANIEL WILLIAMSON: We've been operating for 20 years with an agreement.

MOSER: But do you have a contract with them?

DANIEL WILLIAMSON: You know, I'd have to look and see what the-- how that read. We do have an agreement that allows us to go in and out of the airport. Yes, every airport has that.

MOSER: And what's the term of the agreement?

DANIEL WILLIAMSON: Well, it changed. It-- with that resolution, it became a new agreement.

MOSER: Well, you don't-- you can't unilaterally, unilaterally change a contract unless you-- unless something changes, right?

DANIEL WILLIAMSON: Well, the ordinance changed that.

MOSER: OK, thank you.

GEIST: OK. I have one question. It's probably not hard at all because everybody's used up all my questions.

DANIEL WILLIAMSON: OK.

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GEIST: Was the Stewart Group the only other private entity that was operating at the airport or is there currently more than just you?

DANIEL WILLIAMSON: There was one other and they chose to pay the tax is what my understanding is.

GEIST: OK. So that-- the same imposition of 10 percent was made upon them as well--

DANIEL WILLIAMSON: That is correct.

GEIST: --at the same time?

DANIEL WILLIAMSON: Yes.

GEIST: OK. Thank you. Any additional questions? I think that's it. Thank you very much for your testimony. Any additional proponents who would like to testify? Saying none, any opponents who would like to testify? Good afternoon.

DAVID ROTH: Good afternoon, Vice Chairman Geist and the rest of the Transportation and Telecommunications Committee. My name is David Roth, D-a-v-i-d R-o-t-h. I'm the chief executive officer for the Omaha Airport Authority. The Omaha Airport Authority is a nontaxing political subdivision founded in 1959 and charged with exclusive jurisdiction, care, custody, and control to develop, operate, manage, and oversee the airports in Omaha, Nebraska, including Eppley Airfield. Board members of the authority are appointed by the mayor of Omaha and approved by the city council. To cover airports' costs, airports such as Eppley Airfield collect fees from businesses that directly benefit from the airport's operations and use its infrastructure on a daily basis. Some such businesses, like the airlines, help generate the customer base. Other fill-- facilitate aviation activity. Still, other businesses, such as off-airport parking companies that derive virtually all of their revenues from airport-related operations tap into the market of customers created by the airport's existence. The Omaha Airport Authority is the only airport authority in Nebraska that does not have the power to tax nor does it want the power to tax. Instead, Cities Airport Authorities Act specifically authorizes the authority to quote-- excuse me. Let me take this off-- charge fees, rentals, and other charges for those use of projects. And projects is defined as the entire airport under the jurisdiction of the authority. Since it receives substantial federal funding for airport development, federal grant assurances require the authority to quote, maintain a schedule of charges for use of

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facilities and services at the airport in order to make the airport as self-sustaining as possible. As part of a multi-year ground transportation strategy, the authority began collecting user fees from ground transportation providers at Eppley Airfield. This group includes Uber, Lyft, taxis, limos, rideshare companies, and off-airport parking companies. The user fee is a charge for the use of the airport and its infrastructure, including access to the roadways and commercial vehicle lanes at Eppley Airfield. Last year, the authority passed the off-airport parking company user fee resolution to charge user fees to vendors characterized as off-airport parking companies. The resolution charges a fee of 10 percent of gross receipts received by vendors from their shuttle business services at Eppley Airfield. Similar fees have been fully litigated and upheld in the courts. They are charged at airports across the country, as can be seen in the chart that I have attached to my testimony, indicating fees imposed by our peer airports. These charges are also recognized by the FAA. However, at this time, we are in litigation. LB874 seeks to outlaw authority charges to off-airport parking companies that are based on a percentage of gross receipts. It does not prohibit other charges, such as trip fees, although any fee collected by the authority would require approval of the State Director Engineer of the Nebraska Department of Transportation. Design of a new terminal at Eppley Airfield is underway, with construction expected to start in 2023. The project will be funded by the cash reserves accumulated from the airport authority operations, revenue, including user fees such as the subject ground transportation fee, along with FAA grants, passenger facility charges, TSA grants, and new revenue bonds issued. The authority has always managed its finances prudently with financial or with fiscal responsibility. To involve state agencies in this process or to prohibit a particular type of fee would interfere with the authority's fiduciary responsibilities to our bondholders and to the FAA. To prohibit fees of gross receipts charges-- to prohibit fees on gross receipts charges is unnecessary, highly unusual, and without precedent. This legislation will negatively impact the financial profile of the authority. If enacted, LB874 will create a negative impression on the authority in the capital markets. Any political involvement in its operations of an airport is a significant negative feature from the point of view of the rating agencies, investors, and the airlines. It is highly unusual to require an airport to seek state approval for the imposition of the fee needed to effectively finance airport operations and in closing. Fees levied on ground transportation companies are common at airports nationally and are strictly determined by airport management. Any negative credit impression from the investors will increase our interest rates at the

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authority when we borrow money, which will increase our operating costs and burden users of the airport facilities. The market expects airports to maintain a strong financial profile and having the ability to set rates and charges and collect user fees without political interference is a crucial concern. Eppley Airfield is a successful airport for Nebraska because it operates the way it does. Changes like LB874 put that at risk. For these reasons, the Omaha Airport Authority opposes LB874 and respectfully requests it not advance. Can I please answer any questions?

GEIST: Sure. Thank you for your testimony, Mr. Roth. Are there any questions? Senator Hughes.

HUGHES: Yes. I have flown in and out of Eppley several times. I'm a-- I live a lot closer to Denver International Airport, a much larger airport. So parking facilities are five to ten miles away, but they also serve other facilities other than just the airport. I guess the, the part that is really bothering me is the 10 percent. If you have a person that is gone for a day and he parks at Park 'N Go or whatever the other gentleman's facility was, he pays \$10 a day, you get \$1. He made two trips to the airport, they hauled him in, got on his airplanes, they came and picked him up when he came off. You got a guy that's gone for ten days and he paid \$100, you get \$10, but they still made two trips in and out of the airport on public roads. So to me, the 10 percent is, is very arbitrary and very unfair. I think a gate fee for the amount of times that they circle in and out of the airport would be more appropriate. Just, just some thoughts.

DAVID ROTH: Thank you, Senator. You know, if you look at the chart on-- that was attached, we did substantial reporting on this and some benchmarking on this and you see a lot of the other airports that are situated similar to airport-- Eppley. Ten percent is very, very common. As a matter of fact, when you go back to the Airports Cooperative Research Program, they did a study on ground transportation and one of the predominant ways to collect fees from an, from an accuracy standpoint is gross receipts and they also recommend that. It, it is a way that we can actually get a-- the percentage of actually the amount of parking revenue coming into those parking companies. If you do based on trip fees, there could be one person on a bus, there could be 15 people on a bus. One thing that the FAA wants to make sure that we do is we're equitable across the board on the utilization of, of the facilities and how we collect those fees.

HUGHES: I, I have a follow-up then--

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GEIST: Sure, go ahead.

HUGHES: So how do you charge taxes on Uber and Lyft? What's their fee schedule?

DAVID ROTH: Yeah, first of all, we don't collect taxes. They're--.

HUGHES: How do you--

DAVID ROTH: --they're strictly user fees.

HUGHES: --generated revenue from them?

DAVID ROTH: Yeah, we raise revenue with them with trip fees. So every time a Uber or Lyft come across the drive, they have equipment actually in their vehicles provided by the company and then they report those to us from, from the Uber and Lyft companies. So they actually have equipment, GPS equipment that they have installed in their equipment.

HUGHES: OK, thank you.

GEIST: Yes, Senator Bostelman. Go ahead.

BOSTELMAN: OK. Thank you, Vice Chair, Vice Chair Geist. Thank you-- thanks for coming and testifying today. I guess I got some questions for you. How much, then, does, does those Uber taxes pay [INAUDIBLE]-- you're, you're, you're asking 10 percent gross from these off-parking areas. How much is-- what's the percentage for an Uber driver?

DAVID ROTH: The Uber driver is--

BOSTELMAN: Is it 10 percent?

DAVID ROTH: I believe it is-- it's either a \$1.50 or \$2 trip fee. I'd have to get--

BOSTELMAN: Do you know what would be to their gross income?

DAVID ROTH: It's not gross. It is a--

BOSTELMAN: I understand that, but you're charging off a gross for the Park 'N Go.

DAVID ROTH: Correct.

BOSTELMAN: So why wouldn't you charge on gross for these guys?

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DAVID ROTH: It's-- when you look at the industry standards on the off-airport parkers, it is more consistent to do gross receipts fees.

BOSTELMAN: OK, I appreciate that. I'm looking at the airports you have here that you're comparing to. They're significantly larger than Omaha. Omaha, I think, would be more in the Oakland/Jacksonville. Omaha is not nearly the size of-- I would say your Cincinnati, your Dulles, your Portlands, so I think you're, I think you're, you're number-- I think that putting Omaha in that category is-- I guess we want justification as to how many flights coming in and how many passengers. I think you're probably lower significantly at some of these. My other comment would be you're just to charge me more money. So rather than charging me more money, why don't you lower the rates in your parking garage so I can afford to park there?

DAVID ROTH: The, the parking garage-- when we built the new parking garage-- and about 2017, I believe, was when it started-- we were closing that parking garage about three to four times a week. So we needed the capacity to increase and we chose the investment that we did. We actually have rental car facilities in the first two floors sharing that cost as well and then the top four floors are in the parking garage. Interesting enough, last month or in December, we actually filled up both of those garages. So we are, we are seeing, as the gentleman who spoke before me, we are seeing increase in parkers. Actually, their behavior since COVID has changed significantly. We are getting more parkers coming into the parking garage.

BOSTELMAN: So why is it when you build those-- wasn't it your--- the design or the I'll, I'll call it the feasibility study, business plan for a new parking garage that pays for itself. I mean, to me, instead of going out to charge someone who you've never charged before in the history and now all of a sudden you're going to, you're going-- you go-- and you're going to go at a significant rate. So why-- I guess that's-- I'd like to understand that.

DAVID ROTH: Yes. The, the transportation, the ground transportation fee has nothing to do with paying for a parking garage. That, that's based on our revenues coming in from the parking garage. Actually, the rental cars pay two-fifths or two-sixth of that parking garage, so revenue coming in from Park 'N Go is not going toward that. It just-- it's going into the general fees. And as the FAA has required us to charge fees to all users of the airport facilities, we just started to charge fees on ground transportation and we started looking at that about five years ago because the market changed. Uber and Lyft did not exist before that. We had off-airport parkers. We did not have Ubers

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and Lyft. Now that Uber and Lyft comes into play and the increased off-airport parking, we utilize more law enforcement officers. We probably doubled those numbers, so operational costs increase. We also have the maintenance operations of our facilities. And if you've been by the airport in the last 8 to 12 months, we just started construction of a new entrance roadway, which is part of our overall master plan for the facility.

BOSTELMAN: So-- and one last one. So as Senator Hughes had said-- and you have it in here in, in five-- the user fee is as a charge for use of the airport and its infrastructure. That's a public, that's a public road. That's public infrastructure that got put in there.

DAVID ROTH: The roadway is not-- it is part of the Omaha Airport Authority property. It's not part of the city.

BOSTELMAN: It's part of the-- say it again.

DAVID ROTH: The Omaha Airport Authority.

BOSTELMAN: And is there-- Omaha Airport Authority private?

DAVID ROTH: Is it private?

BOSTELMAN: Is a private business or is it a--

DAVID ROTH: It's a, it's a political subdivision--

BOSTELMAN: OK.

DAVID ROTH: --and we have care,--

BOSTELMAN: So it is--

DAVID ROTH: --custom and control.

BOSTELMAN: So it is a government roadway then.

DAVID ROTH: Funded by the fees that come into the airport authority, authorized by the Cities--

BOSTELMAN: OK.

DAVID ROTH: --Airport Authority Act.

BOSTELMAN: Thank you.

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GEIST: Thank you, Senator Bostelman. Senator Moser. Yes.

MOSER: Did you call me Groene?

GEIST: No, I called you Moser.

MOSER: My hearing must be going bad.

GEIST: No, I, I see you--

MOSER: I take that as a compliment anyway.

GEIST: --clearly.

MOSER: Do we-- do they charge sales tax on parking?

DAVID ROTH: We do not charge any sales tax.

MOSER: But are the parking garages required to charge sales tax?

DAVID ROTH: The parking garages belong to the Omaha Airport Authority, so no.

MOSER: Well, I mean, the ones you're charging the 10 percent to, the off-premises [INAUDIBLE].

DAVID ROTH: That I don't know. We, we don't get into their business.

MOSER: This chart says select airports. Are there some airports that don't charge fees?

DAVID ROTH: The good percentage of airports in the United States charge fees to come onto airport property as a user fee, correct.

MOSER: But you stopped at Oakland, but there are some to the left of that that charge less or no fee?

DAVID ROTH: The ones that don't charge fees, I don't know the number of that. I can get that to you, but the majority and the best practice within the industry is, yes, charging fees.

MOSER: Thank you.

GEIST: Yes, Senator Cavanaugh.

M. CAVANAUGH: I just want a point of clarification. So on number three on your testimony, it says that the Omaha Airport Authority is the only airport authority in the state that cannot levy taxes.

DAVID ROTH: Correct.

M. CAVANAUGH: OK. And I'm assuming that, but please correct me if I'm wrong, that that is because it is not an elected airport authority. It's, it's basically a subdivision of Omaha.

DAVID ROTH: It's in the metropolitan class.

M. CAVANAUGH: OK.

DAVID ROTH: So it's above a certain number of passengers so it's in a metropolitan class.

M. CAVANAUGH: So the Lincoln Airport Authority could charge or levy taxes, but the Omaha could not.

DAVID ROTH: I believe yes.

M. CAVANAUGH: OK, thank you.

GEIST: Any additional questions? Yeah, Senator Albrecht.

ALBRECHT: Thank you. I just have a couple of quick questions. So if, if you're going to start charging this company that's been good to the Omaha airport for 20 years a tax, will you then start charging anyone who drops us off to go to the airport a fee?

DAVID ROTH: On the front drive if you're getting dropped off? No, we don't do that. We're just dropping companies who are making money off airport or on airport, then we are charging a user fee--

ALBRECHT: So, so--

DAVID ROTH: --for access.

ALBRECHT: --but would you say that over those 20 years, you were grateful that they were there--

DAVID ROTH: Oh, absolutely.

ALBRECHT: --because you didn't have enough parking?

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DAVID ROTH: Absolutely. Yeah, during peak times, the-- it's, it's great to have Park 'N Go there because they'll take on passengers. They've got a good, solid base of customers. And matter of fact, as I've driven by their parking lots, those numbers have come back from COVID. Lots are filling up, our lots are filling up and to me, that's a good thing.

ALBRECHT: So I just want to make this comment because when I go to the airport, I don't like walking through big, monstrous parking garages. I love the fact that I can just go there. They pick my luggage up out of my car, put it in there. I like the price. Usually it's on somebody else if I'm going somewhere, but it's really a nice service. It's unfortunate that there can't be something worked out. I'm just saying that-- to have a nice, strong vehicle to go back to your car in-- and as a woman, not-- and maybe a man too, who knows, but it's nice to have the convenience of the Park 'N Go. I will just say that, so.

DAVID ROTH: Thank you.

GEIST: Any additional-- yes, Senator Hughes.

HUGHES: I'm not familiar with the footprint of, of Eppley, but it looks to me like you're pretty landlocked or-- do you have room for expansion? You said that you were anticipating building a new terminal. Is it going to be larger?

DAVID ROTH: Yes.

HUGHES: Do you have room to expand?

DAVID ROTH: Yes, where we're expanding is right on top of ourselves, so we will be renovating the existing terminal and we will be expanding, making it much more efficient with-- for the airlines, TSA. So the process is very seamless as you go through. We're going to be building very much in the same footprint, except we will-- instead of having two concourses like we do today, two separate checkpoints, we will have one concourse. And the other, the other caveat of this is all the concessions, the way-- after 9/11, most folks wanted to get through the security checkpoint so they can get concessions, relax before they get on an aircraft. We don't have a whole lot of concession opportunity on-- in the current layout. The concessions, the majority of them, will be after the security checkpoint.

HUGHES: So are you going to build out kind of a lane or something for planes on both sides?

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DAVID ROTH: Correct. It'll, it'll be-- the landlocked issue, we will be on one side on part of the new concourse and it'll wrap around on both ends of it.

HUGHES: OK. So what kind of a price tag is that--

DAVID ROTH: Right--

HUGHES: --looking at?

DAVID ROTH: --now-- yeah, right now, we, we're in the design phase of that. And the original preliminary estimates are around \$600 million.

HUGHES: Wow. So how much did the parking garage expansion cost, just ballpark?

DAVID ROTH: Yeah, the parking garage was-- I think the bids on that were \$69 million.

HUGHES: OK and that-- and you came in about on budget?

DAVID ROTH: Yeah, on-- right on-- yeah, we came in under what we had budgeted for.

HUGHES: So kind of what's the, the ballpark of the-- what's your operating budget to maintain runways and terminal and parking and--

DAVID ROTH: Can you, can you--

HUGHES: --your, your main-- what's your, what's your operating budget?

DAVID ROTH: Operating budget runs-- 2020, it was, I believe, \$25 million in operating budget.

HUGHES: OK and how many airlines come-- have, have flights into Eppley?

DAVID ROTH: We have seven. We, we run-- it changes seasonally. We run between 70 and 90. Again, COVID has changed things significantly.

HUGHES: 70, 90 flights per week?

DAVID ROTH: Flights per day going out, so.

HUGHES: Between 70 and 90.

DAVID ROTH: Yeah, in that range.

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HUGHES: OK. So I guess I've-- well, I understand why and I-- and I'm-- this is not a criticism of you, but to me, it just defies logic that Lincoln and Omaha don't have a regional airport halfway between Lincoln and Omaha. The opportunities to get a direct flight to anywhere is much greater. I, I'm planning a trip to Texas. I'm flying out of Denver because I can get a direct flight at a heck of a lot cheaper price. I'm spending more miles on the highway, but my time is worth something and the tickets are a heck of a lot cheaper and not having a connector flight through Denver, through Charlotte to go to Texas or through Miami. So rather than, you know, taking \$600 million to build a new terminal-- and the city of Lincoln or Lincoln Municipal Airport is having trouble getting enough airlines, enough passengers. Let's take a look at that. Let's do something for the citizens of eastern Nebraska so they're not driving to Kansas City, so they don't have to have a one-stop or a two-stop to get where they go, where everybody in western Nebraska goes to Denver because you can get to places from there. Just a comment. Thank you.

DAVID ROTH: Thank you.

GEIST: Any additional questions from the committee? Seeing none, thank you for your testimony--

DAVID ROTH: Thank you.

GEIST: --Mr. Roth. Are there any additional opponents who would like to speak? Good afternoon.

JON LARGE: Good afternoon, Madam Vice Chair. Senators, my name is Jon Large, J-o-n L-a-r-g-e. As the immediate past president of the Nebraska Association of Airport Officials, I'm here to testify in opposition to LB874. Whether they are fuel flowage fees based on the amount of fuel a private operator might distribute or an operating fee, an aerial applicator might pay to utilize an airport during a summer/spring season or a gross revenue fee charged to an off-air-- off-property business operating at an airport, fees and charges to those existing-- to those using airport infrastructure are a key component of the operational funding of any airport from largest to smallest. By requiring state approval of any fees and precluding the use of certain types of fees, the association sees this bill as placing all airports in the state on the brink of a slippery slope, jeopardizing future abilities to charge businesses for the use of an airport and eroding one of the foundations of its financial support. Now, this foundation of an airport's financial structure is not optional. Charging fees to airport users is tied directly to federal

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grant obligations that any airport receiving federal funds has agreed to. The specified grant assurance, among the many are-- that, that are required, assures the FAA in return for the federal funds-- and I'm quoting here-- it will maintain a fee and rental structure for the facilities and services at the airport, which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. Perhaps most disturbing about the bill-- proposed bill is that while it does not preclude a fee to an airport user, it does take the control for this obligated fee and rental structure out of the hands of those making the assurance to the federal government and places it into the hands of those with no responsibility or authority or consequence for the fee and rental structure that makes the airport as self-sustaining as possible. Finally, we believe this proposal assumes a level of knowledge and depth of understanding of the process of developing and establishing fees and rental structures that may not exist. This is a highly complex undertaking requiring significant experience and background knowledge. While the department/division is highly experienced and well qualified in the processes of federal grants management and does a commendable job of helping the state's airport sponsors to navigate the waters of airport development, reviewing and approving of an airport's fees of any kind seems well outside of the department/division's purview. Rates and charges for anything from hangar rental rates to fuel flowage fees to business operating agreements and the form that they take should be the sole responsibility of the state's individual airport sponsors based on their own unique situations. To think that the department/division should ever assume a regulatory role in the definition of an airport's finances is far beyond where this association believes they should ever go. For all of these reasons, the Nebraska Association of Airport Officials feels that this bill again puts us on the brink of a slippery slope that could impact every airport in the state and we would again state our opposition. So with that--

GEIST: Are you done? I didn't mean to--

JON LARGE: Yes, ma'am, I am.

GEIST: OK because you still have a little bit of time.

JON LARGE: I do.

GEIST: I wasn't going to cut you--

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JON LARGE: Yes, ma'am.

GEIST: --off.

MOSER: Don't encourage him to keep talking.

GEIST: Well, thank you for your testimony, Mr. Large. Are there any questions from the committee? Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you, Mr. Large--

JON LARGE: Yes, ma'am.

M. CAVANAUGH: --for being here. Just in hearing your remarks about the authority to levy fees and rereading the language here, so am I to understand correctly-- and I guess also looking at the fiscal note, the fiscal note from the city or from the Omaha Airport Authority took into account just estimating fees that they collect for rideshare, taxis, limos, etcetera, would this bill prohibit them from collecting those fees that they currently collect without the approval of the director? Sorry, it was probably a-- it's probably a question I should have asked the Omaha Airport Authority.

JON LARGE: I think I would, I would not want to, to address that.

M. CAVANAUGH: That's fine. I'm sorry. I was a little--

JON LARGE: Thank you.

M. CAVANAUGH: --little slow on processing that, so previous testifier. Thank you.

GEIST: Any additional questions from the committee? Seeing none, thank you--

JON LARGE: Thank you.

GEIST: --for your testimony. Any other opponents to the bill? Good afternoon.

SCOTT TARRY: Good afternoon, Senator Geist and members of the committee. My name is Scott Tarry, S-c-o-t-t T-a-r-r-y. I am director of the Aviation Institute at the University of Nebraska-Omaha. I'm also the-- serving currently as the chair of the Nebraska Aeronautics Commission. I want to be clear, though, I'm not speaking on behalf of the university or the commission today. I'm speaking on behalf of myself as somebody who has been engaged in aviation for most of my

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career in a number of different capacities. I first want to start with Senator Hughes. I had to give you an amen on the idea. Some of my friends back here might-- I've assigned that project that you suggested; why don't we build an airport between Lincoln and Omaha? And one of the reasons we don't is because of the politics. It would be insane because where you put airports is really, really contentious, but the students really get a lot out of that, that exercise. I want to take about a 30,000-foot view, if you don't mind the aviation pun. I think you've heard a lot of the specifics about what this bill is, the rates and charges and fees that the airports use to support their, their mission and what they're trying to do. I'm speaking against LB874 today because I don't think it's necessary and I think it, it misses the point about how our airport system has evolved in this country. If you go back way, way back, historically, we had a real mess of a system of private operators and public operators and who was going to benefit from the airport and who was going to pay their fair share. And fortunately, we've ended up in a place with our large commercial service airports like Omaha where the, the, the airport doesn't go into the community and tax. It, it charges fees to people who use and benefit from the airport. And so if you fly into and out of an airport, you, you pay a fee. If you are a service provider that is benefiting from that airport being there, you, you pay a fee. You contribute to the well-being of the airport. Our, our, our commercial service airports depend on local government structures. They depend on cooperation between airport managers and other stakeholders and an understanding that everyone who benefits from the airport is responsible for paying for the airport, not just that specific one-time use, but for the future of that airport, as was mentioned by some of the other people who testified. The system of grand assurances and restrictions and agreements that are in place are imposed so that the investments that are made in the airport facilities are there for the long term and they're sustained. I've studied a lot of airports and like many of you, I've visited a lot of airports and frankly, our airport in Omaha is something to be proud of. It's run very well operationally. It is run prudently and it has a vision for the future that I think we can-- we should all be excited about for, for Nebraska. There's always a question about, you know, spending \$550 million on terminal expansions and so forth and, and what does that mean? I think we need to look forward, we need to look ahead with those kinds of plans and know that that's going to benefit not only the people of Omaha, but the people of the region. And it's responding to the demands of the market, which I think are, are important as well. The Omaha airport is governed by a politically appointed board, a board of businesspeople, civic-minded

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businesspeople who have not just the interest of the airport in mind, but also the interest of, of, of the community. And they really demand accountability of Mr. Roth and his staff and, and that's important to note. One thing that's I think interesting about airports that a lot of people miss is that they're public entities that really operate like businesses. They're business partners and commercial airline, commercial airlines really demand this after deregulation. They've demanded that these airports are efficient and effective and that they do what they can to run their operations prudently. And a few of the speakers talked about fiduciary responsibility. This is a real important issue for those that run commercial service airports in this country and I think Omaha does an exceptional job of that. The point is that the system that we have effectively distributes the cost of operating the airport, the community needs to those who benefit from its operation, either as customers or service providers. The airport doesn't go into the broader community and asked for tax dollars. It does not seek funding from people who don't directly benefit from the airport. In short, what I'm saying, whether by intention, some sense of luck, or a combination of the two, we ended up with a system of airport ownership and governance in this country and in this case in Omaha, that works. There are enough checks and balances in the system to ensure the airport operators are accountable to both the public and their various business partners. We don't need another layer of government or oversight or intervention in this regard. And for that reason, I believe that LB874 is not necessary. Happy to take any questions.

GEIST: Thank you for your testimony, Mr. Tarry. Are there any questions from the committee? Seeing none, thank you very much.

SCOTT TARRY: Thank you.

GEIST: Any additional opposition to LB874? Is there any neutral testimony for LB874? Good afternoon, Director.

JOHN SELMER: Good afternoon, Vice Chair Geist and members of the Transportation and Telecommunications Committee. My name is John Selmer, J-o-h-n S-e-l-m-e-r, and I'm the director and state engineer of the Nebraska Department of Transportation. I'm here today to offer testimony in a neutral capacity. I thought it was worthwhile for me to be here, hearing how well I'm spoken of is another bureaucrat, bureaucratic entity and, and looking at airport, airport fees. It's been an interesting discussion, as been-- has been discussed with many of you, and I won't take much time. The FAA requires airports to charge fees to companies that operate on airport properties or profit

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from the entity or an airport being in business such as airlines, restaurants, gift shops, limousine services, rideshares like Uber and taxi services. And all those fees are required to be fair and equitable. I believe this bill is talking about the equity-- being equitable and fair in terms of ground transportation. This bill, as it's written right now, would affect the airport's authority to charge fare fee-- fees because it calls for suspending fees that were imposed after July 1, 2021, for ground transportation companies. We believe this is neither fair or equitable to the other, other entities that are currently paying for fees out there. This can also be expected to be a fee increase on other airport businesses in order to make up for the loss in receipts from ground transportation operators. Suspension of the ground transportation company fees beginning from the passage of this bill through the regulatory process up until the airport authority can apply for and receive approval for fees will allow all those companies to operate without costs on facilities constructed with public money. Knowledgeable business professionals with an in-depth understanding of large and complex, large and complex business of owning and operating Eppley Airfield, other airfields such as Lincoln Airport, Millard Airport, and other individual airports across Nebraska, they currently set and-- the rates and the charges at these airports. The setting of those rates and charges is one of the contractual obligations the authority acquires when it accepts grants through the FAA Airport Improvement Program. As such, there are FAA compliance determinations on the amount and manner of setting those rates and charges, which are not set in a vacuum. Currently, as expressed, NDOT does lack the knowledge and the expertise to determine the appropriateness of the rates and charges set by the Omaha Airport Authority. And I think what it gets into is this is changing the role that historically either the Department of Aeronautics or the Department of Transportation has involved in this. To us, I think our concern is that-- even though we're neutral here-- is that it's more than just looking at whether it's fair or equitable. It's really getting down into the finances, into the strategic planning, and really, I think, taking on a role that we're not necessarily comfortable with taking as the Department of Transportation. Is that rightfully our role or is there another entity, local government or a different way of doing business to address the concerns that have been brought up here today? And I'll stop with that and be happy to answer any questions.

GEIST: Thank you for your testimony. Senator Hughes.

HUGHES: Yes. Thank you. Director Selmer for coming in today. So I guess I, I had similar concerns that you do. And my thoughts are would

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the Public Service Commission be a better oversight entity to handle this? Just giving Senator Friesen a heads-up so he can answer that when he shows up, but Public Service Commission regulates a lot of taxi fees, all sorts of things, so that seems like that would be a better fit and you would be off the hook.

JOHN SELMER: I'd like to be off the hook. Maybe I'm not so impartial here, though.

GEIST: Any additional questions from the committee? Seeing none, thank you for your testimony.

JOHN SELMER: Thank you.

GEIST: Is there anyone else who would like to testify in the neutral capacity? Seeing none, Senator Friesen, you're welcome to close on LB874.

FRIESEN: Thank you, Vice Chair Geist. I'm just going to make it-- try and make it real short here. I guess the biggest concern I had is you have an unelected body arbitrarily raising a tax. And if the politicians that run the airport want to take a vote, raise a tax, let them take credit for it. But when you just let a board-- 10 percent of gross revenue-- when you have built a garage that's directly competing-- so when I fly in and out of Omaha, I love flying in and out of there. I-- if I'm going to be gone for a long time, I go in the long-term parking and it's saved me a bunch of money and I ride to Park 'N Go and I go to the airport. But if you're just trying to make it competitive so you're driving me to the underground-- or the covered storage through tax policy, I mean, that would be quite fair to private business that's offering the service. So I don't think Park 'N Go has ever indicated they don't want to pay a fee to have access, but I think the way it was implemented and basing it on gross revenue, when-- if I'm going to stay and for two weeks, they're coming with a bus that hauls numerous passengers. It doesn't clog up the driveway. It relieves congestion there. It helps out the airport and yet you're giving them 10 percent of gross revenue of the business they do. To me, it doesn't make sense. I mean, it's-- they should be encouraging that instead of discouraging it. And so I guess from that standpoint, there's just a couple of those things that-- I think there's a place for everybody to sit down and negotiate a settlement here, but the way this whole process was handled with no ability to negotiate or appeal it to a higher place, whatever, this is not how we implement taxes in Nebraska. There's usually an elected body that has to take a vote, has to do something that implements that tax. And so just the process of

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the way it was done, I'm open to changing who makes that decision. But in the end, it looks to me like the way it was handled is not a fair and equitable for private business that wants to offer a service that, to me, makes that airport better. And when you look at airports, I will say that they get a lot of money from the federal government. So those are my tax dollars at work and so a lot of that is what I would call public property. So with that, I'd be glad to answer any questions.

GEIST: And are there questions? I'm gonna go to Senator Cavanaugh real quick.

M. CAVANAUGH: Thank you, Chairman Freeman. So you said an elected body should be, you know, doing the fees and the Omaha Airport Authority is not an elected body. They're appointed by the mayor. And so in Lincoln, if they wanted to do this, they're an elected body and they can levy taxes, but in Omaha, that's just not the case.

FRIESEN: Correct.

M. CAVANAUGH: So did you-- in drafting this legislation, did you consider giving the authority to the city of Omaha?

FRIESEN: I didn't, I didn't work with drafting most of this. It was given to me and it was a bill that I just saw and saw a need to do. So I, I think they're open to-- from what I have understood, they're open to negotiation. It's not as though they don't want to pay any fees. They just thought that this was arbitrary amount and based on gross revenue wasn't fair.

M. CAVANAUGH: OK. So you'd be open to the authority going to-- the oversight and authority going to the elected body of the city.

FRIESEN: If, if the Lincoln-- if Omaha City Council would vote to implement this, that would be a whole different process because they would hold hearings then. They would determine the need.

M. CAVANAUGH: Sure.

FRIESEN: None of that was done in this process.

M. CAVANAUGH: OK, thank you.

GEIST: Senator Hughes, did you have a question?

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HUGHES: Did, did you consider going-- giving the authority of oversight to the Public Service Commission rather than the Department of Transportation?

FRIESEN: Never occurred to me.

HUGHES: OK. I bet you'll think about it.

FRIESEN: I'll think about it, yeah.

GEIST: Are there any additional questions on the committee? Seeing none, I will let you know that there were six online comments in opposition to LB874 and with that, we will close the hearing on LB874. Senator Friesen, you're back in charge.

FRIESEN: OK. With that, we'll open the hearing on LB913. Welcome, Senator Bostelman.

BOSTELMAN: Good afternoon, Chairman Friesen and members of Transportation and Telecommunications Committee. My name is Bruce Bostelman. That's spelled B-r-u-c-e B-o-s-t-e-l-m-a-n and I represent Legislative District 23. I'm here today to introduce LB913, which will require the Department of Transportation to reconstruct a highway approach when it's destroyed by a natural disaster or by a faulty engineering design. Before I go on, I want to thank those-- both those who are proponents or opponents are going to testify here behind me in case they leave before we finish for being in here today, was-- I had an opportunity to listen to a lot this afternoon, so maybe this is a little educational for some of them. So thank you for coming and I appreciate that. Many counties around the state lack either the necessary funds or staffing to rebuild approaches to highways. Let me explain what happened in my district. In the 2019 flood, Highway 15 north of the Platte River was completely washed out. It was gone. The road was gone. The roadway was rebuilt to include the intersection at the approach at Highway 15 and County Road C. The same intersection approach was then completely washed away last spring. And you have a picture of the approach and the highway-- I handed out. Both the Colfax County highway superintendent and I contacted the Department of Transportation to ask for the approach to be rebuilt since it was just completed I'd say within a year, year and a half and obviously was not built to handle the water flow of the ditch. Their response was no, that is-- that it is the county's responsibility. And I will say that they did use-- I think there was an Attorney General's Opinion on that that said that that's the county's responsibility. Subsequently, in a meeting with the Director Selmer, Selmer-- it was one of the first

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meetings I had with him. I showed him and the deputy director pictures, same pictures I'm showing you of the damage, and I was told, I believe, by the deputy director-- and my LA can attest to this-- that they normally replace approaches that are completely destroyed in this fashion. However, DOT refused to rebuild this approach. More recently, I was told that DOT does not want to pay for the construction of such projects to protect the taxpayer from costs they are not responsible for. So what I am hearing is that DOT would rather have the county attempt to construct an approach that they may not have the expertise to complete, resulting in a hazardous condition on a highway instead of doing the construction and filing a claim of negligence on the offending party or applying for federal funds or other funds that are available. The department has stated this does not occur very often. Again, the department has stated this does not occur very often so I question if safety is a real concern of DOT or just their bottom dollar. The taxpayer pays for this one way or the other unless there was negligence. I can tell you I am concerned for the safety of the citizens of my district and the citizens of the state. LB913 would provide much-needed assistance to county highway departments in these uncommon occurrences, ensuring proper construction and the replacement of destroyed approaches. I ask for you to move the bill to General File and I'll answer any questions you may have.

FRIESEN: Thank you, Senator Bostelman. Any questions from the committee? Seeing none--

BOSTELMAN: I will stay.

FRIESEN: Thank you. Proponents for LB913.

JON CANNON: Chairman Friesen, members of the Transportation and Telecommunications Committee, good afternoon, almost evening. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials. You may have also heard of us described as NACO. I'm here to testify as a proponent on LB913. First, thanks to Senator Bostelman for bringing this bill before the committee. We certainly appreciate it. I think he described the situation very aptly. You know, the bottom line, it's a safety issue, but I'd like to also describe some of the other ways that it affects county government. You'll have handed out to you some letters from the Sanders County highway superintendent and the chairman of the board, a letter from the Seward County highway superintendent, and a letter from the Nuckolls County Roads Department. This is an issue that's been around since I started with NACO. With each passing year, it gets

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to be a little bit longer tenure. It's important enough that elected and appointed county officials behind me have waited throughout the entirety of this afternoon's testimony. I certainly hope you would indulge them and ask them all the necessary questions that you need to get from them so you've got a complete record in order to make, make a decision on this particular issue. There's an A-- as Senator Bostelman said, there's an Attorney General's Opinion that the state is not responsible for these approaches. That was written a couple of years ago and it was certainly-- it highlights the fact that there is a bit of ambiguity in our statutory scheme. This bill would correct that ambiguity and, and delineate exactly whose responsibility that is. The question is who bears the responsibility? If it is the state, then these are-- these approaches are going to be paid for, paid for through monies from our general fund. If it is the county, it is paid for with property tax dollars. Now I've heard in the Rotunda and various other places so far this session, well, the counties have a lot of extra money that you're receiving from ARPA. Same can be said for the state, certainly. But also one thing I'd like to remind the committee of is that in the property tax context, if-- and I'll just make up numbers here. If a county has a, an overall property tax asking of \$2 million in one year and they pay that down by \$500,000 because they have ARPA funds, they're only allowed to levy an extra 2.5 percent or 3.5 percent through a supermajority vote of the board over that prior year's property tax asking. And so if that were-- if it were as simple as that, that we could just use property tax dollars to fix all of our approaches across the state, we would be telling our boards that you have to start off in the-- you have to start off behind in the oncoming year. And that is overall-- from a, from a reliability and from a consistency standpoint, that's poor tax policy. We think this bill is a good start. We certainly value our partnership with the Department of Transportation. They've been great stewards of the taxpayers' money. They have great expertise that we rely on in a number of different ways. But this is something where, because of the ambiguity, it would be helpful if this committee could help clarify that. With that, I'd be happy to take any questions the committee may have. Thank you very much.

FRIESEN: Thank you. Any questions from the committee?

ALBRECHT: I'm going to ask--

FRIESEN: Senator Albrecht.

ALBRECHT: Just one quick one. OK, since you're head of NACO and they come to you with the problems-- because I was in their shoes at one

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time-- if there is an agreement between the county and the state, it should be-- it shouldn't be something we would have to, to write a bill for. But these are extenuating circumstances in just these three areas or do we have more people that are feeling the same way?

JON CANNON: As far as how we handle the construction of approaches in our state, generally speaking, ma'am, the Department of Transportation, through the Attorney General Opinion that's been referenced, has taken the position that any of the highway approach-- any of the highway approaches to the state highway system are a responsibility of the counties. They are not a responsibility of, of the state's. There certainly could be other instances where it would be outside of an extreme weather event or faulty engineering. I've not been asked that question. Well, you're asking that question, so I'll, I'll answer it as best I can. My expectation is that the Department of Transportation, in all likelihood, would say that that is not their responsibility and that would fall onto the property taxpayers.

ALBRECHT: Thank you.

JON CANNON: Yes, ma'am.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? Seeing none, thank you for your testimony.

JON CANNON: Thank you very much.

FRIESEN: Other proponents.

SCOTT HUPPERT: Good evening, senators. Scott Huppert, S-c-o-t-t H-u-p-p-e-r-t. I'm here for this bill. I approve. I'm with Dodge County. Dodge County has approximately 55 miles of freeways and expressways, plus 45 miles of two-lane state highways going through its county, which totals approximately 100 miles of highways. Currently, for-- and another 20 miles of expressways is going to be added into my county already. We are aware of the need for the expressways and are fully supportive of them. However, for Dodge County to be able to work in these approaches for traffic running speeds of 70 to 75 miles an hour four-lanes, it would be necessary to-- for Dodge County to shut these lanes down. For me to shut these lanes down, I'd have to rent arrow boards, cones, signs, obtain appropriate permits, additional-- I'd have to get an engineer to assess these roads and these structures. This is going to cost the counties a significant amount of money in these projects, therefore adding to the strain of our already struggling budget, budgets for

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these counties are facing. These counties are not equipped and trained to work in these conditions. As a highway superintendent for Dodge County, I cannot and I will not allow my employees to be out there in these conditions and place them in more stress or my counties in more stress of their budgets. These approaches were designed, built, and overseen by the state in the state right-of-way and built with no or very little traffic at that time. Why is the state trying to force the counties to work in the right-of-way in these coun-- in these conditions? As a county highway superintendent, I thought the state was there to provide assistance to us and work together for the safety of the traveling public. As you know, Dodge County was devastated with the flood in 2019, which destroyed many roads, bridges, levees in which we are still trying to recover from, the catastrophic total over \$20 million. Our budget is significantly strained. Therefore, Dodge County is in support of amending this bill. I wanted to give you an example. If we were taken over-- Dodge County has approximately 96,300 culverts to deal with already. We have 320 bridges to deal with in our county. Our culvert budget is only \$60,000. My expense for the budget 2021 was \$120,000. I mean, the culverts ranging from 18 inch to 144 inch to box culverts, I have. The culvert increase right now, which I'm assessing, just jumped up from \$22 to \$67 per foot for culverts. For an example, 36-inch culvert, which was-- cost me \$34.46, is now costing me \$52.46 per foot for it. And so Dodge County has, so Dodge County has-- if we took these over, we'll have 218 approaches that connect the state highway and the state will be adding another 34 approaches in the next year, making a total of 252 more approaches that I'm going to be having to take care of. So an average cost, cost, I just figured here, of a 36-inch culvert, 60 foot long, it's going to be-- with the total of, of the culvert cost, the surveys, the engineers, the inspection, the traffic control boards, the equipment, the trucking, the labor, it's going to be-- just for a 36-inch culvert, \$10,108. That's-- it's crazy to put it on the taxpayers of a local when it's in-- these approaches are in the right-of-way of the state. That's all I had.

FRIESEN: Thank you, Mr. Huppert. Any questions from the committee?
Senator Albrecht.

ALBRECHT: Sorry, are you just talking about-- excuse me. I just walked out and came back in. Are you just talking about the new roads that they're putting on, the new--

SCOTT HUPPERT: I'm talking about all--

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ALBRECHT: --expressways or are you talking about any, any of the culverts that you need to put in anywhere or are you just talking about the state highways?

SCOTT HUPPERT: No, I'm talking about the state highways.

ALBRECHT: Because you're responsible for the approaches to your county roads.

SCOTT HUPPERT: They're making those responsible for them, yes, Senator.

ALBRECHT: Thank you.

FRIESEN: Thank you, Senator Albrecht. Any other questions? So do you have any examples where you have had to pay for an approach?

SCOTT HUPPERT: Yeah, in the flood of 2-- I don't have an example here, but in the flood of 2019, we replaced three of them on the state highway because they wouldn't help us with it. The, the FEMA did help us with it after fighting with the, the Feds about who's right-of-way it was because we had to pay for them because the state wouldn't and then the FEMA says, no, that's state right-of-way. Why are you fixing in the state right-of-way? They should have been the ones to file for that. And we argued and argued and finally said that they would pay for them, but.

FRIESEN: So did you get like a 90 percent reimbursement?

SCOTT HUPPERT: We got-- yes, 90 percent, yes.

FRIESEN: OK, thank you. Seeing no other questions, thank you for your testimony. Any other proponents?

JUSTIN LAUDENKLOS: Good afternoon, Chairman Friesen, everybody else there. I'm Justin Laudenklos, J-u-s-t-i-n L-a-u-d-e-n-k-l-o-s. I am the newly appointed Colfax County Commissioner/Superintendent. And Senator Bostelman took care of kind of what I was going to talk about down there with the state. He did a good job explaining that so I'll make this pretty short. That ended up costing the county just \$20,000 and that was one of the smaller ones with just a couple 24-inch tubes. We have several other ones with box culverts in it where that would range, if that whatever happen, up to \$300,000. And we're just a small county. I don't have a lot of guys. We have 15 guys. It's hard to put us out on the state highway to do that stuff so it's a real strain on

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us to take out-- all our guys off to do these projects instead of blading roads and that. So that's all I want to get to you guys.

FRIESEN: OK. Thank you for your testimony. Any questions from the committee? Seeing none, thank you. Any other proponents for LB913?

CHRIS RAUNER: Well, good evening. My name is Chris Rauner, C-h-r-i-s R-a-u-n-e-r, and I'm the Pawnee County highway superintendent. Although I am for this bill because we have like 100, at least 100-- I think I counted around 100 intersections with the state highway system. We have a very-- there's, there's quite a few paved returns. We have quite a few that are unpaved and we are being told that that's, that's something we have to maintain all the way to the edge of the road. Well, that's, that's OK. Our insurance company doesn't like us doing that for one, because there's liability issues because you're actually in the state right-of-way. And that's, that's I guess our biggest issue with it. I think this bill does clear up a lot of the, the language as, as far as the definition goes of, of who's is who's, but to me, there's no clear line in the sand. The state actually owns that right-of-way, why are-- why is the county having to do anything inside of that, that owned right-of-way? So I, I don't really have anything else. I just wanted to show our support from Pawnee County.

FRIESEN: OK. Thank you for your testimony. Any questions from the committee? Seeing none--

CHRIS RAUNER: Thank you.

FRIESEN: --any other proponents?

MATT SCHAARDT: Good evening, senators. I'm Matt Schaaradt, M-a-t-t S-c-h-a-a-r-d-t, and I am for-- excuse me-- Johnson County. I'm the highway superintendent. Pretty much everything these guys have said, I'm for this bill. It is a big safety issue for us. Like Pawnee County superintendent said with the insurance, it's a big liability for us to be out there. I only have a shop of 12 guys. My guys are trained and they're trained very good, who are not trained to be along the highway. My guys express fear almost to be out on the highway. I don't want uncomfortable people out there. Another thing is, you know, we get a lot of phone calls daily, weekly about people complaining about stuff inside the right-of-way and it's just-- there's no answers. My commissioners have told me to try to stay out of that. We have tried to go out there every once awhile to help. If we try to stay a certain footage off the highway to make that better for our people in the

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county, it's getting very difficult. We have, as Johnson County, we have had the Department of Roads, Department of Transportation, sorry, in our courthouse to discuss this. And again, it came back to the Attorney General's, I guess, ruling on that. So we have reached out to the Department of Transportation. We've had them in our courthouse. We've had other commissioners from other counties there. I've had some of these guys behind me in that same meeting and we pretty much at that point just shook hands and agreed to disagree on this policy. So that's all I got. I am for the bill. I just wanted to say my two words. Thank you.

FRIESEN: Thank you, Mr. Schardt. Any questions from the committee? Seeing none, thank you for coming. Any other proponents, LB913?

MARK MAINELLI: Good afternoon. My name is Mark Mainelli, M-a-r-k M-a-i-n-e-l-l-i. I'm president of Mainelli Wagner and Associates. We're a consulting/engineering firm in Norfolk and in Lincoln here. We act as the highway superintendent of several counties, including Stanton and Platte County. I want to take a step back a little bit of where some of this came from. I've been working in the transportation business since the '80s, which makes me feel a little old nowadays. But historically, the DOT would take care of the infrastructure on their right-of-way. When these guys are talking about returns, we're talking about that paved section when you turn off the highway and it's asphalt or concrete and then it turns to gravel and off we go. Historically, the county would take care of everything that hit their right-of-way or at the end of that paved return. And the state maintenance or when they would do projects, they would come through and take care of that paved return section. What happened several years ago is a policy was written by the DOT that said we're not going to take care of those returns anymore, counties. We want you to take care of everything a foot beyond that return. Now we stopped and we say, OK, well, what's the big deal? Pushing snow, most counties accept their responsibility. Adding gravel and rock to the end of those returns, we accept that responsibility. The issue is, is asphalt typically lasts about ten years before it needs some kind of maintenance and its service life is typically 20. Now, all of a sudden, I got this little spot of asphalt at the end of the state return and a lot of counties like Stanton that literally has no maintenance abilities to do, to do pavement. Colfax County is in the same boat, Seward, Pawnee, and Nemaha and several other counties that we address. So we don't have the staff or the ability to go do it so that means I got to hire somebody. I got to hire a big asphalt team to come in and do a little spot of asphalt that would fit in your chamber here. Talking with the asphalt guys, if I don't have a project going

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right there to fix it, it could cost us \$10,000 or more to mobilize, somebody come in, tear up that old return, lay it back down because it's such a small amount of work. These returns don't all go bad at the same time. So if Stanton County has 100 of them and Platte County has 150 of these and we choose to do five or ten of these a year and we don't have any asphalt in the area, now I'm mobilizing an asphalt company or begging them to come in to help us with these costs. Over a period of 10 or 20 years, you could be talking an average of \$3 million amortized over a 20-year period lifecycle of this asphalt work. Scott talked about his structures. He talked about his culverts and bridges. I'm not even looking at those. I'm just looking at the potholes at those returns. The big issue that started brewing is when the state wrote their policy. The statute isn't clear enough of who is responsible for that area. The counties want to know who's responsible for that area. If it's the counties, put it in the statute, make it clear. I can go back to my constituents and raise the mill levy and say that your mills are going to go fix the asphalt next to the highway. That's fine. Right now, we're working in the state right-of-way. Often, based on the district. I got to get permits, I get permissions, I got to do flagging. It's a dangerous situation. We're just asking for clarification and that's when Senator Bostelman got involved and it really came to a head with these disasters. Who's responsible to fix these things, not only the ones that got destroyed in the floods and the disasters, but in general?

FRIESEN: OK. Thank you for your testimony. Senator Cavanaugh.

M. CAVANAUGH: Thank you. Do you know what year the-- they made that change, the department?

MARK MAINELLI: It's been, it's, it's been about five years, between five and ten years that policy has, has been out there.

M. CAVANAUGH: Thank you.

FRIESEN: Thank you, Senator Cavanaugh. Any other questions? Seeing none, thank you for your testimony.

MARK MAINELLI: Thank you.

FRIESEN: Any other proponents? Seeing none, anyone wish to testify in opposition? Seeing none, anyone wish to testify in a neutral capacity?

JOHN SELMER: Trying to start off good this year.

HUGHES: Too late.

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FRIESEN: Welcome, Director.

JOHN SELMER: Thank you. Good afternoon-- I think it's getting into the evening now-- Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is John Selmer, J-o-h-n S-e-l-m-e-r, and I'm the director and state engineer of the Nebraska Department of Transportation. I'm here today to offer our neutral testimony on LB913. LB913, as written, would shift the responsibility of maintaining a small portion of the approach of a county-owned road to a state highway from the county to the Nebraska Department of Transportation under two specific circumstances. Currently, Nebraska Revised Statute Chapter 39-2105 places jurisdictional responsibility upon counties for the design, construction, reconstruction, maintenance, and operation of all roads, with various classifications under the rural highway category. Nebraska Department of Transportation and the Attorney General have interpreted this and other statutes to mean that although a county road may sit upon a portion of the state's highway right-of-way, such facility is still the responsibility of the county. NDOT has simply permitted the county to occupy its right-of-way at that location. I've also included the Attorney General's Opinion 20-002 for your information. LB913 would create a limited exception to this rule by requiring NDOT to design, construct, reconstruct a portion of the county road which occupies the state right-of-ways if it has become unusable due to either an extreme weather event or where there has been, quote, faulty engineering. The bill raises a few questions surrounding the term faulty engineering that NDOT believes would be answered by inserting clearer definitions into law that can be understood by all. Different people may have different interpretations of what faulty engineering means and without a clear definition, it is likely that legal disputes could arise over this provision. Additionally, the bill should provide more clarity regarding which entity is responsible for the faulty engineering. If NDOT designed and constructed the highway approach, it should surely take responsibility under the provisions of this bill. However, if faulty engineering occurred due to the county or a third party, NDOT should not be expected to cover the cost, perform the work for that damage that occurred due to no fault of its own. NDOT recommends that subsection (2) of Section 3 be amended to clarify which entity is responsible if the facility fails due to faulty engineering. In closing, NDOT and its district engineers encourage our crews to work with and communicate with county and city personnel when delivering a project. NDOT often performs work and collaborates with city and county crews when work needs to be completed if we're in the area. It's good business to communicate and coordinate with our peers and we

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want to be helpful. And with that-- you know, I probably want to add some more since I've heard some testimony here. As an agency, we're not in disagreement in terms of working with the county to address these circumstances, but I think we heard some broader concerns in terms of right-of-way and who's responsible. And our right-of-way can go tens, if not hundred feet beyond where the roadway edge is, so who is responsible for that? And part of that, I think, the, the prior testimony looking at, I think it's reasonable for the county to do the gravel up to where the approach is. I believe it's agreeable for us to take care of the asphalt that matches up to there and even look at those, those drainage structures. We want to perpetuate drainage. I think some of our concerns is really what, what is the right amount of what to do there? We definitely don't want to do snow removal on, on, on the county road system just for those segments, similar to where they don't want to do asphalt for a small portion. You know, snow removal would be significant. I understand there is a risk with high-speed expressways, but if I give you a simple example of, let's say there's an intersection every mile and it takes us-- we go 30 miles per hour in a storm. It takes us two minutes to clear that highway. How much time do you think, at least in one direction, it would take us to clear each intersection? If it took two minutes, we'd be doubling our time to clear highways. So does it make sense for us to take on? So I think that there's some questions, some dialog we can continue to have with our partners in terms of really what makes sense. I know in Iowa, when I was there, basically the counties would take care of the gravel. We don't have lots of gravel and it, it doesn't make sense for us to go out there and work and try and address what's in the 50 feet or so that we're doing. It makes sense and I think what Nebraska has done is good, it works and there needs to be some tweaks and we want to partner-- and I, I'm not aware of the policy five years ago or whether it was a practice or an agreement, that that's something we will definitely revisit and look at that. We too want to serve the citizens of Nebraska and be effective.

FRIESEN: Thank you, Director Selmer. Senator Geist.

GEIST: Yeah, just a quick question. Neither here nor there, really, other than I'm just curious. When you go in to, to do a repair like this, is-- do you have to do all the economic-- I mean, the environmental studies to do a repair like you do a--

JOHN SELMER: Not typically. You know, the only time that really kicks in is if, if we're acquiring more property or all of a sudden we find out maybe there's migratory birds or something or--

GEIST: OK.

JOHN SELMER: --something odd can happen then.

GEIST: Only if something has changed.

JOHN SELMER: But typically, if, if we're doing work within our existing right-of-way, something like that, NEPA doesn't kick in.

GEIST: OK, thank you.

FRIESEN: Thank you, Senator Geist. Senator DeBoer.

DeBOER: So if I'm hearing you correct, Director-- thank you, by the way, for being here-- it sounds like you're willing to sort of have joint custody over these approaches so that there would be-- that maybe they would do the snow plowing and you would do the asphalt or something like that. Is that what I'm hearing?

JOHN SELMER: Typically, you know, my understanding talking with my deputies is that we were tending to do that or if we went through a project, we would take care of those asphalt approaches or we would work it in such a way that it wouldn't be an issue for our county partners. I've only been here less than a year, so this, this is something I'll definitely dig in, but yeah, I think there's-- I think we both look at times with things at extremes and we're worried about that. I think communication is the best way in which to address that and look at it.

DeBOER: OK, thank you.

FRIESEN: Thank you, Senator DeBoer. Seeing no other questions, thank you for your testimony.

JOHN SELMER: Thank you.

FRIESEN: Any others with to testify in a neutral capacity? Seeing none, Senator Bostelman, wish to close? We do have one letter in support of LB913.

BOSTELMAN: Thank you, Chairman Friesen. Thank you for the committee for your attention at this hour and for those again who come in and testified. If you look on the back of that-- the handout that I gave you, when we talk about the approach, it's that concrete-- when you pull up on a county road, it's that concrete with a, with a, with the culvert underneath it all the way out to the, to the shoulder. This

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washout went all the way up to the highway. It's a four-lane highway. What you heard from our, our county supervisors and from county engineer represented was we don't have-- our counties don't have the expertise, nor the, nor the person power to do this type of work. And I've heard three or four different responses to having the state come in and help them fix this. And I believe in Colfax County-- and, and superintendent-- highway superintendent, correct me if I'm wrong. The last I knew, they had to have the state come out and actually do traffic control for them because they didn't have the personnel or the expertise to be able to do that. So they're kind of flying by the seat of their pants in a sense. This is a state highway. This is a contract that the state approved. Engineering, that was the responsibility of the state. If it failed, as in this case from a high water, I think it's the state's responsibility to come in and fix it, replace it. It shouldn't be left up to the county. Again, it comes back to the state was responsible for putting the, the highway in. The state was responsible for putting in the approach in. If it was done wrong, if there's some fault in there engineering wise, well, then whoever was at fault should be responsible, should have to pay for it. But the state should fix it and then turn around and charge-- file a claim of accordingly, accordingly or charge accordingly. We've heard from our, from our county folks. This is, this is an issue that they struggle with and I think there's not a lot of these oppor-- these occurrences that happen in the state that it's not reasonable-- it's not unreasonable. Like I say, it's not unreasonable for the state to pick this up and, and take charge of this and do what's right. So with that, I'll close my testimony with the bill and take any other questions you may have.

FRIESEN: Thank you, Senator Bostelman. Senator Moser.

MOSER: Don't you have any pull with the committee to get this earlier on the agenda?

BOSTELMAN: I wish I could, you know? I actually had a, I actually had a doctor's appointment I had to cancel, so anyway.

FRIESEN: Thank you, Senator Moser. Senator Albrecht.

ALBRECHT: I want to thank everybody for coming because I know they came a long way and they sat through a full afternoon of this, but I will tell you there's a new sheriff in town and I think he's easy enough to work with to offer up what he did today. So I'm hoping that we don't have to legislate this, that we can work through the department at this point.

FRIESEN: Senator Albrecht.

BOSTELMAN: If I may, you know, the DOT has reached out a couple of times. We just haven't come to agreeable language. So perhaps after this, we can come to some agreeable language. We can make some things work, so.

ALBRECHT: Thank you for bringing it.

FRIESEN: OK. Thank you, everyone and with that, we'll close the hearing on LB913 and we'll close the hearings for today.