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Transportation and Telecommunications Committee
January 29, 2008

[LB741 LB837 LB1034]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, January 29, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB837, LB741, LB1034. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; Scott Lautenbaugh; LeRoy Loudon; and DiAnna Schimek. Senators absent: Dwite Pedersen. []

SENATOR FISCHER: Good afternoon. Welcome to the Transportation and Telecommunications Committee. At this time, I would like to introduce the members of the committee that are present: On my far right is Senator DiAnna Schimek from Lincoln; next to Senator Schimek is our Vice Chair, Senator Arnie Stuthman from Platte Center; next to Senator Stuthman is Senator Ray Aguilar from Grand Island; to my immediate right is our committee counsel, Senator...Senator, I always want to demote you...Mr. Dustin Vaughan; on my immediate left is our committee clerk, Mrs. Pauline Bulgrin; and on my far left is Senator Carol Hudkins who is from Malcolm. I am Senator Deb Fischer and I am Chair of the committee. Our pages are Matt Pederson from North Platte and Rhianna Needham from Bellevue. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep this hearing moving. Please complete the yellow sign-in sheet at the on-deck table so it is ready to hand in when you testify. We do have a computerized transcription program that is being used, and so it's very important that you follow the directions on the sign-in sheet, and you will need to hand that sign-in sheet to our committee clerk, Mrs. Bulgrin, before you testify, please. For the record, at the beginning of your testimony spell your last name and also your first name if it can be spelled in several different ways. Please keep your testimony concise and try not to repeat what someone else has covered. We seem to have a large number of people here today, so before we begin each bill's hearing, I will ask how many people plan to testify; at that time, I would appreciate if you would raise your hand. If you do not want to testify but you want to voice your support or opposition to a bill, you can indicate so at the on-deck table on that sheet that is provided there; this will be part of the official record of this hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete a yellow sign-in sheet and you must actually come forward to testify, even if you just state your name and your position on the bill. If you do not choose to testify, you may submit comments in writing and those will be read into our official record. If you need anything, please signal one of the pages and they will certainly help you. And I would ask at this time that you turn all your cell phones off; in this committee hearing, we want cell phones off, not just muted, so there's no text messaging, please. With that, I will open the hearing on LB837 and I see Senator Karpisek is here for the introduction. Good afternoon, Senator Karpisek. []

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SENATOR KARPISEK: (Exhibit 1) Good afternoon, Senator Fisher and members of the Transportation Committee. It's a little different to see Senator Aguilar when he's not the Chair. [LB837]

SENATOR AGUILAR: I'm in my chair. [LB837]

SENATOR KARPISEK: (Laughs) Well, you're not a Chair, you're in the chair. It's the same thing, just...it's not your different (inaudible). I'm here today to introduce LB837, which would eliminate provisions in statute that currently require the closing of certain unmarked railroad crossings. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. We are trying to get to eliminate the provisions in the statute that currently require the closing of certain unmarked railroad crossings by the Department of Roads that are located within one-quarter mile from a public crossing with gates, signals, alarm bells, or personnel. The bill also eliminates a section that provides direction with regard to objections to such closures. LB79 in 2006 was introduced by Senator Baker, who is here today, which put these closings in statute. I feel that there was much misunderstanding on LB79 and do not believe it would have passed on the floor if argument was accurate. I have given you a copy of floor debate and highlighted the sections which I feel make the difference. I will quickly go through those for you. Page 2R, toward the bottom, Senator Baker says, "So we drafted the committee amendment that allows an interested party to object to an action under this proposed change in the statute so that an engineer, a licensed professional engineer licensed to practice in the state of Nebraska shall state in writing that they are familiar with the requirements of this section, with all relevant aspects of the railroad crossing. This is the escape clause that says if they can get a professional engineer to look at the crossing and provide a statement to the Department of Roads..." skipping a little, "If that professional engineer can come to the Department of Roads and say this, I'm familiar with the crossing, these are the safety issues, I think it's fine to leave it open, why, that's the method they take. So there" it "is, it's not a iron-clad statement if a crossing is within a quarter of a mile of an unguarded crossing will be closed." Farther in floor debate...and you can read all the rest, there is some pertinent parts in there...page 11R, the astute Senator Fischer asks a very good question, "According to your amendment, if a professional engineer who's licensed would be employed by the city or contracted by the city to look at one of these crossings and if that engineer then determines that the crossing is needed, the crossing remains. Is that correct?" Senator Baker: "That's correct." Senator Fischer again: "Because of this amendment, I would support the amendment and then the bill because I think that takes care of some of the concerns in my area. It still allows cities and towns and counties the opportunity to keep some of those crossings open and they have the avenue with this amendment to do so." To page 12R, Senator Baker: "Senator Fischer brought up a good point. If you don't want this crossing closed, all you have to do is get a professional engineer to sign off on this thing, says I'm familiar with it, take it to the city, the county, whoever has jurisdiction over the road that this crossing is on. You can

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waive this requirement." A little farther down: "And the railroads cannot close public crossings on their own. If they did, we would have turmoil because they'd close a lot of them. They can't do that. They have to work with the city, village, the county to do this and then they negotiate." "As Senator Fischer said, you don't want this crossing closed under these provisions, get an engineer to sign off it, and it doesn't have to be closed." The very last page, 14R; Senator Baker states, "This bill, the amendment we adopted provides the flexibility needed that if a locality, a county, a city, village doesn't want to close a crossing, they can hire a professional engineer and say, let's keep it open. The railroads cannot close public crossings. That's up to the judicial body, meaning the city, the village, the county. They can't close these crossings arbitrarily. That seems to be a misunderstanding." Then at the end, the clerk...on the vote was "27 ayes, 5 nays." While I was still mayor in Wilber, the city was faced with this situation. First, we were told that this was coming down from the feds to the railroads, that one-half of the crossings needed to be closed. The city council was not in favor of closing any crossings. Now that I have become a senator, I learn that LB79 is the reason for the closings and all you need to do is get an engineer to sign off. That has not been the case. That is not how the Department of Roads handles this. I feel this should be a local control issue and not a heavy-handed mandate passed down by the state without any consideration from the local board. The state did agree to swap out one closing in Wilber for another, but the issue is that the city wants none closed. There are two trains per week through Wilber, that is what I've been told, and this does not create many exposures. I realize that Senator Baker's reasoning was for safety and I could not agree more. I understand his point, but safety is also my concern. If we now have four crossings instead of six in Wilber, and they wanted to close three so we would have been down to three, our chances of getting across the tracks in an emergency, fire trucks, rescue personnel, is reduced by half or a third. Are the chances of that great? No, but time is very valuable in an emergency. I've tried to work with the DOR and the railroads to amend this bill and we cannot agree. I want the local board to have final decision, others do not. So, LB837 would give the authority back to the local board. Thank you for bearing with me through all of that and I'd be glad to take any questions. [LB837]

SENATOR FISCHER: Thank you, Senator Karpisek. Are there questions? Senator Stuthman. [LB837]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Karpisek, what is the distance between your railroad crossings in your town? You stated that there are six crossings. Is that over a two-mile span, a one-mile span, or are they one block apart? [LB837]

SENATOR KARPISEK: Roughly a mile. They're a block apart, so roughly...they're not all a block apart, I'm sorry. Fifth Street does not have one that goes through, 2nd Street does not have one that goes through; there's a couple that don't go all the way through.

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But it's about a mile across and they are every block, but not all go through. [LB837]

SENATOR STUTHMAN: And these crossings, are they in business district or residential or both? [LB837]

SENATOR KARPISEK: One is in business...well, two are in business district...actually three are, but it separates the town roughly in half. And 3rd Street is what we call Main Street, where my business is. And this also doesn't only pertain to Wilber; Crete has got a couple to close and we've got some other ones just in my district that I know. But this is the one that I'm most familiar with. [LB837]

SENATOR STUTHMAN: And one more question, Senator Karpisek. Do you feel that what we have in place, getting a professional engineer, is not workable? That doesn't...you can't get that to accomplish what you're doing? [LB837]

SENATOR KARPISEK: No. You can get the professional engineer, but then it still goes to the Department of Roads and they'll make the final decision. [LB837]

SENATOR STUTHMAN: Even from the advice of the professional engineer? [LB837]

SENATOR KARPISEK: As far as I know, Senator. I don't know anyone that has taken it that far yet, because they have tried to negotiate. But I know Wilber was going to hire an engineer and they were going to have the hearing. And by that floor debate, and what everyone understood about the bill, you were supposed to just have to get an engineer and if he says it's okay, end of situation. But that is not the case. [LB837]

SENATOR STUTHMAN: Okay. Thank you. [LB837]

SENATOR KARPISEK: Thank you, Senator. [LB837]

SENATOR FISCHER: Thank you, Senator Stuthman. Senator Aguilar. [LB837]

SENATOR AGUILAR: Thank you, Madam Chair. Something you said confused me a little bit. You were talking about the safety aspect of fire trucks and ambulances and what have you. If there's a train on your track, you can't get across whether there's a crossing or not. [LB837]

SENATOR KARPISEK: Correct. [LB837]

SENATOR AGUILAR: So I guess I didn't follow the point you were trying to make there. [LB837]

SENATOR KARPISEK: Oh. Well, if there's train on the track, we could go around. In

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Wilber, if we're going to go to the south, we'd have to go seven miles to DeWitt or north four miles to Four Mile Corner. So, the chances of that train blocking everything in Wilber are pretty minimum because it's not the big long coal cars that you see, it's usually grain cars. But if there would be a derailment or they do stop, there will be no way to get across there. [LB837]

SENATOR AGUILAR: I was going to say, obviously you don't get the same trains we do coming through Grand Island (laughs). [LB837]

SENATOR KARPISEK: No, we sure do not, Senator, and that's a little bit of my point on this, that...I don't know, I was told we had two trains a week, I think there's more. But it's not like...here's my stepdad and mom live in Grand Island, the train goes by constantly. That's not what we're talking about at all. And I understand that it is for safety and I understand the intent of this bill, LB79, but when there's absolutely no local control it has not set well. And I just don't think that that was the intent of the bill, to give no way out. [LB837]

SENATOR AGUILAR: To follow up a little bit on Senator Stuthman's question, did your engineer recommend that they stay open to the Department of Roads? [LB837]

SENATOR KARPISEK: I've got a city councilman from Wilber here and he can elaborate more. But so this did not go...I'm not familiar with how far it's gone. What I did find...when they did come to us, they wanted to close one crossing, then when we didn't want to, then it got to be two, and then it got to be three. And it just, it has not been a very good working relationship. [LB837]

SENATOR AGUILAR: Wouldn't it be wiser to find out how far it's gone before we go to the extent of changing state legislation that impacts a whole state? [LB837]

SENATOR KARPISEK: No, because as soon as we go there and they close it, it's done. And like I say, this is not the only one. I've talked to the Department of Roads, they said, yes, it will come in front of the whole panel. [LB837]

SENATOR AGUILAR: I understand, but I would make the point that it is working in other communities and, you know, and I haven't (inaudible). [LB837]

SENATOR KARPISEK: No, it's not, Senator. They're just saying, okay, we'll close them but give us the best that we can get. [LB837]

SENATOR AGUILAR: Okay. [LB837]

SENATOR KARPISEK: They don't like it. [LB837]

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SENATOR AGUILAR: Understood. Thank you. [LB837]

SENATOR KARPISEK: Thank you. [LB837]

SENATOR FISCHER: Other questions? I see none. Thank you, Senator Karpisek. [LB837]

SENATOR KARPISEK: Thank you, Senator Fischer. [LB837]

SENATOR FISCHER: At this point, I'd like to see a show of hands of those wishing testify on this bill, either pro or con. That's seven people? Okay. We may have to limit testimony, but at this point I won't. I would just hope that you would (phone rings) be...uh-oh. (Laughter) At this point, I would just hope that you would "expediate" your testimony. With that, I will ask for the first proponent for the bill to please step forward. Good afternoon. [LB837]

LYNN REX: Good afternoon, Senator Fischer and members of the committee. My name is Lynn Rex, representing the League of Nebraska Municipalities and we're before you today in support of this measure. And if there are words or provisions that the committee is not comfortable with, with respect to this particular bill, we're happy to work with you to address the issue. I think the senator has done a great job in outlining what the problem is. The problem is, this bill is not what it was presented to be. And it is...most of our cities will tell you that it's been virtually impossible to find the engineer that is prepared to give the magic statement, which is not what was reflected in floor debate but rather the statement saying that the engineer shall provide a detailed explanation of why this section should not apply and a statement that the railroad crossing corridor has been examined by the engineer and the engineer believes that the railroad crossing will be safe as designed. When this was going through, we really thought that that might be adequate. But what has occurred is that engineers tell us that they are concerned about the liability of making any comment to the effect that, in fact they would be attesting to the fact that a railroad crossing would be safe. In terms of safety issues, of course we're very concerned about that as well; and we'd refer you to section 1 of the bill, lines 3 through 12, which is language in 74-1334(1) which is being left in this bill, not being stricken, which talks about what the department may do to basically accommodate safe issues and make sure that there is safety. So, we support the concept of this bill; we're prepared to work with this committee and anyone else in terms of making it better. But we do think there is a problem and we hope that this committee will address it because it is a serious one. I'd be happy to respond to any questions that you may have. [LB837]

SENATOR FISCHER: Thank you, Ms. Rex. Any questions? Senator Stuthman. [LB837]

SENATOR STUTHMAN: Thank you, Senator Fischer. Ms. Rex, you're with the League

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of Municipalities? [LB837]

LYNN REX: Yes, I am. [LB837]

SENATOR STUTHMAN: (Coughs) Excuse me. Do you know of any crossings that have already been closed by the Department of Roads? [LB837]

LYNN REX: Oh, yes. [LB837]

SENATOR STUTHMAN: There are... [LB837]

LYNN REX: Oh yes. [LB837]

SENATOR STUTHMAN: ...quite a few of them have been, or there's been a number of them? [LB837]

LYNN REX: I mean, it's...yes, and they're in negotiations with a number of cities, too. But I think that what was presented...I guess the essence of my testimony is, what was presented in floor debate and what we understood that this bill would be is not what the result has been. [LB837]

SENATOR STUTHMAN: Okay. Thank you. [LB837]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB837]

LYNN REX: Thank you very much. I appreciate your time. [LB837]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB837]

ED WOEPPEL: (Exhibit 2) Thank you. Senator Fischer and members of the Transportation Committee, my name is Ed Woepfel, that's W-o-e-p-p-e-l, and I'm representing the Nebraska Cooperative Council. The Nebraska Cooperative Council is the trade organization for the farmer-owned cooperatives in the state and we represent about 92 percent of the farmer-owned cooperatives in Nebraska. I'm here today to testify in support of LB837. The closure of railroad crossings made possible by the passage of LB79 could have a negative impact on many of our members and I've got an example that I'll share with you in just a moment. When LB79 was proposed, we surveyed our members and found that there was a number of people that would be adversely impacted by that. We just have conducted another survey and we haven't gotten the results from all of our members because of the short time frame, but we found that there's 19 facilities across the state of those people that have responded that would be impacted by that with their operations. In addition to that, and if I could (inaudible) this, I do have a letter that was faxed in to me yesterday by one of our

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members and it talks about the situation in their local community and one of the questions that was addressed in terms of a crossing that had been closed in a local community out in Brule, Nebraska, and it gives a situation. But it certainly has had an impact on that community as well as on that cooperative, so. With that, I will end my testimony and certainly respond to any questions that the committee may have. [LB837]

SENATOR FISCHER: Thank you, Mr. Woepfel. Are there questions? I see none. Thank you very much. [LB837]

ED WOEPPEL: Very good. [LB837]

SENATOR FISCHER: Next proponent, please. Welcome. [LB837]

TIM LEMPKA: Thank you. Senator Fischer and the rest of the Transportation Committee, my name is Tim Lempka, that's L-e-m-p-k-a. I am on the city council for the city of Wilber and when this legislation came down the pike, it really...it didn't set well with us at the city council. It felt like it was being jammed down our throat. We did get us an engineer to come and study the crossings that were proposed to be closed. We got a response, which I do not have, unfortunately, today, from the engineer which we then forwarded to the Department of Roads. We got a response basically that said...well, to abbreviate: Too bad. We're going to close these. Basically there's not anything that you can do about it. Okay. At that point in time, that's when I approached Senator Karpisek and said, you know, is there something we can do about this to give us some local control? The safety aspect of this is, you know, that's fine. Everybody is in favor of safety. I have no one...that's not the issue here. The issue is having some local control over this because, as Senator Karpisek stated, once these crossings are closed, they're closed forever. And really, I mean, I don't have anything else to say. I'm just voicing our opinion as a city, municipality. And I'm open for any questions that you may have. [LB837]

SENATOR FISCHER: Thank you, Mr. Lempka. Senator Schimek. [LB837]

SENATOR SCHIMEK: Yes, thank you, Madam Chair. My only question is that I am...is my assumption right that the engineer was supportive of not closing these crossings? [LB837]

TIM LEMPKA: That is correct. [LB837]

SENATOR SCHIMEK: All of them? [LB837]

TIM LEMPKA: No. There is one in town that warrants closing. The sight distance on one of those is of such that when you are eastbound, you almost have to be on the track to see if there's a train coming. And no one is opposed to that one. But the other ones he

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recommended leaving open and we were met with quite a bit of resistance on that.
[LB837]

SENATOR SCHIMEK: Is there no provision in LB79, and I don't distinctly remember the provisions of that bill, that allow for a mutually acceptable professional engineer to make this study? Is there any provision in the original legislation like that? [LB837]

TIM LEMPKA: None that I could see, ma'am. [LB837]

SENATOR SCHIMEK: Okay, so it was just up to the local entity to hire their... [LB837]

TIM LEMPKA: Right. To hire our city engineer. [LB837]

SENATOR SCHIMEK: Okay. Oh, your city engineer. [LB837]

TIM LEMPKA: Yeah, which was...he works for Olsson Associates, P... [LB837]

SENATOR SCHIMEK: Oh, from here in Lincoln. [LB837]

TIM LEMPKA: Yes. [LB837]

SENATOR SCHIMEK: I'm not sure I understood you. He is not your city engineer, then?
[LB837]

TIM LEMPKA: Well, they're the engineering firm that we employ as, per se, the city engineer. They do most of our engineering work in Wilber. [LB837]

SENATOR SCHIMEK: And you don't think there would be any conflict of interest there in what this engineer recommended, then? I mean, he's a employee for their...not technically employees, maybe, of a city, but they contract with the city to provide services. [LB837]

TIM LEMPKA: Right. That's a good question. That's a good question, ma'am, I...
[LB837]

SENATOR SCHIMEK: That's just what I'm wondering is if there is a better way of doing this, but I don't know. I'm empathetic to your concerns. I just don't know that that's the best way to do it. [LB837]

TIM LEMPKA: Um-hum. [LB837]

SENATOR FISCHER: Other questions? Senator Hudkins. [LB837]

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SENATOR HUDKINS: Thank you. Mr. Lempka, the crossing that you said really should be closed, was it closed? [LB837]

TIM LEMPKA: No, it has not been closed. [LB837]

SENATOR HUDKINS: That one was left open? [LB837]

TIM LEMPKA: Yes. [LB837]

SENATOR HUDKINS: And the one in question here that everyone said, leave it open, the engineer said, leave it open, and yet it was closed. [LB837]

TIM LEMPKA: No, there have been no crossings closed yet, Senator. [LB837]

SENATOR HUDKINS: Oh, okay. [LB837]

TIM LEMPKA: There have been none closed. [LB837]

SENATOR HUDKINS: Okay. Well, I'm confusing you with this letter. Never mind. All right. Thank you. [LB837]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB837]

SENATOR STUTHMAN: Thank you, Senator Fischer. Tim, do you feel that the process that we're attempting to go through to make sure that the communities, you know, do keep the ones open that they feel need to be open because no one knows better than yourself and your community. And we had the intent of the bill when it was passed that there was a process in place that this could take place. [LB837]

TIM LEMPKA: Um-hum. [LB837]

SENATOR STUTHMAN: Do you feel this process is not doable or workable or should be changed? [LB837]

TIM LEMPKA: I believe the process that is stated in the original bill is fine, but somewhere between the original bill and how it was drafted into law there's something that got missed. I mean, the way I understand it is that the Department of Roads, they have the final say in all issues. And, you know, we can even go to a third party arbitrator, but it still goes back to the Department of Roads and their decision is final. It doesn't matter what our engineer comes up with. [LB837]

SENATOR STUTHMAN: The thing I'm trying to get an answer to is, you know, do we need to change something that isn't doable? Would you think...it sounds like it's

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doable... [LB837]

TIM LEMPKA: I think we need to stick by the original language. If we could get what's in here into the law to where, you know, we could get more local control, our voices would be heard, I believe it would work just fine. [LB837]

SENATOR STUTHMAN: Okay. Thank you. [LB837]

SENATOR FISCHER: Other questions? Under the original bill...counsel just showed it to me...it does state, Senator Schimek, that a professional engineer would make the determination. I know many small cities don't have a professional engineer who even lives in the area. But my question to you, when you're saying that the original law, if it was followed on what the intent was would be fine, I don't think that's going to happen. Would you support taking out the whole process of having a city council having to even hire a professional engineer to basically do what they are hoping he will do and just have that decision made by the city council? [LB837]

TIM LEMPKA: Yes, I would support that. [LB837]

SENATOR FISCHER: Would you be concerned about liability issues for a city council? We heard concern here that there is liability issues for a professional engineer to take that step in saying, this crossing should be closed. As a city council, would you be concerned on liability issues? [LB837]

TIM LEMPKA: Not speaking for the council, speaking for myself, I personally would not feel any liability issues on that. I mean, we're doing...there's nobody that...we're concerned about safety. And trust me, I believe if we have an unsafe crossing in the city and we don't close it, we are more liable that if we do. [LB837]

SENATOR FISCHER: Okay. Thank you. Other questions? Thank you very much. [LB837]

TIM LEMPKA: Thank you very much. [LB837]

SENATOR FISCHER: (Exhibit 3) We have been joined by Senator Scott Lautenbaugh from Omaha. Oh, I'm sorry, I forgot to mention earlier, we've been joined by Senator LeRoy Loudon from Ellsworth, too. I just took it for granted you've been here all along. Thank you. Any other proponents? Are there opponents to the bill? If I could go back just a moment, I do have a letter from the Nebraska Farm Bureau, signed by Jay Rempe in support of LB837. Now opponents. [LB837]

TOM BAKER: Yes. [LB837]

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SENATOR FISCHER: Welcome. [LB837]

TOM BAKER: You didn't think I was not going to oppose this. Thank you. [LB837]

SENATOR FISCHER: And welcome, Chairman Baker. It's nice to see you here. [LB837]

TOM BAKER: Thank you. Thank you, Chairman Fischer and members. I was going to actually start with some prepared testimony, but I have to adapt after listening to some of the testifiers in favor of this bill, LB837. I want to bring up one point: Safety is the issue here. [LB837]

SENATOR FISCHER: You have to identify yourself, I'm sorry. [LB837]

TOM BAKER: (Exhibit 4) Oh, I'm sorry. I've lost the train of thought, I guess. Tom Baker from Trenton; I am here as an individual. And I had best stay on track, hadn't I? So I'll get started here. Dealing specifically with LB79, I had legislation drafted in 2002 to address the issue of public railroad crossings due to the fact that I annually ride from McCook to Lincoln on the front end of a freight train. That was one of the things...and I'm sure that if you wanted to work with them, I know Senator Dwite Pedersen came to McCook once and I think that's probably an open invitation. But each year I would ride from McCook to Lincoln and back to McCook on a freight train. And it became very apparent to me after riding just once, the near misses we had, that there were many, many redundant crossings, in particular in small towns. And many of them are not guarded by lights and their cross arms, they're just cross bucks, that's all they are. And I am a longtime EMT, and if you want to hear stories about railroad crossing accidents, I...I'm not going to tell them today, but they're not pleasant, and I have not ever worked a crossing accident where there wasn't at least one fatality. And they're not pretty fatalities. So, that was some of the basis of what I did; we went through the small towns between McCook, and in particular at the time we drafted the bill Exeter, Nebraska was one of the poster children. I think there was five streets in Exeter and they had four crossings, and they have since closed one of them. Kenesaw in Senator Burling's district, there was a fatal accident on the west crossing there in Kenesaw. I believe, that crossing has been closed, and so on. So, I saw the need and it is safety, it's an issue of safety, and an inconvenience of driving a block...I've handed out an unscaled map there of Wilber, but there appear to be six crossings in the town of Wilber, and I don't know the population of Wilber, but to me that seems like a lot of crossings in a small town. And there has to be a safety issue. Now, one of the testifiers said that if they had an unsafe crossing, they'd close it, but they did have the professional engineer apparently say, you need to close that crossing, and it still hasn't been closed, so. The bill is working; I think it's a good policy. I'll tell you, I have been thanked by some village board members in small towns out of my district saying, thank you, Senator Baker, this got the monkey off of our back, if you will, to close a crossing specifically one in Stratton. There had been fatalities. They got that closed. It was before the bill actually was passed, but

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it was an issue of some business people on a town board simply being inundated with people saying, now, we don't want to close that crossing, and they knew it needed to be closed . But when the bill was drafted and I said, okay, this thing is coming down the pike, they went ahead and closed it. And another thing that the testifiers have not mentioned is there's compensation involved. Now, I don't remember the Department of Roads' engineer or who was there for BNSF, but there was a crossing west of Trenton that we met on and there was, I think, \$30,000 they said they would pay to close the crossing, and then they'd put cross bucks and lights on another crossing. So, there's compensation involved. One in Stratton, I think there was \$35,000 of cash involved, plus the state Roads Department has the Crossing Closure Fund that pays the actual cost of closing the street, so there's no cost to the village. And generally there's some cash involved. Now Indianola, that crossing in Indianola, they actually took the money and paved a couple streets with it because of the inconvenience of driving a block across a guarded crossing. So, safety is an issue. And another thing I need to bring up, the railroads did not bring this issue to me; I did this on my own. I think the railroad, the BNSF and UP, were probably as surprised as anyone when I drafted the bill and it hit the public. I did not confer with them. If you recall, the bill started out a mile...I was pretty aggressive...in the beginning with this, it was a mile. We worked it down to a quarter-mile of unguarded crossings, so we compromised a great deal. Senator Stuthman, I remember, had an issue with the cooperative in Columbus, which we worked through with the professional engineer provisions in there. I don't think I misled anyone. This bill was drafted 2005, set over the interim, and we didn't address it until the following year, and to be quite honest, I didn't hear any of this from Ms. Rex and these people dealing with it. And the professional engineer provision was worked out with the cooperative council, as I recall, and now they're testifying against the bill. Now, maybe there's a breakdown with the professional engineer. I don't know what the situation particularly is in Wilber, but if they're going to say, these crossings should not be closed, why, fine, they should go to the Department of Roads and I do know the folks of the Department of Roads quite well. They're going to be flexible and work. And as I understand, they proposed closing, I think four of the crossings in Wilber; they're down now to just proposing two. So, there's been some give and take there, obviously. I don't know the particulars as to whether there's cash consideration to close them or what, but I do know the state's rail Crossing Fund is funded through this \$100 per crossing per year tax that goes into that. And there's a considerable amount of money in that fund that can be used to assist the villages, the cities, whomever to close the road and so on, etcetera. So, there's not a lot of out-of-pocket money that I know of goes into these things from the village. And there was a straightforward process included for the appeal, which Senator Stuthman, and we did have meetings with Senator Stuhr, Senator Wehrbein. I think Senator Louden sent staff to a meeting we had with BNSF and questioned about a crossing in Ellsworth or something. So, we worked through this outside of the legislative chamber and agreed that this was what we could do, and if there is a question in my mind is whether people have actually gotten that professional engineer's opinion, taken it to the Department of Roads, and simply told that it wasn't

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going to work. I don't know, I'm not privy to that information. Maybe someone can give that to us today. But that would be my testimony, I guess. I think it's a flexible policy and I do recall working with Senator Stuthman and particularly cooperatives because small town crossings for loading trains is what it was. And I think that we worked through that, so. I'd be glad to answer any questions. [LB837]

SENATOR FISCHER: Thank you, Senator Baker. Are there any questions? Senator Hudkins. [LB837]

SENATOR HUDKINS: Welcome back, Senator Baker. [LB837]

TOM BAKER: Thank you. [LB837]

SENATOR HUDKINS: I appreciate everything that you've said, but the fact remains that in the transcript from LB79, it said in here four, five, or six times that if you can get an engineer to sign off on it and say that it doesn't need to be closed, then it won't be closed. But that's not what's happening. [LB837]

TOM BAKER: Then I'd suggest the Department of Roads look at that intent and abide by it. And I'd say you need to talk to the Department of Roads, and I don't know that they're going to testify but I don't know what the case is there. I...the people that I've talked to have had no problem with that provision, but it's not people from Wilber, Nebraska, obviously. [LB837]

SENATOR HUDKINS: And like you said, every crossing probably needs to be looked at on an individual basis. Sometimes this is going to work just fine for a community, and in other cases, Wilber in particular, it isn't. And so what do we do to get the Department of Roads to pay attention to what the intent of this original bill was? [LB837]

TOM BAKER: Well, I'm under the assumption that BNSF and maybe UP will have some folks here to shed some light on that, because I'm not familiar with the one in Wilber. I am familiar with the one in Stratton, the one there west of Trenton. They were more than amiable to work with us. But I don't know specifically what the problem is with the PE in Wilber, Nebraska, here. [LB837]

SENATOR HUDKINS: Do you understand why this bill is here, then? Because what was intended to be done isn't being done, and so Senator Karpisek is saying, if you're not going to follow what we said before, we'll go back to the original language. [LB837]

TOM BAKER: And I would suggest that you talk to the Department of Roads and see if we could...we can't make them testify, I guess, but I would like to hear from them or talk to them one on one. Because that was the intent, was that if a professional engineer signed off on this, that they would have to use that in their judgment of closing a

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crossing. Of course, all the state crossings are under jurisdiction of the Department of Roads, we did that several years ago, quite a few years ago. And they do have considerable amount of experience on that. There are various other factors going into crossings. I think it's 3,000 exposures per day, it's the number of trains times the crossing, determines a lot of what the railroads are required to do as far as guarding them. There's all sorts of this language and regulations. [LB837]

SENATOR HUDKINS: And you don't think part of the decision to close a crossing or not has to do with money and maintenance and upkeep and... [LB837]

TOM BAKER: Oh, sure it does. And...there's no question about it. It does. I still say safety should not be trumped by convenience of having to drive a block to a guarded crossing. [LB837]

SENATOR HUDKINS: A block I can agree with. But we received a letter from the Farmers Coop in Brule, and they said that if you have the crossings blocked, it looks like crossing, the only other way across the track is 12 miles one way or 9 miles the other. So, I don't know how many crossings they close, I don't know. [LB837]

TOM BAKER: I have no idea what the situation in Brule is, I don't know. [LB837]

SENATOR HUDKINS: Thank you. [LB837]

SENATOR FISCHER: Other questions? Senator Louden. [LB837]

SENATOR LOUDEN: Yeah. Senator Baker, welcome back. [LB837]

TOM BAKER: I was in your hometown the other day. [LB837]

SENATOR LOUDEN: Well, good. What did you think of the crossing? (Laughter) [LB837]

TOM BAKER: It's busy, busy, busy. [LB837]

SENATOR LOUDEN: You should have went a couple of miles west and looked at that crossing. We fought that all summer and we got a beautiful one down there, and it doesn't have bells and whistles on it, and so... [LB837]

TOM BAKER: I don't get to ask questions, I guess, but I'm glad you're satisfied with it. Something must have worked. [LB837]

SENATOR LOUDEN: Now, the other part though about closing, though...I said, you remember when we did this LB79 and all the trouble you caused us ever since. I guess

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my first question would be is, you stated, you know, if you close these crossings, you'd have less accidents. That's what you stated, isn't it? How do you figure that? Because people are going to have to cross that railroad track about so many times. Now, whether you put them all down and cross...crossing in one spot or whether you have them crossing in several spots... [LB837]

TOM BAKER: Well... [LB837]

SENATOR LOUDEN: ...it's all a matter of paying attention when you're crossing the railroad track. [LB837]

TOM BAKER: What I'm talking about here in LB79 was unguarded crossings, meaning cross bucks. No lights, no cross bars. And obviously our goal is to provide grade separation on those crossings east of Alliance. [LB837]

SENATOR LOUDEN: Well, I...yeah, but that... [LB837]

TOM BAKER: We can't do that. [LB837]

SENATOR LOUDEN: That isn't going to happen. As you stated... [LB837]

TOM BAKER: My answer... [LB837]

SENATOR LOUDEN: ...you got to have about 30 cars a day. [LB837]

TOM BAKER: 3,000 before you get a guarded crossing. [LB837]

SENATOR LOUDEN: No, you don't... [LB837]

TOM BAKER: And I think I'm speaking correctly here... [LB837]

SENATOR LOUDEN: It doesn't take quite 3,000 because it just got one in at Antioch, but we did have a fatality there. But nonetheless, those are somewheres now \$110,000 to put them in and that sort of thing, and the railroad is pretty near...I think they would rather have a grade crossing, a private grade crossing than put in lights because they got to maintain them. So that isn't exactly the answer of the railroad; the railroad wants to close crossings because they don't like them because of what it does to the railroad tracks and the whole thing. So I think when you say it's working, I don't know as it's working. It's working because it's closing the crossings, but I don't know if it's working because the people are happy. And therein lies our problem. When you said, like, Indianola received money, or one of those towns you mentioned, now were they...then they were willing to close that crossing? I mean, they were agreeable to it. [LB837]

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TOM BAKER: They negotiated with BNSF in that case, there east of McCook, and... [LB837]

SENATOR LOUDEN: Okay. [LB837]

TOM BAKER: ...and the village... [LB837]

SENATOR LOUDEN: Now, when you close, though, this map here, we have of Wilber, it shows a lot of crossings...we had that problem in one of the towns. There was a couple of crossings, two crossings and one of them was less than a half mile apart. The railroad went in there and built a road right at the edge of their property down to where the crossing was. Is the railroad doing any of that when they close some of those grade crossings, do they turn around and build a road on down to the other crossing? [LB837]

TOM BAKER: You're going to have to ask the railroad that. I don't know. [LB837]

SENATOR LOUDEN: Okay. [LB837]

TOM BAKER: My...still the basis of the bill was safety. And it's 1,320 feet is what it is. If you have an unguarded crossing within 1,320 feet, that's not much inconvenience to go to a guarded crossing where...you talk about what's the point. It's got lights, bells, and/or cross bucks that drop, and it's pretty hard to ignore those. And in riding a train back and forth, we do see people run around the cross bars. But at least they come down, and those things...each train crew, and there's going to be testimony behind me, has to report that if there is something out...I remember getting caught on a train coming down...I think everybody on the committee should ride a train. The front end...they're not just real comfortable, but get on the front end of freight train, the signal wasn't working, so we had to stop and the conductor get out and hand signal that crossing. So, they maintain these things, and obviously, the cross bucks drop, it's pretty hard to ignore them. Senator Stuthman, you just can't ignore them, can you, they drop down in front of you and there they are. So, it's a safety issue with me, and if anybody would like any details of being an EMT and working these things...there was teenagers, 12-year-old killed at one I worked, it just makes me sick. It didn't need to happen, quite frankly. [LB837]

SENATOR LOUDEN: Then you feel that you don't want anybody to tinker with the bill? [LB837]

TOM BAKER: I would suggest that before you tinker with it, you talk to the Department of Roads. And I'm sure that, Madam Chairman, you talk to the Department of Roads quite a bit, I'll bet. I used to. See what their... [LB837]

SENATOR LOUDEN: For now, okay, but now the Department of Roads doesn't have

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the last say on the railroad crossings. The railroad has the last say on the railroad crossings. All the Department of the Roads does is maintain that road up to that crossing. [LB837]

TOM BAKER: You're going to need to talk to the railroads here. I can't speak for the railroads, but. It's not only a safety issue for the public, it's also a safety issue for the train crews. The last crossing accident I worked was a county road grader hit, it ended up on top of the engine, broke the glass out, the conductor was cut, broke the train in three places, obviously killed the guy on the road grader. It... [LB837]

SENATOR LOUDEN: Was his line of sight obscured by a parked train? [LB837]

TOM BAKER: No, it was on the main line...unguarded crossing, but they have since done a lot of work on that crossing. [LB837]

SENATOR LOUDEN: Okay, because that's usually more than anything is to make sure the road comes up square with the crossing for... [LB837]

TOM BAKER: And it didn't, but they have upgraded... [LB837]

SENATOR LOUDEN: ...for visibility. That's a different issue altogether. [LB837]

TOM BAKER: They have upgraded this crossing. [LB837]

SENATOR LOUDEN: Thanks, Senator. [LB837]

SENATOR FISCHER: Thank you, Senator Louden. Other questions? Senator Aguilar. [LB837]

TOM BAKER: I have all day. [LB837]

SENATOR FISCHER: (Laughs) We don't. (Laughter) [LB837]

SENATOR AGUILAR: Thank you, Madam Chair. Welcome back, Senator Baker. I'm really appreciative of the points that you make, that the safety part of this is the most important issue here. It's not about whether the people are happy, it's the safety. And the true measuring stick as far as whether or not this is successful procedure is the number of fatalities before and after the legislation was introduced. And I would submit to you that it's probably decreased significantly since the time of your legislation. I very much appreciate what you're trying to do and congratulate you for making the long trip down here today in defense of what you really believe in, so. [LB837]

TOM BAKER: Thank you. [LB837]

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SENATOR AGUILAR: And I strongly agree with what you're saying. The legislative intent is pretty clear, so the Department of Roads has somewhere along the line dropped the ball and that's where the conversation needs to take place. So, it's either a failure of recognizing legislative intent or they just don't like Senator Karpisek. Thank you. [LB837]

TOM BAKER: I don't know. No answer. I...no comment. [LB837]

SENATOR FISCHER: You better not comment on that one. (Laughter) [LB837]

TOM BAKER: I will make one comment, though. I was in Grand Island Saturday, actually out west of the Heartland Shooting Center...that's a nice facility...but I drove from that facility to Elm Creek on Highway 30, and I don't know the numbers of fatalities, but obviously the train traffic continues to increase. So, you have to factor that in there, too. Those triple tracks west of that area, there was always a train in sight, so. [LB837]

SENATOR AGUILAR: Always. [LB837]

TOM BAKER: And it affects Senator Fischer's district just like Grand Island. It's amazing the train traffic. So, although the fatalities may not go down, even if they'd stay the same, I'd think we're making progress because the train traffic keeps increasing. [LB837]

SENATOR AGUILAR: Thank you, Senator Baker. [LB837]

SENATOR FISCHER: Senator Stuthman. [LB837]

SENATOR STUTHMAN: Thank you, Senator Fischer. Welcome back, Senator Baker. [LB837]

TOM BAKER: Thank you. [LB837]

SENATOR STUTHMAN: The thing that concerns me with this is, I am not sure, and I haven't heard in the testimony so far, if the ones that wanted to close the crossing followed the intent of this language to the "T" with the professional engineer and that total process, and then were turned down. I think that's where I need to get some answers to see if this has been followed like we had intended to do, or if there was something happened along the way. That's the concern that I have. And I think that was your intent that, you know, if there was a community that felt that there wasn't, there was a crossing that shouldn't be closed because no one knows better than that community and they got a professional engineer and we had the process laid out and then they still said, no, then there's something wrong. Is that what you had intended?

[LB837]

TOM BAKER: It would be hearsay, not admissible in court, but I was told that the process was not followed correctly. Now, that's hearsay, you're going to have to ask someone who may know that. But...I lost my train of thought. We have...in the case at point...and I'm not really picking on Senator Karpisek, but their village board member said they had a crossing with poor visibility, it hadn't been closed. This got them moving. It should have been closed apparently, engineer, the PE they hired, Olsson Associates, said it should be closed. Why wasn't it closed before now if it was that dangerous? I think we're making some progress. And any time we change things, there's going to be some upset people, you all know that as senators. You can't please everyone, but we're making progress. [LB837]

SENATOR STUTHMAN: Yeah. Thank you. [LB837]

SENATOR FISCHER: Other questions? Would you say, then, Senator Baker, that the intent of the bill was that if a city council hired a professional engineer and that professional engineer then submitted his recommendation to the Department of Roads, that the Department of Roads then would just rubber-stamp whatever that recommendation was? Was that the intent of this law that we passed? [LB837]

TOM BAKER: I don't know that I'd use the word "rubber-stamp." If there was a rational reason to leave that open, I would expect them to leave it open. That was my intent. [LB837]

SENATOR FISCHER: But if the Department of Roads did not have a rational reason to leave that crossing open, and since the Department of Roads is in charge of railroad crossings in this state, not railroads, if they felt that that crossing needed to be closed, was the intent then that the Department of Roads could reject the recommendation by the PE and close that crossing? [LB837]

TOM BAKER: That...they would have to have some pretty...to me, they'd have to have some very substantial grounds to reject that PE's recommendation be open. And I don't know what that would be. [LB837]

SENATOR FISCHER: But that still could happen under the law that we passed? [LB837]

TOM BAKER: It could, but that was not my intent, as we well discussed on the floor. I expected the professional engineer to have a justifiable reason to leave it open, take it to the Department of Roads and, yes, we understand. Now, if they're not doing that, then they need to be talked to, Madam Chairman. [LB837]

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SENATOR FISCHER: Maybe we have a slight problem in communication here and just need to take care of it that way. [LB837]

TOM BAKER: I think so, too, because I honestly can give you names of the mayor of Stratton, I... [LB837]

SENATOR FISCHER: You're taking names? [LB837]

TOM BAKER: No, the mayor of Stratton talked to me the other night and says, thank you for getting us off the dime on this thing. We closed the crossing. I have had some praise for the bill, so. [LB837]

SENATOR FISCHER: I appreciate it, Senator. Thank you very much. [LB837]

TOM BAKER: Thank you. Sorry we took so long. [LB837]

SENATOR FISCHER: It's always nice to see you. [LB837]

TOM BAKER: Thank you. [LB837]

SENATOR FISCHER: Next opponent of the bill, please. Good afternoon. [LB837]

BRENDA MAINWARING: (Exhibit 5) Hello. Brenda Mainwaring, common spelling Brenda, Mainwaring is M-a-i-n-w-a-r-i-n-g, and I'm here on behalf of Union Pacific Railroad. I appreciate the opportunity to talk to you all today about this issue. I want to start by clarifying something, and Senator Fischer did allude to this: Railroads do not control the closure of public crossings. That is the Department of Roads' purview. We do have control, typically, over the closure of private crossings because private crossings are an agreement between the railroad and the landowner or the person who is using that private crossing, and I think that's an important clarifying point. Nebraska Department of Roads selects crossings for closures based on a lot of measures, and what the current statute does is provide an objective method to identify what might be called redundant crossings and redirect vehicles to nearby crossings three blocks away, one block away, that have active safety devices instead of passive safety devices. At the state and the national level, the regulatory agencies that have responsibility for railroad safety, the safety of the public as they interact with the railroad, their goals are to reduce crossing collisions. And all of them have determined that closing crossings is the best way to reduce collisions. The existing statute allows Nebraska to focus on identifying redundant crossings as one measure of identifying a crossing that may be appropriate for closing. The Department of Roads has informed Union Pacific that 52 of our crossings would be eligible under this statute for closure. We have not closed any of those, according to my engineering department. And I also want to share with you that there have been 11 crashes at those 52 crossings, fortunately no fatalities; but the only

way to ensure that there are no fatalities and that there are no more crashes at those crossings is to close them. However, we recognize that communities don't always view a crossing as redundant just because it's within a block or three blocks or a quarter-mile of another crossing with active warnings. Our engineering department has looked at those 52 crossings that are on the list and they understand that some of these communities are going to have very valid reasons why those crossings may not be appropriate for closure, according to the community. We support the existing statute because it seeks to improve public safety and we think, and you've heard a lot of testimony along these lines, that there is room for discussion under the statute about how local communities can protect crossings that are important to them. We want to work with those interested parties. I've talked with a lot of you individually; you know that my position was created because Union Pacific wants to do a better job at getting out into the communities. This is one way that we can do that, to talk to those communities about the crossings and better understand what their concerns are. You know, there are a lot of states who have similar statutes and there may be ways to refine the implementation of this statute by looking at how some other states have been successful. And again, in our experience, communities are often very pleased about the results of having closed a crossing. It improves their safety for their communities, for their neighbors. And they are very pleased with the financial advantage that they get, both from the state and from the railroad, when they are willing to close a crossing. So, we believe that local concerns can be heard in this process and we are definitely going to work closely with the Department of Roads and with the communities to accommodate the interest of those local communities. From our perspective, it would be very unfortunate to accept an outright repeal of this existing statute without at least first looking at how the concerns of local communities can be met within the current statute. And with that I'd take any questions. [LB837]

SENATOR FISCHER: Thank you very much. Any questions? Senator Louden. [LB837]

SENATOR LOUDEN: Yes. Well, thank you for testifying today. You're from the Union Pacific? [LB837]

BRENDA MAINWARING: Yes, sir. [LB837]

SENATOR LOUDEN: Okay. And you stated that you don't close public crossings. [LB837]

BRENDA MAINWARING: We are not responsible for those decisions. The railroad is not responsible for deciding which public crossing will be closed. [LB837]

SENATOR LOUDEN: Okay, but you are for private crossings? [LB837]

BRENDA MAINWARING: Correct. [LB837]

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SENATOR LOUDEN: Now, that poses something. Should we change the specifications for what a private crossing can be so that all of them would be public crossings? [LB837]

BRENDA MAINWARING: That's obviously up to this committee. I will tell you a little bit about Brule since that has come up. That was a private crossing that was closed outside of Brule. We have been, and I personally have been working with the fire chief in Brule about some of his concerns there, and there is a fairly long distance to drive around. We are working with our engineering department to make sure that if we ever have to close that remaining crossing for any period of time for maintenance, that we will reopen that private crossing in order that the community can use it to get past it. So, we are working with the community of Brule, we do understand those issues. We've also worked with private crossing owners in a lot of other situations. We go out and we physically look at the crossing, we review our records to see if there are any commitments, obligations between the railroad and the landowner about the terms of the crossing. We post the notice saying we're going to close this and if you have any concerns, please call us, and frequently we talk to the landowner. I know a lot of cases, even this year; we've gone out, we've talked to landowners, they've said, I have this problem. And it's like, you know, it may look on paper like I don't need this crossing, but in fact this is how I get to my irrigation, and see that big ditch over there? It's the only way. And in several instances, we have elected not to close a private crossing. [LB837]

SENATOR LOUDEN: What's the specifications for a public crossing? [LB837]

BRENDA MAINWARING: I don't know that. [LB837]

SENATOR LOUDEN: Is it, by any chance, that all you have to have, to have a public crossing is the county to maintain the road up to the railroad track? [LB837]

BRENDA MAINWARING: I do not know the answer to that. [LB837]

SENATOR LOUDEN: Okay. That's what I think it is. And I don't think you have to have a certain number of vehicles that way. And that's a lot of the problems with closing crossings; you always designate between public and private. And the private is where the...many times where the problem comes in. So, I've run across this, you know, on...where I live along the railroad tracks, across the district I represent, which is Burlington Northern for the most part. And it's usually...most of our problems come about at private crossings. We don't have that much trouble with public crossings because there aren't that many of them that are declared public crossings because we don't have that many county roads out there. [LB837]

BRENDA MAINWARING: We have... [LB837]

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SENATOR LOUDEN: When this bill came about, it was supposed to be mostly with public crossings, but it got into the part where they started using them to close private crossings that were within a short distance of a crossing with bells, and I think therein...I don't know where somebody got overzealous or where are problems arose. [LB837]

BRENDA MAINWARING: I can't speak to that. In having talked to our engineering department, they indicated they have not used this statute to close any crossings on Union Pacific. And the statute, obviously, applies only to public crossings, not to private crossings. We have closed private crossings this year, and the reason is safety because we have a lot of concerns about some of those private crossings. But as I say, we have gone out and talked to landowners and have elected not to close crossings in some cases, and we've made some mistakes. [LB837]

SENATOR LOUDEN: Now, when you closed some of those crossings on account of safety, was that because coming up at an angle or coming up at a steep grade, or was it right next to some type of a sand cut or something, or...I mean, could those crossings, when you say "safety," could they have been upgraded so that they were safer? [LB837]

BRENDA MAINWARING: There are a lot of reasons why a private crossing might be closed, and, you know, I haven't actually prepared to talk about the closure of private crossings. I would be more than happy to have that discussion with you at some point. [LB837]

SENATOR LOUDEN: Okay. Thank you. [LB837]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB837]

SENATOR STUTHMAN: Thank you, Senator Fischer. Welcome... [LB837]

BRENDA MAINWARING: Thank you. [LB837]

SENATOR STUTHMAN: ...to the Union Pacific here in Nebraska. In looking over the bill that we have in existence at the present time, do you feel that it is a workable solution? The process that they have to go through to hopefully keep some of them open, the engineer, do you feel that's a workable solution? [LB837]

BRENDA MAINWARING: It appears to offer a workable solution. The bill itself is not terribly prescriptive. We haven't seen final rules and regulations about how this legislation is going to be applied, and so I think that there is some flexibility on implementation and maybe that's the direction that needs to be considered as opposed to an outright repeal. [LB837]

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SENATOR STUTHMAN: Okay. Thank you. [LB837]

SENATOR FISCHER: Other questions. I see none. Thank you very much. [LB837]

BRENDA MAINWARING: Thank you. [LB837]

SENATOR FISCHER: Next opponent, please. Do we have anyone to testify after this gentleman? One more, okay. Good afternoon. [LB837]

ROBERTO MUNGUÍA: (Exhibits 6, 7) Good afternoon, Senator Fischer, members of the committee. My name is Roberto, spelled R-o-b-e-r-t-o, Munguia, spelled M-u-n-g-u-i-a, and I'm referred to as Bob, so please refer to me as Bob. I'm the director of government affairs for the BNSF Railway company. I'm here to give testimony in opposition of LB837. I have prepared a written statement that I'd like to read and make part of the record, but before I do that, I just want to make clear on the record that as late as today, my understanding with the Department of Roads is that not a single crossing has been closed under LB79. So, let's be clear about that, physically closed. There have...some have been earmarked, but none that have been physically closed. Beginning with my testimony: On behalf of BNSF Railway, I urge this committee to reexamine the true intent of state statute 74-1334 and keep it alive. As we all know, former Senator Baker introduced LB79 in 2005 and it was signed into law in 2006 as state statute 74-1334. His catalyst for introducing the bill and working hard for its passage was due to his experience as an EMT when responding to vehicle-train accidents. For anyone who has responded to these types of accidents, one gets a dose of reality as to what kind of damage a train with up to 135 cars of coal, each weighing 110 tons, with a combined weight of over 15,000 tons, can do to a human being in an automobile weighing a mere 2 tons. LB79 was a mechanism to help reduce the amount of injuries and deaths to Nebraskans caused by grade crossing accidents involving vehicles and trains. Exhibit 1 of the handout is the Federal Railroad Administration's latest list of at-grade highway rail crossings for Nebraska. As you will note, there are a total of 6,012 crossings with 3,598 of these being public crossings. Also as a part of exhibit number 1 is the FRA's list of grade crossing accidents in Nebraska for the first 10 months of 2007, that's the most current one. I couldn't find for the entire year. You will note that there were 38 vehicle-train accidents resulting in the death to 6 individuals and life-changing injuries to 10 others. The Nebraska Legislature should feel proud of the fact that they were the first state to pass such a safety measure as provided in state statute 74-1334. Our neighbors to the west, Colorado, believed it was such a good idea for assistance that they passed a similar bill last year. Exhibit 2 is a copy of this bill. While the statute may not be popular with some of the affected communities because of the inconvenience they may have caused some people by requiring them to drive a little out of their way, it does eliminate the risk of vehicle-train accidents. Let's quickly examine why LB837 was introduced. Exhibit number 3 is the BNSF line segment map for the city of Wilber. Now,

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one correction to that map, the elevator should be on the east side of that track as opposed to the west, so make that correction. You will note that there are six railroad crossings within eight city blocks in this community of 1,761 people. This community was notified by the Nebraska Department of Roads that under state statute 74-1334, there were three crossings that met the criteria for closure. There was a difference of opinion as to which and how many crossings should be closed, which resulted in discussions between them and members of the Department of Roads. As a result of these discussions, on January 17, 2008, the NDOR notified the city of Wilber that they readjusted their closure numbers; currently only two crossings, Ash and 4th Street, those highlighted in the blue, are now earmarked for closure. And again, none have been closed. As you will note from exhibit number 3, a motorist will only be inconvenienced by having to travel an additional block to cross the tracks. However small the inconvenience, members of the community felt they should have more involvement in the decision-making process, and hence LB837. The main argument I hear in favor of the bill is that the statute does not give the local communities an opportunity to appeal the decision as to which and how many crossings will be closed. Well, I disagree. As evident by Wilber's case, what started out with three crossings marked for closure, has been reduced to two. While the current penal process may not be palatable to some individuals, there is no question that an informal process was used in reducing the number of crossings closed and even earmarked in Wilber. It is my belief that if the final decision is left entirely up to the local community as to which crossings are closed, none, if any will be closed. But let's drill down deeper into the community of Wilber as it relates to train traffic. (Coughs) Excuse me. Wilber just happens to be on a BNSF route. It is on our branch line with a maximum train speed of 30 miles per hour. We operate two trains on a weekly basis, each hauling approximately 20 cars. The number of trains does increase during the harvest season by maybe one or two a week. You may be saying that with only two trains on a weekly basis, there is little risk to the motoring public. It's a fair statement, but we shouldn't use Wilber as a basis for repealing a statute that is statewide in scope because on the opposite side of the scale is our coal loop between Lincoln and Alliance, which runs approximately 70 trains per day, travelling up to 60 miles per hour. I have one handout here that I'd also like you to have a copy of and I'll be making reference to. I'll just wait a minute until she hands that out. [LB837]

SENATOR FISCHER: You can go ahead. [LB837]

ROBERTO MUNGUIA: The handout that you just received is a copy of a National Rail Freight Infrastructure Capacity and Investment Study conducted by Cambridge Systematics, dated September 2007. They are an independent, employee-owned company out of Cambridge, Massachusetts, comprised to transportation specialists recognized throughout the world for providing innovative policy in applying solutions to meet transportation needs now and in the future. They were commissioned by the Association of American Railroads at the request of the National Service Transportation

Policy and Revenue Study Commission to conduct the study. The commission is charged by Congress to develop a plan of improvements to the nation's service transportation systems that will meet the needs of the United States for the 21st Century. I would direct your attention to page 5-4. Again, 5-4, Figure 5.3. The graphic reflects their projections as to how much freight rail transportation will increase by the year 2035. As you look at the graph, understand that a thin black line indicates that a train corridor will carry up to 50 percent more trains per day by 2035. A blue line indicates that a corridor will carry between 50 and 100 percent more trains per day. And a thick black line indicates that a corridor will carry over 100 percent more trains per day. As you focus on Nebraska, you will note that there is a blue line and a thick black line. Well, folks, that means by the year 2035, it is projected that there will be approximately 100 to 150 BNSF trains traversing on our current main track corridor. I don't have the numbers for the Union Pacific, but my point is there will be a great deal of traffic heading our direction and in order for railroads to handle this increased demand, we are going to have to increase our infrastructure capacity to move that freight. What does that mean? That means we're going to be doing more double track, triple track, quadrupling our main line corridors to handle the freight. And if we don't begin to start closing, again, redundant crossings, now, will we be subjecting our fellow Nebraskans to a risk we could have avoided by keeping state statute 74-1334 alive? My last comment on LB837: If the appeal portion of the statute needs to be tweaked, let's work on it together. But I would ask this committee not to kill the statute just because someone may have been inconvenienced. It just doesn't make sense. What we're trying to do here is save lives and eliminate permanent injuries. On a different note, I would encourage this Transportation and Telecommunications Committee to read the Cambridge study to get an eye-opening analysis of the projected demand for freight transportation and how it is pressing the capacity of the nation's transportation system, especially its critical highway and freight rail transportation infrastructure. And with that, I thank you. [LB837]

SENATOR FISCHER: Thank you, Mr. Munguia. Any questions? Senator Louden. [LB837]

SENATOR LOUDEN: Yeah. Thanks for being here, Bob. [LB837]

ROBERTO MUNGUIA: Certainly. [LB837]

SENATOR LOUDEN: Notice I didn't have any pictures today. [LB837]

ROBERTO MUNGUIA: Not today, no. That's good. [LB837]

SENATOR LOUDEN: I want to thank you that Burlington Northern did a very good job of fixing that crossing that we were concerned about, and we worked that out by us and people rather than legislation. [LB837]

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ROBERTO MUNGUIA: Excellent point. [LB837]

SENATOR LOUDEN: So now you're talking about this map where you're going to be running more trains and more capacity. If you're going to make all that money, then, is the railroad going to be willing to built more overpasses for us to get over your railroad tracks? [LB837]

ROBERTO MUNGUIA: That's a good question. We need to understand something, and a lot...well, I don't want to give a... [LB837]

SENATOR FISCHER: Short answer. [LB837]

ROBERTO MUNGUIA: ...Railroading 101 class here, but the roads leading up to our tracks do not belong to the railroads. We cannot just arbitrarily close a crossing, we cannot arbitrarily alter a crossing or put in any kind of a structure without authority from the Department of Roads. And you know, as far as giving more monies for overpasses, that's something that I can't answer here. [LB837]

SENATOR LOUDEN: Okay. Now, when you say you don't have the authority to close them, but here again like to see what's from the Union Pacific, you're talking about public crossings, you're not talking about private crossings, right? [LB837]

ROBERTO MUNGUIA: I'm talking about public crossings, yes. That... [LB837]

SENATOR LOUDEN: But you can actually close private crossings with how much...I mean, what do you have to do to not close a public crossing, or what does it take for you to close a private crossing? [LB837]

ROBERTO MUNGUIA: Well, it depends on the agreement. If you have a private crossing with us, we have literally an agreement in place as to what and who is responsible for that crossing and the criteria that we have to follow on that crossing. And if at some point we, you and I, for whatever reason, can't deal with the terms of that agreement, and I guess I'm barring that it's the only access in and out, then at some point maybe we'll close that crossing. But as far as the public crossing, the final decision is made by the Nebraska Department of Roads. [LB837]

SENATOR LOUDEN: Okay. Well, my concern, like I said before, is private crossings. Usually public crossings...I understand where that's coming from. But as you talk about more train traffic and everything, is the railroad going to want to be working more to close the private crossings? [LB837]

ROBERTO MUNGUIA: Senator, I really can't answer that. I don't know. But if, in fact,

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you know, that comes down the pike, I know we'll work with that individual to try to come up with some kind of access into their property. [LB837]

SENATOR LOUDEN: Should some of those private crossings be declared public crossings? [LB837]

ROBERTO MUNGUIA: You have to look at each one of these crossings and determine on an individual basis. I can't just give you a general statement. [LB837]

SENATOR LOUDEN: Do you have any objections if some of those private crossings are declared public crossings? [LB837]

ROBERTO MUNGUIA: Well, I'm the wrong guy to answer that question, Senator. [LB837]

SENATOR LOUDEN: Well, you're the guy that's here doing the talking. [LB837]

ROBERTO MUNGUIA: But I'm not...yeah, that's exactly right. But I'm not in the engineering group, they have final say on that. [LB837]

SENATOR FISCHER: Although in this bill, we aren't addressing any private crossings. [LB837]

ROBERTO MUNGUIA: Exactly. We are not addressing any private crossings. [LB837]

SENATOR LOUDEN: We won't...what is it they say, shoot the messenger, so. (Laughs) [LB837]

ROBERTO MUNGUIA: Shoot the messenger? And I appreciate that. [LB837]

SENATOR LOUDEN: Thank you, Bob. [LB837]

ROBERTO MUNGUIA: Yes, sir. [LB837]

SENATOR FISCHER: Other questions? Senator Aguilar. [LB837]

SENATOR AGUILAR: Thank you. Welcome, Roberto. [LB837]

ROBERTO MUNGUIA: Thank you. [LB837]

SENATOR AGUILAR: In Grand Island, Burlington's rail is pretty much all elevated all through town, and as far as we're concerned, that's about the greatest thing since sliced bread. So, you could increase the traffic along there all you want, you can run engine to

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caboose and it's not going to bother us a bit. Now, if the UP were to do that, that would be a scary situation because we have trains going through one every three minutes, you know, it just... [LB837]

ROBERTO MUNGUIA: And again, you bring up a good point. Folks were looking at a situation coming down the road here of increased freight demand and we have to step up as a rail industry to meet that demand for economic reasons for military readiness, for a number of different reasons. And you know, if we don't start looking at these, again, redundant crossings to eliminate some of those, we're going to be putting an awful lot of people at risk. And you heard earlier that there's already, what, I think the testimony was that there were 11 accidents at 11 crossings that were earmarked under LB79? We're talking about safety and we're talking about trying to save some lives here, folks. Anyhow. [LB837]

SENATOR AGUILAR: Thank you. [LB837]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB837]

ROBERTO MUNGUIA: Yeah, thank you. [LB837]

SENATOR FISCHER: Another opponent, please, and I believe this is our last one. [LB837]

TOM MICEK: And I'll make it short, Senator. [LB837]

SENATOR FISCHER: Thank you very much. Good afternoon. [LB837]

TOM MICEK: Good afternoon, Senator Fischer and members of the Transportation Committee. My name is Tom Micek, M-i-c-e-k. I am region manager of field safety with Burlington Norther Santa Fe Railway Company. In my current position, I have Nebraska and five other states for territory. I am responsible for railroad crossing-related matters, especially crossing safety. In 1999, BNSF had 570 collisions. At the end of 2006, we had 395 collisions, a 31 percent reduction. In 2000, we started a crossing closure program and year to date have closed over 3,800 crossings on the BNSF system, with 223 closed here in Nebraska. Obviously there is a direct correlation between collision reduction and the closure of redundant crossings. Senators, I would like to mention a process we use to identify a crossing, either public or private, to be a closure candidate. First, we look at access. Is there a reasonable alternate access for emergency vehicles and motorists? Secondly, if we close the crossing, where will the additional traffic be routed, were it be a highway, to another crossing with active warning devices, etcetera. We then contact the Nebraska Department of Roads if it is a public crossing or the landowner if it is a private crossing and start the process of getting hearings scheduled or meetings with the landlord if it is a private crossing. As Bob stated earlier, if the local

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officials have the ultimate authority as to how many crossings will be closed, I also believe few, if any, will be closed. I'd like to give you three of many examples where community opposition led to the crossing or crossings not being closed. Hamilton County: The proposal was to install active warning devices at three crossings. The costs were approximately over \$250,000 per crossing...the closure of four crossings. The installation of new concrete surfaces in five locations at \$1,200 per foot, and with 36-foot crossings on average and double track, each new crossing service would cost a minimum of \$86,000. Connecting roads were also to be built and BNSF and Nebraska Department of Roads would also pay the county a minimum of \$5,000 per closure. The funding would be federal, state, and BNSF. There was absolutely no cost to Hamilton County whatsoever, but they voted the proposal down. They now have a new ethanol plant; along with a fertilizer plant, that will have an estimated 40,000 trucks a year using these facilities. And yes, some will have to access our double track, or cross our double track to access these facilities. Kenesaw, Nebraska: Senator Baker mentioned this previously. Had a meeting with the city council along with the Nebraska Department of Roads on closure of a crossing would that would fall under LB79. The property owners had connecting roads already in place at adjacent crossings that will give them access if the crossing was closed. We'd also pay the city \$5,000 each from the state and BNSF. They voted down the proposal as well. In closing, Senator Fischer and members of the Transportation Committee, it appears that the only thing that LB837 addresses is convenience to the motorist. It does not consider the safety of the motoring public or the safety of our train crews. All LB837 does is give the local government final say on the closure. If that is the case, they will never happen as it did in the examples I gave previously. Senators, before I took my current position with BNSF, I was a locomotive engineer for 22 years. I've been seeing firsthand how motorists behave at crossings. I cannot count how many close calls I have had with cars and trucks. The last collision I had unfortunately resulted in fatal injuries to the driver who I later discovered was 50 years of age. This is at a crossing that he used daily, sometimes four to six times a day. He didn't even look in either direction when he approached the crossing. I was operating a 100-car grain train travelling at 35 miles per hour. I put my train in emergency braking, and it took over a half a mile for my train to come to a stop. Senators, you need to understand, we did not even feel the impact of that collision. Let me put this into perspective: The weight ratio of your family car and a soda can as Senator Fischer has in front of her now is 4,000 to one. The weight ratio of your family car to an average freight train is the same. When we have a crossing incident, our train crews can request a trauma relief after a collision, so they can either go home. We also have our assistant group that calls our crews to see how they are doing to make sure if they are okay mentally or if they need any further assistance. I took advantage of both these services my company has to offer. Senators, I will never forget that warning at that crossing. Thank you. [LB837]

SENATOR FISCHER: Thank you, Mr. Micek. Any questions? Senator Loudon. [LB837]

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SENATOR LOUDEN: Yeah, thank you for testifying here today. With or without, whether we had LB79 or whether we have this, would it make that much difference how these crossings are handled? I mean, is this usually something that's worked out between...if it's a public one, between the village or the county and if it's a private one it's between the people that are using it. [LB837]

TOM MICEK: Correct, Senator Louden. You know, a public crossing, for example, the railroad and the state work with the community on a particular issue. As far as a private goes, I personally work on closures on private crossings with BNSF in the six states that I have. Can we close some, some we have resistance, of course. You mentioned previously about asking about the roads being built. Yeah, we've paid the landowner to have a road built on their property to access a county road, for example, in lieu of the closure. [LB837]

SENATOR LOUDEN: Well, that's the reason...I thought it was stated earlier that there hasn't been any crossings closed on account of LB79, and if that's been on the books for a while and nobody uses it, I guess I wonder if a lot of this legislation is necessary if it's usually worked out amongst the people anyway, such as I had mentioned with Bob, and I don't know if you were involved with that crossing that I had up there. That was worked out among us, there wasn't any legislation done over that deal. [LB837]

TOM MICEK: Your right, Senator. I met you at the Grand Island hearing and gave you my business card and two days later received an e-mail from you requesting assistance on Ellsworth crossing, so. [LB837]

SENATOR LOUDEN: Um-hum. And it got done when we talked to the right people, right? [LB837]

TOM MICEK: Yes, sir, that got remedied, yes. [LB837]

SENATOR LOUDEN: Okay, yeah. They did a very good job. Thank you. [LB837]

TOM MICEK: Thank you. [LB837]

SENATOR FISCHER: Other questions? Senator Schimek. [LB837]

SENATOR SCHIMEK: Yes, thank you, Madam Chair. I'm going over in my mind the Wilber situation and I'm thinking that if a train is going to have to slow down and so forth for one of these crossings...I'm trying to work out in my own mind, what difference does it make if there's one every block? I mean, how much of a safety problem is that when you have so many right in a row? [LB837]

TOM MICEK: Well, Senator, I guess the only way I can answer that is, none of us have

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a crystal ball. We don't know where these are going to happen. Now, I guess, let me answer that with a question to you, Senator. If your grandkids are riding a school bus, for example, and they were using a cross buck-only crossing. [LB837]

SENATOR SCHIMEK: You're going to give me grandkids? That's just great! (Laughter) [LB837]

TOM MICEK: No, no. I'm just using...I just...no, no, I'm just... [LB837]

SENATOR SCHIMEK: That would be wonderful, thank you. (Laughter) [LB837]

TOM MICEK: You're welcome, Senator. But just to, (laughs) as an example, wouldn't you rather have your family members use a crossing that has active warning devices, in other words, gates and lights, instead of a plain cross buck crossing? [LB837]

SENATOR SCHIMEK: Sure. [LB837]

TOM MICEK: That's... [LB837]

SENATOR SCHIMEK: And I can't necessarily see Wilber's point of view on this when it's only a block or maybe two blocks down the street to the proper crossing, but I'm just thinking in terms of the whole scheme of things. But I think you've answered my question. Thank you. [LB837]

SENATOR FISCHER: Other questions? I have a question. Senator Louden has brought up a couple times that he was fortunate to be able to make a comment to a railroad official and have his crossing handled. I would doubt that there are too many citizens in Nebraska that would be able to make a comment face-to-face with a railroad official and have their crossings handled. In a situation like that where you have a city council in Wilber that is trying to work not necessarily with railroads, but with the Department of Roads on an issue and they do not feel satisfied as a city council, what do you think the chances are a regular citizen in the state of Nebraska would have in getting their concerns answered? [LB837]

TOM MICEK: You mean as far as a... [LB837]

SENATOR FISCHER: I don't want to put you on the spot. [LB837]

TOM MICEK: No, no, no, you're not, Senator. I mean, as far as getting ahold of me on the railroad for something? [LB837]

SENATOR FISCHER: Getting ahold of the railroad, getting ahold of the Department of Roads and not being a member of the Transportation and Telecommunications

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Committee. [LB837]

TOM MICEK: (Laughs) I don't have any problem with any citizen of Nebraska calling me on my office, none whatsoever, whether it be Senator Louden, my good friend Senator Louden, or anybody else. [LB837]

SENATOR FISCHER: I can tell you two have bonded. [LB837]

TOM MICEK: (Laughs) But no, Senator, I have no issue with anybody calling me at any time about any crossing-related matters. [LB837]

SENATOR FISCHER: And is...I know the Department of Roads has a web site where their contact information is available to citizens. Perhaps we need to get that information out a little better to our own constituents. But my problem with this is you have a city council that feels like they are being ignored, not by the railroads but...so I shouldn't pick on you...but because of legislation that was passed previously. Do you think, in light of that, that the bill we have before could possibly be helpful in opening up the dialogue? [LB837]

TOM MICEK: Senator, I think...I would suggest staying with LB79 because there is a process in place with that. Now, I cannot answer the question about, you know, where it is between Wilber, Nebraska and the city council and the Department of Roads, if there is a gap of communication or something to that effect. I do not know. But I think LB79 is workable if all parties...and like Bob said, we want to work together with communities and stuff. I testified with this in Grand Island on another thing before, but we want to work with communities, not work against them. [LB837]

SENATOR FISCHER: Okay. I appreciate your answer on that. Thank you. I see no other questions. Thank you very much. [LB837]

TOM MICEK: Okay, thank you. [LB837]

SENATOR FISCHER: Are there other opponents to the bill? Anyone wishing to testify in the neutral capacity? I don't think you raised your hand earlier. (Laughter) [LB837]

MICHAEL NOLAN: I wasn't here, Senator. I'm sorry. [LB837]

SENATOR FISCHER: Welcome. [LB837]

MICHAEL NOLAN: Thank you, Senator Fischer and members of the committee. My name is Michael Nolan, I spell the last name N-o-l-a-n, I'm the city administrator in Norfolk. [LB837]

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SENATOR FISCHER: Mr. Nolan, you will need a sign-in sheet when you're finished with your testimony. [LB837]

MICHAEL NOLAN: Okay, very well. [LB837]

SENATOR FISCHER: Okay. [LB837]

MICHAEL NOLAN: I was fascinated by...I tried to get here earlier, but we had some bills in Urban Affairs and I had to testify before. But we have managed LB79 and we have closed two railroad crossings. We have invested a significant amount of money and with cooperation from the Short Line company and are privy to another one are going to close a third one. The processes...it requires a lot of time with citizens, it requires an explanation as to why you have to do it. I want to encourage anybody who's never been in train ride to get up in the cab and look at it from the point of view of the operator of the machinery, because in fact there's tremendous momentum going through those crossings and they can't slow down. And if they're even going 5 miles an hour like the Short Line is, they're obviously going much faster than that in Grand Island, Senator. So there's an important purpose for LB79 and we should be doing everything we can to partner with the railroads to solve the safety problems and infrastructure problems that are out there. That's really all I wanted to say. [LB837]

SENATOR FISCHER: Thank you, Mr. Nolan. [LB837]

MICHAEL NOLAN: Um-hum. [LB837]

SENATOR FISCHER: Your experience has been as a city administrator and you would say also with your local city council has been good, then, in implementing LB79... [LB837]

MICHAEL NOLAN: I've had to negotiate with the city...yes. [LB837]

SENATOR FISCHER: ...and whether you want a crossing opened or closed? [LB837]

MICHAEL NOLAN: We have not tried to insist on any being open, although the railroad has worked with us in providing an additional crossing for a local industry that, in fact, was part of the discussion. But I do want to tell you, this is a very pluralized discussion. City staff have negotiated with the railroads, we've negotiated with the businesses, we've negotiated with the citizens, and we've negotiated with our own elected officials; because whenever you have people who are critical about change, it takes someone having the patience to kind of facilitate that and get people to look at the big picture. And this is just a short line, you imagine what kind of complexity there is in Grand Island, Nebraska. A lot of it. [LB837]

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SENATOR FISCHER: Would you happen to have any knowledge of other cities or small towns, communities that have tried to have a crossing open and...it's been stated that no crossing has been closed under LB79. But do you know of any city or small community that has had problems in dealing such as Wilber has had? [LB837]

MICHAEL NOLAN: No. We negotiated both with the Short Line company, which is Nebraska Central who leases the line from the Union Pacific, and with the safety people at the UP. And I had Beth involved in some of the discussions. I mean, that's...we negotiate everything all the time, so it's not the fact we have somebody that wants to engage with us on their interest doesn't bother us. It was a long process, but we got through it. I'm just suggesting to you that LB79 has an important purpose and we don't want to go throwing it out. I mean, we need to make it better and we need to have a process here where we're all, instead of being adversaries, kind of partnering because railroads are a very, very important part of the transportation system of this state. And it really is fundamentally all about economic development. [LB837]

SENATOR FISCHER: And they help save our pavement, too. [LB837]

MICHAEL NOLAN: Absolutely they do. [LB837]

SENATOR FISCHER: So thank you very much. Anybody else in the neutral capacity? Senator Karpisek, would you like to close? [LB837]

SENATOR KARPISEK: Thank you, Senator Fischer, thank you, Senators. This took much longer than I anticipated. I keep hearing brought up "inconvenience." I didn't say "inconvenience." No one in the proponents said "inconvenience." We're not talking about an inconvenience for going around a block. We're talking about safety, making one side of the town that you can't get to with an ambulance or a fire truck. Sorry, I'm getting a little bit hot because no one said "inconvenience," but I think I heard it out of each and every one. Senator Schimek, only Lincoln, Omaha, and some of the first-class cities have city engineers on staff. All villages and towns have an engineering firm or what they consider their "city engineer." So as far as that they would be on their side, no. That's who they work for. And we talked about money. The city does get some money, I'll read from the fiscal note: The Department of Roads has estimated that as many as 200 crossings may be closed under the existing statutory language put in place by LB79. Any political subdivision which eliminates a crossing by closing the street or highway will be paid \$5,000 plus actual costs not to exceed \$12,000 from the Grade Crossing Protection Fund and \$5,000 from the railroad. If the crossing is closed by removal of the rail, the political subdivision is paid \$2,000 or the actual cost, not to exceed \$12,000 from the Grade Crossing Protection Fund. This is not hundreds of thousands of dollars that these people are getting. They are getting a few thousand dollars. I don't know how much paving they can do with \$10,000. And although I am a new senator, I am not naive enough to not talk to the NDOR. I have had conversations

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with them, have had conversations with the railroads. We cannot come to an agreement. And if I am the first senator that ever came in front of someone to try to help their town, their hometown, then I'm sorry, I am not, it happens every day on the floor. And it is not only Wilber that's having these problems; Crete's having it, DeWitt. I think as you've learned to know me that maybe people from there are just a little more hardheaded and aren't going to just lay down. Also, we've had trouble with engineers not wanting to put their seal on these to say, yes, it's safe. What happens if a train does come and there's a wreck? The lawsuit goes back to the engineer, you said it was safe. Well, none of them are safe. That's obvious. I am not talking about completely gutting the bill, I'm talking about leaving the first part in and trying to get some local control back into the bill. I have a copy of the NDOR's list of when they do come through and do this. And I apologize I did not get these out for you. But in number 8, it states: The submittal by the engineer on behalf of the political subdivision must review traffic operations and grade crossing safety in the crossing corridor and determine that traffic operations and grade crossing safety will be safer if the crossing or crossings remain open. Well now, how on earth are you going to say that it's safer to leave it open? I don't think that that's doable. We talk about Wilber not closing that one that they said is dangerous. The letter came back January 17, 2008; this bill was read January 10, 2008. I was still mayor when this started. I've been here a little over a year. Do you think there's some correlation between the dates? Maybe finally someone has said something and we're getting something moving. Again, this is not the only town, but I'm the most familiar with Wilber. I guess I should have brought more towns in. I did not know it was all going to revolve around my hometown. We talk about the liability issue; cities are liable all the time. We have swimming pools, we have parks, we have all sort of...well, of course, maybe last year we got the liability off the parks (laughs) to Senator Chambers' chagrin. But we have liability, stepping off sidewalks, all the time. We don't want to leave something that is dangerous. That's why I think this bill is fine; we tried to draft amendments. Bruce Cutshall worked with me and Beth Ryan to draw amendments to say, let's get the process started, give the city a little bit of time, 60 days to say, no, we don't want that. Then we'll proceed on. That was not agreeable, so...it was with me, so I brought the bill as drawn. We did hear that there was 11 wrecks at 52 intersections, not 11 at 11, 11 at 52, but I didn't hear how many there were at gated crossings. Why is it that only two are being closed now in Wilber? It's been at least two years, and if none have been closed in Nebraska, I know there's a whole lot of them that are getting real close. And the railroad and the state have been good on negotiations as long as you agree. Okay, in Wilber's case, we'll take out 1st Street, but you can take Ash. Well, if you don't vote for this bill but you vote for my other bill, Senator Fischer, then we're going to agree famously, too. So, I do think that local control needs to have a little more influence in this and not just come in. There has not been good communication back and forth, and it has not seemed to me that it has been in good faith. And to hear that there hasn't been enough that I bring this to you, well I apologize. I think that's my job. Thank you. If there's any other questions, I'd be glad to take them. [LB837]

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SENATOR FISCHER: Thank you, Senator Karpisek. I appreciate you staying for the closing. [LB837]

SENATOR KARPISEK: (Laughs) Oh, I'm sure you are. [LB837]

SENATOR FISCHER: I am. [LB837]

SENATOR KARPISEK: Thank you for your time. [LB837]

SENATOR FISCHER: Thank you very much. With that, I will close the hearing on LB837 and we will open the hearing on LB741. And I see Senator Fulton is here. Good afternoon, Senator Fulton. [LB837]

SENATOR FULTON: (Exhibit 1) Good afternoon, Madam Chair. Thank you to the Transportation and Telecommunications Committee for allowing me to bring this idea to you in the form of a bill, LB741. Presently, revenue from the motor vehicle tax is not allocated for road maintenance or construction. As I found this out, this seems to be to the surprise of, in my opinion, the vast majority of citizens in Nebraska. Before new avenues are created to generate revenue for the projected roads shortfall that we as a state face, in my opinion current mechanisms must be made to operate as efficiently and effectively as possible. Currently, Nebraska statute directs each county treasurer to distribute revenues generated by the motor vehicle tax to the county, to the city, and the school...I'm sorry, to the county, to the city of vehicle registration, and the school districts of that county, at the rate of 22 percent, 18 percent, and 60 percent respectively. As you will note in the handouts I have distributed, the 93 counties of Nebraska recorded nearly \$197 million in total revenue during fiscal year 2005-2006 from the motor vehicle tax. LB741 amends Nebraska statute chapter 60 by increasing the distribution to counties from 22 to 25 percent, to cities from 18 to 20 percent, and decreasing the distribution from 60 to 55 percent for school districts. LB741 mandates that all revenue greater than the original 22 percent for counties and 18 percent for cities will now and hereafter be dedicated to roads building and maintenance. LB741 proposes the utilization of an existing funding mechanism to improve our roads at both the county and city level. I see this legislation as only one chapter in the book that is the future of road funding for our state. I believe it appropriate that taxes derived from the use of motor vehicles be used to finance roads. The fact that thousands of constituents and officials with whom I have visited over the past several months already believe this to be the case in my opinion introduces somewhat of a scandal on the part of the public with regard to our present tax policy. Our tax policy ought to be understandable to the people and this bill takes a small step to establishing a policy which is discernible by the public. I believe it will serve to inform and animate our policy discussions with regard to roads and I believe it will make our future roads policy decisions more likely to move forward. And that concludes my opening testimony. If you have any questions, I will be glad to attempt to answer them. [LB741]

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SENATOR FISCHER: Thank you, Senator Fulton. Are there questions? Senator Lautenbaugh. [LB741]

SENATOR LAUTENBAUGH: I like the phrase "inform or animate." Has this informed or animated the school districts in any way? [LB741]

SENATOR FULTON: Probably both. If I may take that opportunity to explain why...ostensibly, what I'm proposing here is to take the schools from 60 percent to 55 percent. And I don't have the figure in front of me, but we're talking probably between \$8 million and \$10 million. So, that would represent a loss to the schools. I recognize that and this is something that...it's appropriate to talk about the broader policy here. We have had and you will, I don't know if this committee will have it, but there will be ideas introduced as bills and maybe even as initiatives, to take general fund dollars and move it into roads. And there's plenty of arguments for and against that, of course, but nevertheless that's something that's going to be proposed. This was something that I recognized could be accomplished via the motor vehicle tax, and the way that I would intend to have this move forward is to have the 5 percent that would be lost by the school districts made up through state aid to schools. That being said, I have talked with Senator Raikes and I understand that we could accomplish that through amendatory language to existing statute regarding the TEEOSA formula. There's a concern that the lost revenue that would be made up with the General Fund would not be recognized until a year later. That's something that I raised with Senator Raikes and I believe that we could remedy that through amendatory language. So, in the event that the committee finds this an appropriate policy to consider or to perhaps include in our broader roads policy going forward, this would be a remedy available to us, the General Fund make up to hold the schools harmless. Now, there is a question regarding nonequalized districts, this is something that I've been able to discern through this process. And as I understand it, and there may be testimony to follow that will add greater clarity, but about 10 percent of the lost revenue here would involve nonequalized districts. That would not be made up easily in the TEEOSA formula; however, we do have that authority within the Appropriations Committee on which I serve. And that would be my intention to hold the schools harmless, if indeed this is part of our broader roads policy. So, I bring this to you, as I mentioned earlier, it's a chapter in a long book. But if this is something that could be considered, that would be my intention, that we would hold the schools harmless. [LB741]

SENATOR FISCHER: Other questions? Senator Louden. [LB741]

SENATOR LOUDEN: Yes. Senator Fulton, thanks for bringing a different idea forward. I don't know if I agree with it or not, but thanks for bringing it forward anyway. Because when you talk about some of those school districts that wouldn't get any money, I think some of them are out in the district I represent because we have a large areas out there

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and the valuation per student is probably high according to other ones and consequently we don't receive as much state aid as some of the other districts are. What...whenever you do something like this, like they say, you're not generating any more money, you're just moving tax from one place to the other. Where do you think the benefit would be to move the tax into this rather than just raising the gas tax? [LB741]

SENATOR FULTON: Um-hum. That issue actually was before me as a decision point in the Appropriations Committee, and at the time I did not want to raise the gas tax because I wasn't convinced, or I had not enough information in my mind personally, to say to my constituents that we have investigated all other avenues. So, I spent the interim...and I took that to heart, I said, no, and I didn't just say no, I wanted to come up with some ideas. I hate it when people just say no and then walk away. So, we investigated this and realized that the motor vehicle tax is something that does not go to roads. It was a surprise to me and so I tested that over the course of this summer; I knocked on a lot of doors in my district. And it's no exaggeration, unanimously, and this question was put to over 1,000 people in my district personally, they believe that this money goes to roads. [LB741]

SENATOR LOUDEN: Okay. When you talk about motor vehicle tax, which part are you talking about? You circulated that piece of paper of your car last, whenever it was. Which part are you talking about now that you didn't know went to roads or whatever? [LB741]

SENATOR FULTON: The motor vehicle tax. [LB741]

SENATOR LOUDEN: That \$20.50? [LB741]

SENATOR FULTON: No, that would be the...oh, that's the motor vehicle registration fee, that's something different. [LB741]

SENATOR LOUDEN: Okay. [LB741]

SENATOR FULTON: The motor vehicle tax, there is a, I believe it's a statutory expression based on the age of the vehicle and there's a gradation of taxes... [LB741]

SENATOR LOUDEN: Now, that piece of paper you had, you know, clear up at the top I think you had like \$200 and some dollars or something like that. Is that the one you're talking about? [LB741]

SENATOR FULTON: Yeah, and that particular postcard, it's specific to my vehicle. [LB741]

SENATOR LOUDEN: Okay. Now, that \$260 something dollars, that's actually a property

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tax, is what that is, isn't it? [LB741]

SENATOR FULTON: Well, I...there could be those to come after me to testify... [LB741]

SENATOR LOUDEN: I mean, that's a property tax whether you had a motorcycle or whether you had a tractor or whether you had other property in your county, you have to pay a property tax. And that's actually a county property tax, isn't it? [LB741]

SENATOR FULTON: If it were a county property tax, I would feel more comfortable calling it that. And presently... [LB741]

SENATOR LOUDEN: Well, I know, but that's what it is. I was always going to show you, and I guess I had neglected to do it, but I was going to bring that little card like that on my mom's 1990 Oldsmobile and show you the difference. She pays the \$20.50, we did the same and the \$5, but up there where you have the \$269 or whatever it was, I think that one is \$3 or something like that because of that, you talked about that age. And down at the bottom where you have the wheel tax, that's Lincoln's deal. Everybody else, you know, people outside of Lincoln, I don't know how many other places, very few places have to pay a wheel tax in Nebraska. But I was just wondering, when you talk about cars, about all the state gets out of that is that, some of that registration fee and maybe that \$5 or so. They don't get any of that up above and the reason they say 65 percent of that goes to schools is because any property tax you have in about any county, about 65 percent of your taxes in any county goes to support schools. [LB741]

SENATOR FULTON: Well, I...you know, again, whether it's called a property tax or a motor vehicle tax, my investigation revealed that most...well, that's not a strong enough word...virtually all of the people that I talked to believe that the motor vehicle tax goes to pay for roads. And I think it has something to do with how we had structured our roads policy. We have the gas tax presently... [LB741]

SENATOR LOUDEN: Well, it has something to do with people don't read the little card they get. [LB741]

SENATOR FULTON: Well, that could... [LB741]

SENATOR LOUDEN: Because you get over to the other side, it says what your mill levy was and everything for Lancaster County and the whole bit there, so. I just wanted...because when you do that, you take that away from the counties. That's what a lot of rural counties live on is their property tax on real estate and the property tax on personal property, and that's what that is. [LB741]

SENATOR FULTON: Well, Senator, to be clear, my bill does not take the money from the counties. This bill is designed to put the money into cities and counties. It would

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increase the amount that would go to cities and counties. I'm not proposing that this money go into the Highway Allocation Fund; my proposal would increase the amount of money. It would decrease the amount to schools, but again, as I indicated earlier, my intention would be to make that up as a broader policy decision with general fund dollars. So, I'm actually increasing money to cities and counties. [LB741]

SENATOR LOUDEN: Then you're telling me that by doing that the people then are sending their money to Lincoln and then Lincoln is sending the money back to the counties, only they're sending them back more than what they sent to Lincoln. Is that what you're telling me? [LB741]

SENATOR FULTON: Well, to the state. I mean, presently the...well, how can I explain. Okay, each county treasurer presently distributes these revenues within the county. So, what we would be saying is that the way this money will be allocated, we will now put 25 percent and 20 percent to cities and counties respectively. So, statutorily, we're set right now, at 18, 20, and 60 percent, and that's handled at the county level. And so my bill would say that we'll bring that down to 20...bring the cities and counties up to 20 and 25 percent, reduce the schools down to 55 percent at the county level still. So, this money is not going into the state highway allocation formula, this is for cities and counties to get roads built. [LB741]

SENATOR LOUDEN: Okay, thank you. [LB741]

SENATOR FISCHER: Other questions? I would just like to thank you, Senator Fulton, for keeping your word last year on the floor when we had the discussion on highway funding and you said that you would be looking into things and you and I had a number of discussions over the interim. And I do appreciate that you have come forward with a proposal. So thank you very much. [LB741]

SENATOR FULTON: Okay. Thank you. [LB741]

SENATOR FISCHER: Are there proponents for the bill? Would the first one step forward, please. Could I ask for a show of hands on how many proponents we're going to have first of all? A total of four. How many opponents to the bill? I see one hand. Anyone in the neutral capacity? I see two. I would ask that you try to be short with your testimony. I certainly do not want to cut off any discussion on this bill, though. So it's at your discretion. [LB741]

LARRY DIX: (Exhibit 2) Good afternoon, Senator Fischer. Members of the committee, for the record my name is Larry Dix, I'm the executive director of the Nebraska Association of County Officials. Certainly we thank Senator Fulton for bringing this forward and sort of bringing something to light that Senator Fulton alluded to before in the fact that many people pay what's called a motor vehicle tax but many people aren't

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necessarily aware that some of that money is not dedicated specifically to motor vehicles. It certainly does bring this point to light, and one of the things that, as I was sitting there listening to this and Senator Loudon had talked about this being a property tax, years ago I would say this used to be a property tax. Years ago, when you went in and paid for your car, there was a certain amount of tax that was distributed to all the political subdivisions just like a tax dollar. And so many years ago, when you paid that tax the counties would get their proportionate share, the cities would get their share, the schools would get their share. But in addition to that, NRDs would get a share, ESUs would get a share, ag societies, so on and so forth. Then through the process, through the number of years when we started looking at a different way of valuing cars, well we went to the age and the value of the car to determine how much motor vehicle tax there was, I believe at that point in time, the Legislature then decided that instead of sending that money out to ag societies, ESUs, NRDs and some of the smaller taxing entities, it was just going to be divided among the three taxing entities, the schools, the cities, and the counties. And so that's what we have right now; that's called the motor vehicle tax. And that's a little bit of the history of that. From our perspective, we certainly understand the difficulty that schools have in their financing, and like cities and counties, we're all out there fighting for that dollar. And so we don't want to be painted with the brush that says, you know, the counties are in here just trying to take money away from the schools. We understand the dilemma that they're in. What we do ask is that you look at this as a policy, as a funding policy within what we see as "road funding." And I think fundamentally, it's a decision that the committee needs to have to just say, is this something that we should take and if we're going to call it a motor vehicle tax, then should it be earmarked, so to speak, or should it be allocated and should we force that money to be used for roads within the cities and the counties? And I think more so the discussion should be a policy decision along with many of the other bills that we're going to see in the Legislature this year. So, with that I'll leave it at that. Certainly we believe this is a tool or an option that can be looked at. We also are very cognizant of the fact that we have some schools that will not be held harmless by this, we're very much aware of that. [LB741]

SENATOR FISCHER: Thank you, Mr. Dix. Mr. Dix, did you pass out the letter? [LB741]

LARRY DIX: I'm sorry, I did... [LB741]

SENATOR FISCHER: Here, would you like...thank you. [LB741]

LARRY DIX: ...on behalf of Lancaster County, I handed out a letter for them in support of this bill. [LB741]

SENATOR FISCHER: Thank you very much. Yes, the bill from the Lancaster County Board of Commissioners, correct? [LB741]

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LARRY DIX: Yes. That's correct. [LB741]

SENATOR FISCHER: Thank you. Questions? I see none. Thank you very...I'm sorry. Senator Hudkins. [LB741]

SENATOR HUDKINS: I wasn't quite quick enough. Thank you. Mr. Dix, since this bill would decrease the amount of monies going to schools, would you then see an increased asking in property taxes from schools? [LB741]

LARRY DIX: As I understand this, part of it gets into...some of the schools, I believe, would be made whole by the school funding TEEOSA, okay. So I believe that would accommodate those schools. And I would be the first to tell you I don't understand that formula, but I believe we will see the possibility that some school districts that are nonequalized would have no other remedy but to increase their tax asking if they were to remain at the level that they're at today. [LB741]

SENATOR HUDKINS: Thank you. [LB741]

SENATOR FISCHER: Other questions? I see none. Senator Louden. [LB741]

SENATOR LOUDEN: You're familiar with Sioux County that gets what, \$30 or \$40 state aid for education, I think? They don't get little or none, anyway. [LB741]

LARRY DIX: I don't know what they get for state aid for schools. [LB741]

SENATOR LOUDEN: Okay. [LB741]

LARRY DIX: I'm familiar with Sioux County, though. [LB741]

SENATOR LOUDEN: If something like this was through, then they wouldn't...where they're not receiving state aid now, they wouldn't receive any at all in the future, would they? Whatever they lost on this part, they would have to make up in property tax. [LB741]

LARRY DIX: Yeah. If that school district is one of those that I referred to that would not receive additional money through TEEOSA, then I believe their only option would be property tax. [LB741]

SENATOR LOUDEN: Then if that's the case, then probably your more sparsely populated counties and your rural counties and those would be the ones that would be harder hit by this bill. Would that be safe to say? [LB741]

LARRY DIX: You know, it's sort of a unique...I think last year there was a bill, and I can't

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remember the number of it, maybe LB663 or something like that, where we started to have a discussion about nonequalized schools. And it checkerboards across the state, and the reason I say that, I believe Columbus Lakeview might have been one that had that, and I believe maybe Westside might have been one that had that. So, as we talked about that, I don't know that we could put a defining position that said, it's only the smaller, more rural areas because I think within that school formula it sort of splatters across the whole state. [LB741]

SENATOR LOUDEN: How many school districts then, you know, would be affected by this and not receive anything? Ten percent? [LB741]

LARRY DIX: I don't know. There might be somebody from the schools that could say that. I think last year...I would hate to say...we had those figures last year, but I think that probably is coming from the Department of Education or someone from one of the schools that might answer that. [LB741]

SENATOR LOUDEN: Okay, thanks. [LB741]

SENATOR FISCHER: Other questions? Thank you, Mr. Dix. [LB741]

LARRY DIX: Thank you. [LB741]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB741]

BRUCE BOHRER: Good afternoon, Madam Chair. Bruce Bohrer on behalf of the Lincoln Chamber of Commerce appearing in support of LB741. I'll be brief. [LB741]

SENATOR FISCHER: Would you spell your last name for the record, please? [LB741]

BRUCE BOHRER: Yes, ma'am. For the record, B-o-h-r-e-r. I think Mr. Dix did an excellent job covering a lot of the issues and also Senator Fulton as he introduced this bill. We support this bill because we clearly have a road funding crisis. And the options out there for us to consider, raising taxes or looking how we spend our money or looking at how we allocate our money, looking at the criteria for distributing our money, all of them have their bad points and their good points. I think the main point I want to make is we'd like to see as many options on the table as possible. I appreciate Senator Fulton's efforts in this regard, bringing an idea forward. I also wanted to mention that we too wanted to make sure that the schools were held harmless under this proposal and that's the way we understood the intent. And I think he was...as Senator Fulton introduced it, he made clear that not only the equalized schools, but I believe he referenced the fact through the appropriations process, he would even want to make whole the nonequalized schools as well. You know, I think one of the reasons, I can't remember who asked the questions, but as far as the why we would want to consider this, I was

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reminded of a, I think it was a Washington state official, legal counsel, may have been out here that came and talked to the Highway Commission, I think it was in November, about the efforts in Washington state. And they've been fairly successful in getting more money into their road building programs...in fact, even having their population, their citizens increase their user taxes. But one of the things he said, the first steps they took was to look at, you know, what he called accountability for the current tax system. And I think this is part of it; whether or not this is the right way to do it, I don't know. I do think we're going to have a lot of different suggestions on the table. Obviously tomorrow in Revenue Committee I'm going to get a chance to also support a proposal regarding the user tax. And a peculiar problem there as well that the tax that we mainly use to support our road needs is pretty, in a lot of ways, immune from the inflation that, you know, is really a factor in our road building needs. So, with that I'll wrap it up. But I just think the main point is that at least it's an idea, something that we do need to consider. And, you know, another aspect of the bill is also to say, we're giving you this money, counties and cities, we'd like to make sure you really are using this money for road needs. And I think in a lot of cases we may not be, so. [LB741]

SENATOR FISCHER: Thank you, Mr. Bohrer. Are there questions? Senator Louden. [LB741]

SENATOR LOUDEN: Thank you, Senator Fischer. If this money would be going to the counties and cities, then...for road improvement, then do they intend to lower their tax levy? [LB741]

BRUCE BOHRER: Well, I doubt it. It already is going to the counties and cities in a certain percentage. This, I think, bumps up the county an additional 3 percent to 25, and the city gets the additional 2 percent. And I don't anticipate it, Senator, because the needs are so great out there. You referenced the fact earlier that... [LB741]

SENATOR LOUDEN: In other words, the money will probably be spent. [LB741]

BRUCE BOHRER: Absolutely. [LB741]

SENATOR LOUDEN: And then... [LB741]

BRUCE BOHRER: The needs are there. The needs are great. [LB741]

SENATOR LOUDEN: Then where this money came from, what do you propose to fill that hole up with? [LB741]

BRUCE BOHRER: I'm not sure. [LB741]

SENATOR LOUDEN: Because, I mean, if you're taking the money and giving it to the

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county, you pulled it from some other entity someplace, so what are you going to use to fulfill the needs of that entity? [LB741]

BRUCE BOHRER: Oh, okay. I think it's what Senator Fulton mentioned in his opening; this essentially would be a General Fund support bill. That's what it turns into if you run it through the TEEOSA formula. [LB741]

SENATOR LOUDEN: Would it save a lot of work and time, which I guess time doesn't mean anything to a hog, but would it save work and time if we just took some from the General Fund and put it in the Highway Trust Fund? [LB741]

BRUCE BOHRER: It may, yes. [LB741]

SENATOR LOUDEN: Okay, thank you. [LB741]

SENATOR FISCHER: Other questions? Do you think, Mr. Bohrer, that this bill could be characterized as a "tax shift"? [LB741]

BRUCE BOHRER: Oh, yes. [LB741]

SENATOR FISCHER: Since...when you're talking about using General Fund money in supplementing TEEOSA and holding nonequalized districts harmless... [LB741]

BRUCE BOHRER: Yeah. [LB741]

SENATOR FISCHER: ...that would be sales and income tax money, correct? [LB741]

BRUCE BOHRER: Absolutely. [LB741]

SENATOR FISCHER: So you would be moving from a user fee system that we currently have in place to the state supplementing cities and counties under this bill, the state supplementing cities and counties under this bill with sales and income tax? [LB741]

BRUCE BOHRER: I agree, yeah. [LB741]

SENATOR FISCHER: Okay. [LB741]

BRUCE BOHRER: Absolutely. That's a fair characterization. [LB741]

SENATOR FISCHER: Okay. Thank you. Other questions? I see none. Thank you very much. [LB741]

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BRUCE BOHRER: Thank you. [LB741]

SENATOR FISCHER: Next proponent, please. Good afternoon. [LB741]

JACK CHELOHA: Good afternoon, Senator Fischer and member of the committee. My name is Jack Cheloha, the last name spelled C-h-e-l-o-h-a, and I'm the registered lobbyist for the city of Omaha. The city of Omaha maintains and operates over 4,200 lane miles of streets and about 140 bridge structures to provide a dependable, safe, and efficient transportation system for the Omaha community and its visitors requires an increasing demand for financial resources. Increased cost for material, energy, and manpower drives up the total project cost. Over the years, the city of Omaha has undertaken other measures to increase revenue for street operation, maintenance, and construction such as increases in our wheel tax, street cut fees, and development fees. These revenue increases fall far short of the existing and future needs for the metropolitan area. In fact, in Omaha there's the metro-wide, and includes Council Bluffs even, it's called the Metropolitan Area Planning authority, and they've undertaken a significant study where just for the city of Omaha itself, they estimate our needs for streets and improvements is anywhere between \$300 million and \$400 million. The annual change in our allocation from the gas tax from 2001 to 2006 has been less than one percent, which is not sufficient to maintain our investment, let alone do new streets and new improvements. Road deterioration and poor-quality ride increases vehicle ownership costs, congestion increases cost to businesses, impacts public safety response, and has an adverse affect on air quality and unnecessarily consumes more fuel. Increase funding to provide safe, efficient, and dependable transportation system is a long-term investment in our communities. So, with that, generally the city of Omaha supports the concept set forth in LB741. I think Senator Fulton should be commended for coming up with an innovative way to, you know, try to come up with some new funding for roads. My elected bosses in the city of Omaha, as you face, are very worried about and cautious in terms of wanting to raise taxes, and so basically my instructions down here this year have been to support, you know, innovative ways to try and get more road funding without flat out raising, you know, the taxes, whether it's the cent per gallon raise or things like that. And so, I wanted to explain one other thing, too, before I quit for the day. Generally, this tax on motor vehicles that we're talking about here, as Larry Dix explained, was property tax. And most people still consider it that because you're allowed to deduct it on your income taxes and things like that. And, you know, I'll make a statement that won't be surprising to you, but governments need money to provide services. And so, what do you look to when you try to raise revenue? You want to have a general ad valorem tax, if you will, and when people purchase motor vehicles, to most individuals, that's probably going to be the most expensive piece of personal property they probably buy in a lifetime. I mean, you can buy your ranch and your real property and your homes, and so that's why we like to have these general taxes...we don't like to have them, but we have these taxes on these general items of great expense because that's where we can raise the greatest revenue when we provide

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services. So, I want to caution you when it comes to, you know, looking at a particular piece of property or a tax on a item and say, well, this was raised on that, it should be spent on this. For instance, you know, we do property taxes on homes, the city gets it's share, we can't dedicate it only for, you know, our planning department that issues permits and inspections on home building. I mean, we need sources of general revenue just like the state does to operate and run and provide services. I'm grateful to Senator Fulton and this bill. In Omaha, Douglas County, that's the only county that the percentage is shifted under existing law. Under existing law, most counties get 22 percent of this tax on the vehicles and 18 percent go to cities. In our county, we sought and through some metro senators, were successful in shifting that because at the time the bill went through to exclude some of these other taxing entities, we wanted the whole, the three sources that receive the money harmless. And so we had to shift it in our county so that way Omaha didn't lose revenue when this bill was adopted, oh, roughly a decade ago or whatever. And so, I'm grateful to Senator Fulton when he says this new money that he proposes to use has to be dedicated to roads, and we can accept that and we like that because we need sources of funds for that. But in the meantime, I'll admit and I'll tell you now, we use that 22 percent in our city general fund and we need that revenue to run and operate general items of service that we give to our people, whether it be libraries, whether it be police protection, fire protection, etcetera. And so I just wanted to share that with you and now I'll try to answer any questions. [LB741]

SENATOR FISCHER: Thank you, Mr. Cheloha. Questions? Senator Stuthman. [LB741]

SENATOR STUTHMAN: Thank you, Senator Fischer. Jack, the registration fee from your county, this bill will take a greater percent of that registration tax or that vehicle tax proceeds to be utilized in your county or your city of Omaha... [LB741]

JACK CHELOHA: That's right. [LB741]

SENATOR STUTHMAN: ...for roads. [LB741]

JACK CHELOHA: Right. [LB741]

SENATOR STUTHMAN: Okay. Those dollars would be coming to your county anyway, but you're trying to take a little bit bigger chunk for your roads out of those proceeds. And in...the other part is you're giving a little bit less to the school system. [LB741]

JACK CHELOHA: Right. [LB741]

SENATOR STUTHMAN: Five percent less to the school system. [LB741]

JACK CHELOHA: Right. [LB741]

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SENATOR STUTHMAN: How are the school systems going to be funded, through general fund TEEOSA? [LB741]

JACK CHELOHA: Right. [LB741]

SENATOR STUTHMAN: That's the way I understand it. [LB741]

JACK CHELOHA: As I've understood from other witnesses and as we've studied it in the fiscal note, the loss of school money to the unequalized...or, I'm sorry, I don't quite understand that. But the TEEOSA would help those that are equalized and the ones that are not, you know, would be left, you know, holding the bag, if you will. But I think Senator Fulton said that it's his goal to hold everybody harmless and if that's the case, you know, I can...the city of Omaha can support this bill without having the schools be mad at us if that's everybody's intent and we all try to get there, but. [LB741]

SENATOR STUTHMAN: The concern that I have is you're going to be utilizing state's money, General Fund money, to make the schools harmless with TEEOSA. [LB741]

JACK CHELOHA: Right. [LB741]

SENATOR STUTHMAN: The way the state gets its funds is from the whole state... [LB741]

JACK CHELOHA: Right. [LB741]

SENATOR STUTHMAN: ...state and income tax, I mean sales and income tax. [LB741]

JACK CHELOHA: Right. [LB741]

SENATOR STUTHMAN: So this sounds to me like the communities, cities of Omaha and Lincoln, Lancaster and Douglas County, are trying to get a little bit more money for their road system and having the state, the whole state, pay the bill. [LB741]

JACK CHELOHA: If we do want to hold people harmless, Senator, I think that's a fair statement. And I guess we look at it from the numbers on the books and we think that the state's a little more flush that maybe we are locally. So that's why, you know, we're willing to accept that if you are. [LB741]

SENATOR STUTHMAN: Okay. Thank you. [LB741]

SENATOR FISCHER: Any questions? I have one. You mentioned, Mr. Cheloha, that the city of Omaha, the needs for roads and bridges was \$300 million to \$400 million. For

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how long a period of time? [LB741]

JACK CHELOHA: Well, I... [LB741]

SENATOR FISCHER: Is that for 20 years, is that... [LB741]

JACK CHELOHA: Yeah, I don't know particularly... [LB741]

SENATOR FISCHER: I would doubt that's per year. [LB741]

JACK CHELOHA: No, I don't think that's per year, either. I think that's an ongoing demand or wish list, if you will. If I could take you back, we get about \$26 million a year, I think it is, out of the Highway Trust Fund and then we do these other fees, etcetera, that I talked about. Yeah. [LB741]

SENATOR FISCHER: Right, but the cities needs, when you mentioned \$300 million to \$400 million...does your wish list cover 20 years? Is it a 20-year plan, or... [LB741]

JACK CHELOHA: I can't tell you. I can double-check and I'll get back to you on that. [LB741]

SENATOR FISCHER: Okay. [LB741]

JACK CHELOHA: But I think it maybe is...I don't know, I better not say. [LB741]

SENATOR FISCHER: Okay. Thank you. [LB741]

JACK CHELOHA: Yep. [LB741]

SENATOR FISCHER: Thank you very much. [LB741]

JACK CHELOHA: Thank you. [LB741]

SENATOR FISCHER: Other proponents? Welcome. [LB741]

LYNN REX: Good afternoon, Senator Fischer, members of the committee. My name is Lynn Rex, representing the League of Nebraska Municipalities. I know you've had a long afternoon, so I'll make my testimony brief. First and foremost, we want to thank Senator Fulton for introducing this bill. We think it underscores the fact that there is a crisis with roads funding in the state of Nebraska. With that, our board is supportive of this, but only on the condition that schools are held harmless. When this was presented to us, it was presented to us that TEEOSA would make up the difference. And as Senator Fulton has indicated to you that for unequalized schools, he would find a way to

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deal with that with the appropriations process. So, we do support the bill on that basis, but understand that we also do not believe it's in anybody's interest to take money from the schools in order to do this. There is a tremendous unmet need in roads funding across the state of Nebraska, as you well know, and we just applaud any efforts by senators to address that need. I'd be happy to respond to any questions that you may have. [LB741]

SENATOR FISCHER: Thank you, Ms. Rex. Any questions? [LB741]

LYNN REX: Thank you. [LB741]

SENATOR FISCHER: (Exhibit 3) Thank you very much. Any other proponents? Are there opponents to the bill? Would the first one step forward, please. I would like to read into the record that we received a letter from the city of Lincoln from Greg MacLean, the director of Public Works and Utilities, in support of the bill, again with the assumption that LB741 will address the needs of school districts in the state aid formula and those districts will be held harmless. Thank you. [LB741]

SUSAN SCOTT: Hi. I'm Susan Scott, S-c-o-t-t, from Lincoln, and I oppose changing the reallocation presented in LB741. One of the things that has been confusing to me as I hear the previous people talk about new money, and basically when I read this it's robbing Peter to pay Paul. And, you know, everybody says, let's do it if we aren't going to hurt the schools, and so, you know, it's...I don't quite understand the logic in that. In economically challenging times, education becomes a target for reductions, while on the whole the road systems do not. In 2001 to 2003, state aid to education was cut \$432 million while the roads funds were not cut. Taking this money could lead to increased property taxes if there isn't some other answer. In an era of limited resources, education must remain a priority for Nebraska's future. Education contributes to the quality of life and assures the future through an educated and skilled workforce. Even though roads are important, they should not be taking money from kindergarteners in order to fund concrete. Thank you. [LB741]

SENATOR FISCHER: Thank you, Ms. Scott. Are you here representing a group, or... [LB741]

SUSAN SCOTT: Myself, no. [LB741]

SENATOR FISCHER: ...on yourself. Thank you. Any questions? Thank you for coming forward. I appreciate it. [LB741]

SUSAN SCOTT: Um-hum. [LB741]

SENATOR FISCHER: Any other opponents? Any other opponents to the bill? Anyone in

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the neutral capacity? Please step forward. Good afternoon. [LB741]

MARY JOHNSON: Good afternoon. Senator Fischer, members of the committee, I'm Mary Johnson, J-o-h-n-s-o-n, with Ruth Mueller Robak. I'm a registered lobbyist for the Associated General Contractors. I am testifying today in a neutral capacity because we have not reviewed bills, and so we'll be doing that later this afternoon. But one thing we did want to make clear is the message that you have all heard already; we are in a funding crisis for Nebraska roads and we are pleased to have any kind of tools to look at and ideas. We too want to thank Senator Fulton for putting another tool into the toolbox to let us look at to see if we can get some additional dollars into those important roadways in Nebraska. So, at this point I can't offer any more than that, but if you have any questions, I'll certainly try to answer them. [LB741]

SENATOR FISCHER: Thank you, Ms. Johnson. Any questions? [LB741]

MARY JOHNSON: Thank you. [LB741]

SENATOR FISCHER: I see none. Thank you. We have our next person in the neutral capacity. Good afternoon. [LB741]

VIRGIL HORNE: Good afternoon, Senator. My name is Virgil Horne, H-o-r-n-e, representing the Lincoln Public Schools. Senator Loudon, I'm a hog that cares about time; I'll make this real quick. (Laughter) Obviously, it is a revenue-neutral bill or we'd be opposed to it. Our concern is that there's a year's lag time from the time we lose the money until it's made up in TEEOSA. That's a very big concern across the state. The other concern is, is that if you've been anywhere at any venue that the Governor speaks in, you will hear his comments about what's going on with TEEOSA and its growth. And I'm violating my own policy by...I don't like to call it "TEEOSA." It's the Tax Equity and Education Support Act, and you need to remember that that "Tax Equity" is in there at the beginning of it. But we get beat up every time the Governor speaks about how TEEOSA is growing. This will just add fuel to the fire and it's basically a switch in taxes. That concludes my testimony. Thank you. [LB741]

SENATOR FISCHER: But you are speaking in the neutral capacity? [LB741]

VIRGIL HORNE: I am in the neutral capacity (laughter). If we were in a negative capacity, we'd really get upset. [LB741]

SENATOR FISCHER: I wouldn't even want to hear it, Mr. Horne. (Laughter) Okay. Anyone else wishing to testify in the neutral capacity? Senator Fulton, would you like to close? [LB741]

SENATOR FULTON: Thank you, Madam Chair. I don't want Virgil Horne in a negative

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capacity, we like him neutral. [LB741]

SENATOR FISCHER: You can take him on, believe me, in the opponent. [LB741]

SENATOR FULTON: (Laughs) I want to point out the last time that this motor vehicle tax was "tinkered with" by the Legislature; this would have been in the Revenue Committee, amendatory language to LB142 in 1999. At that time, the allocation formula for the motor vehicle tax afforded the schools at 50 percent, the counties at 25 percent, and cities and villages at 25 percent. So, what we did back then was we moved more of that funding to the schools and less to the cities and counties. So, I point that out just for a point of reference. With the advent of term limits, we're going to lose a lot...we understand this, we're all in the same boat here...we're losing some institutional knowledge. That wasn't that long ago; 1999 is when that occurred, and again it was LB142, amendatory language from the Revenue Committee. So, this is something that has been adjusted, so I guess another point I can make is, there's no magic behind the present 60, 18, and 22 percents. So, that's a point of reference. The overall policy question year is, how do we get general fund dollars to roads? Right now, we do have a surplus of general fund dollars, so my constituents ask if we're going be...before you give these tax cuts, you're telling me that we need to build roads. So, we provided some tax cuts; now I'm proposing that we build some roads. How do you get general fund dollars over to roads? That will be something that I think is going to be before this committee, that's actually going to be a proposal, and you'll see if you have not already that there will be people who would benefit from that who do not like that policy because in down times, there may be temptation to come back for roads money to pay for other sources of government with general funds. This is an idea that would require the collaboration of the Appropriations Committee, this committee, as well as the Education Committee, to utilize the mechanism of the motor vehicle tax to move general fund dollars to pay for cities' and counties' roads. If we can accomplish this, then perhaps we could even have the schools be in favor of this, because what we would be doing is moving general fund dollars into the schools and moving that school's money back into roads. So I put this before you as a tool, and I really mean that. There's language in the bill and the bill itself, yes, does reduce funding to the schools, but if we're able to work collaboratively, which I believe is going to have to happen if we're going to have a broader roads policy going forward, the collaboration in this case would be between three committees working together to hold schools harmless while at the same time using existing funds within our General Fund to build roads. So, I hope you'll look favorably on the bill. I'll answer any questions now. Of course, I'll be around to answer questions 'heretoforward.' [LB741]

SENATOR FISCHER: Thank you, Senator Fulton. I just have a question, but it's more of a comment. You mentioned that the split on that money took place, did you say in 1999? [LB741]

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SENATOR FULTON: 1999. [LB741]

SENATOR FISCHER: Do you know the reason that that split was changed? Was it because there was growing concern with the amount of money that was going for TEEOSA, or... [LB741]

SENATOR FULTON: I can't answer that. I don't know for certain. [LB741]

SENATOR FISCHER: Perhaps you and I can, you know, we can have that conversation later. [LB741]

SENATOR FULTON: Yeah. We do have the language...we could find that out. [LB741]

SENATOR FISCHER: Okay. [LB741]

SENATOR FULTON: But as I recall, we looked into the language, we researched this very hard. I pushed my staff on this very hard, and I don't recall that we found any rhyme or reason as to why it was changed. So it's possible that those that were here at that time would be able to enlighten us. I was not, I was far from here in 1999. [LB741]

SENATOR FISCHER: Okay. Thank you, again, and I do appreciate that you stepped forward with the proposal as you promised you would do. Thank you very much. With that, I will close the hearing on LB741 and open the hearing on LB1034. Senator Louden, you are recognized to open. Good afternoon. [LB741]

SENATOR LOUDEN: (Exhibits 1, 2) Good afternoon, Senator Fischer and members of the Transportation Committee. I'm LeRoy Louden, that's spelled L-o-u-d-e-n, representing the 49th Legislative District and I'm here today to introduce to you LB1034. I introduced LB1034 to describe in statute what the Nebraska expressway system entails. At the present time, the only description or outline of the system is in the Department of Roads' 2006 State Highway Needs Assessment. The department's 2007 State Highway Needs Assessment contains no mention of the expressway system. My concern is that if it isn't recognized as an important part of the state's highway system, it will be ignored, unfunded, and never completed. The state's expressway system is part of the priority commercial system, which was initiated by the Department of Roads in 1988. The priority commercial system directly serves all cities that are first class or larger and it directly serves 80 of the state's 115 second class cities, and it comes within 10 miles of 18 second class cities. The priority commercial system is to be constructed with two 12-foot driving lanes and 10-foot shoulders, 8 feet of which are to be paved. In 2006 there were 3,189 miles in the priority commercial system and about 94 percent of it is constructed. The focus of LB1034 is on a portion of the priority commercial system which is the expressway system. The Department of Roads identified the expressway system in its 1988 State Highway Needs Assessment. It was planned to have 600 miles

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and to connect all urban centers of 15,000 population or greater to Interstate 80 and to add routes that have an average daily traffic of 500 or more heavy commercial vehicles and to add additional segments for continuity. The expressway system will include multi-lane divided highways and "super 2" highways. It may include interchanges where the system intersects with high volume highways and local roads and streets. Since 1988 some construction has been undertaken and completed on segments of the expressway system, but much remains to be done. As you will note, LB1034 uses the routes designated on a map in a 2006 State Highway Needs Assessment. I asked the pages, they distributed copies of that map to you. The expressway system is shown in three colors and the map provides a key to those colors. The key shows that routes shown in green are planned but not programmed, which means they were not part of the original expressway system. The green segments go from Norfolk to South Sioux City, Minatare north to the South Dakota border, and Kimball south to the Colorado border. LB1034 would include all the segments, blue, green, and red in the Nebraska expressway system. Traffic has changed considerably since the original Needs Study done in 1988; so have demographics in western states bordering Nebraska. An additional 4 million people have moved into the region that stretches from Colorado Springs to Cheyenne, Wyoming. This front range population demands routes to commerce and recreation and if Nebraska does not complete its expressway system, we will miss the opportunity to bring traffic, vacationers, commerce, and revenue to western Nebraska. The "Planned" but "Not Programmed" category includes a transportation corridor across western Nebraska and a corridor from Norfolk to South Sioux City, which leads to a large population base in the Minneapolis-St. Paul, Minnesota area. LB1034 is a step towards ensuring that work continues on the expressway system, original, planned and programmed by placing it in statute, describing what it is, and where it is located. It should also be put in statute so that it isn't simply omitted from future Department of Roads State Highway Needs Assessment. One last point I'd like to make: The bill doesn't appropriate any money for the expressway system. However, the fiscal note on LB1034 states a cost of \$500 million to complete the system. I believe this estimate is twice what it should be. Based on e-mails from the Department of Roads, and I've handed out some of those copies for you, the actual estimate should be more like \$238 million. The Fiscal Office gave an estimate of 220 miles at over \$2 million a mile, and this is based on what the Department of Roads estimated. Unfortunately, before the Fiscal Office wrote the fiscal note, it did not have the e-mail exchanges which I'm sharing with you. The fact is that some parts of the expressway system are to be "super 2" roads. A "super 2" is a two-lane highway with climbing or passing lanes on long grades. The portion of the Heartland Expressway, from Alliance to the South Dakota border, has sections that are already considered to be "super 2"; hence, to build from Kimball to the Colorado border is estimated to be \$9 million to construct a "super 2," considerably less than the \$272 million which the department gave in its first e-mail message. I'm not familiar with Highway 35 from Norfolk to South Sioux City, so I will have to take the Department of Roads' estimate. I would hope that they were more accurate than they were with the

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Heartland Expressway portions in western Nebraska. Thank you and I'd be happy to answer any questions. [LB1034]

SENATOR FISCHER: Thank you, Senator Louden. Are there any questions? Senator Schimek. [LB1034]

SENATOR SCHIMEK: Yes. Thank you, Madam Chair. Senator Louden, I want to make sure I understand this map, if you wouldn't mind a question or two. The blue is road that was originally planned... [LB1034]

SENATOR LOUDEN: That was the original... [LB1034]

SENATOR SCHIMEK: ...as part of the expressway and it's been completed? When you say programmed, I'm not sure what "programmed" means. [LB1034]

SENATOR LOUDEN: I don't know if they're all completed or not. There's...I haven't checked with the Department of Roads, but several of them have...okay, out of that first 600 miles, 400 and some miles of it has been completed. So as you look at that blue there, that was the 600 miles and there's 400 and what, 439 miles or something like that that's been completed up to this time, I think it is. [LB1034]

SENATOR SCHIMEK: I'm just not sure that I understand what "programmed" and "not programmed" mean. But programmed means it was planned... [LB1034]

SENATOR LOUDEN: That was the original programmed 600-mile expressway. The planned but not programmed was put in there afterwards and that was where they came up with the "super 2's" on some of that. [LB1034]

SENATOR SCHIMEK: I see, okay. [LB1034]

SENATOR LOUDEN: And that was never part of the expressway system of the 600-mile deal. That's the reason in some of those areas there's been federal earmarked money for those planned but not programmed areas. [LB1034]

SENATOR SCHIMEK: Okay. Now, to the fiscal note and to the overall impact of this bill. It seems to me if you don't have any dates written in for completion on any of this stuff, it really doesn't mean anything, does it? [LB1034]

SENATOR LOUDEN: Well, that's the reason we didn't put any dates on it, because then when you do that, then you do have a fiscal note. That's the reason I don't understand why we have half-million dollar fiscal note. The reason I think that this should be in statute is because it is not described anywhere. You're taking...the only place that it's described... [LB1034]

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SENATOR SCHIMEK: I understand that. [LB1034]

SENATOR LOUDEN: ...is in this book that comes out. [LB1034]

SENATOR SCHIMEK: I understand that, but what good does it to do put it in statute? [LB1034]

SENATOR LOUDEN: Well, you'd have a point of reference where it was described. I mean, this map will be... [LB1034]

SENATOR SCHIMEK: True, but it could sit there for the next 50 years and still not get done. [LB1034]

SENATOR LOUDEN: Well it's been setting there for what, since 1988? I mean, that's 20 years that we've been setting there, so I'm sure this isn't going to be something that's going to be finished in your and my lifetime. But at least there is a point of reference so that, as I mentioned in the 2007 State Needs Assessment, they deleted it whatsoever. And that's my concern, that as we go into the future there will just be people, they'll keep forgetting about it, keep forgetting about it and it will... [LB1034]

SENATOR SCHIMEK: Does this mean, then, that every time we have a change in this plan that we have to come back with another bill to change it? [LB1034]

SENATOR LOUDEN: Why would you have a change in plan? It's already been laid out. [LB1034]

SENATOR SCHIMEK: I know, but we have added to it since we first had it, right? [LB1034]

SENATOR LOUDEN: That one time, and I think that was...must have been right after it was originally brought about that that "planned" but "not programmed" was put it. I think that was in, what in the late 1880's or something like that. [LB1034]

SENATOR SCHIMEK: I'm not arguing about whether you should do this bill or not, I'm just saying I'm not sure that it will accomplish that much. But maybe it will, I mean... [LB1034]

SENATOR LOUDEN: Well, if nothing is done, we know it will probably go off of the horizon or off the radar scope and it will probably never get done. [LB1034]

SENATOR SCHIMEK: That's all. Thank you. [LB1034]

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SENATOR FISCHER: Other questions? I see none. Thank you, Senator Louden. Are there proponents for the bill? Any proponents for the bill? Good afternoon. [LB1034]

LYNN REX: Good afternoon, Senator Fischer and members of the committee. My name is Lynn Rex, representing the League of Nebraska Municipalities. We thank Senator Louden for introducing this measure. We, too, think it's important that there be something in statute outlining what the expressway system is and the reason for that is because of the accountability we think that occurs when you put it in statute. And that accountability is because folks all across the state have access to that, whereas, quite frankly, they have much less access than what is generated by the Department of Roads. And as you have well noted, I think there is a surprise on a number of folks across the state when they found out it was not included in the 2007 Needs Assessment. Now we think this expressway system is important. I will tell you that one of the issues that came out of...when Governor Johanns put together the Transportation Task Force, his task force...I was a member of that along with many other people, some of them are sitting in this room. And one of the things that occurred throughout the state at these forums was a need to look at the expressways, the need to understand the economic viability that attaches when you have access to I-80, and what this means for the state's economy and for our cities and for our citizens and our businesses doing business here, to have access to market. So, with that, we just appreciate this. We think that...we, too, don't understand why there's any fiscal note to this. This is simply stating for the purposes of, I think future reference, too, and to put this on the radar map for folks to understand this is important. I'd be happy to respond to any questions that you might have. [LB1034]

SENATOR FISCHER: Thank you, Ms. Rex. Are there questions? Senator Stuthman. [LB1034]

SENATOR STUTHMAN: Thank you, Senator Fischer. Ms. Rex, do you feel that if we could get this into a statute that it would give better direction to the Department of Roads as to, we've got a plan, let's try to finish that plan before we start on something else? [LB1034]

LYNN REX: Yes. I mean, at least let's complete something that we've started. We have parts of this expressway that, quite frankly, are in need of being redone now, and they've never even completed the back end of it. So, it just seems to me that there needs to be some reasonable expectation that if you're going to have an expressway system, that at some point it will be completed, or at least complete them one by one. One of the analogies that I've used with a group of colleagues recently was, if you're going to paint a house, you don't just paint a little bit on one side, a little bit the other side, a little bit on the back, but there's just swatches here and there. Nothing's ever connected to anything else. So, it just seems to us this is a directive and the Legislature's statement that this is important. [LB1034]

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SENATOR STUTHMAN: Thank you. [LB1034]

LYNN REX: Thank you. [LB1034]

SENATOR FISCHER: Other questions? I have a couple questions for you. [LB1034]

LYNN REX: Sure. Sure. [LB1034]

SENATOR FISCHER: Do you know what map we're talking about on here? [LB1034]

LYNN REX: I have not seen that... [LB1034]

SENATOR FISCHER: Could I have the page? [LB1034]

LYNN REX: ...the one that he handed out, but I have seen the map of the 1988 expressway system. [LB1034]

SENATOR FISCHER: Oh, okay. On the map, if I was understanding... [LB1034]

LYNN REX: Thank you. [LB1034]

SENATOR FISCHER: ...the Senator Louden correctly, the blue highways that are on this map that are outlined in blue, those are part of the original expressway system from the 1988 plan, is that correct? [LB1034]

LYNN REX: That would be my understanding, yes. [LB1034]

SENATOR FISCHER: The green line and the red line, which makes up a number of miles on the map, they were not part of that original expressway plan. Do you happen to know when they became part of the expressway plan? [LB1034]

LYNN REX: I don't. But, Senator, I could find that out for you, but I don't know. [LB1034]

SENATOR FISCHER: Okay. That would be helpful. Do you know...when you mentioned splotches done here and there with the Department of Roads in road construction in this state, do you know why we have those "splotches" around the state of Nebraska? Could it be because of federal earmarked funds, perhaps? [LB1034]

LYNN REX: That could be. Also, I think it's a function of the Department of Roads not having enough money. There's no question the Department of Roads doesn't have enough money to do, as you well know. I mean, as I recall, last year they were \$50 million less than over the prior year and then...from the prior year, not over the prior

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year, but \$50 million less than the prior year, and that was what was appropriated. The Legislature was successful in putting \$20 million in and I think in large part thanks to your leadership, and the Appropriations Committee also. But you testified before the Appropriations Committee with several of us to request that. That was given a line-item veto, and so basically that, plus I think it's anywhere depending upon to whom you speak, of \$100 million to \$120 million less federal funding. So we're looking at a dire situation here in this state in terms of whether or not the Department of Roads can do what they need to do, frankly, to even maintain the current systems. But all that being said, I do think we do need to focus on completion of systems. [LB1034]

SENATOR FISCHER: And I don't disagree with you, obviously, on the funding situation we are in. But when you say we need to focus on completion of systems, following up on Senator Schimek's comment to Senator Loudon, when we put these in statute, in my opinion that's almost as permanent as putting it in the constitution of the state. The Department of Roads does come up with the needs assessment plan every year. [LB1034]

LYNN REX: Um-hum. [LB1034]

SENATOR FISCHER: The priorities on that plan change every year, it is updated to meet current needs as determined by that agency within the executive branch. If you're supporting the idea of putting the expressway system into statute, do we need to put other roads that have been on that priority list, either on a one-year plan or a five-year plan in the department, that possibly every senator at this table would say are priorities... [LB1034]

LYNN REX: Um-hum. [LB1034]

SENATOR FISCHER: ...and they've been left off now in a current plan for whatever reason. So, do we need to put some of those into statute so we don't forget that they were on a one-year or a five-year plan and were a priority at one time? [LB1034]

LYNN REX: Your point is well taken. I do think that with respect to the expressway systems, there may be any number of ways to accomplish what Senator Loudon wants to do here, and I can't obviously speak for him. But for example, it would accommodate our needs to make sure that on the State Highway Needs Assessment, that every year they indicate what the status is on that expressway system. I cannot begin to tell you the number of people that registered complete shock to find out it was not there in 2007. [LB1034]

SENATOR FISCHER: I would... [LB1034]

LYNN REX: And so...but I do understand your point, too, and we're also not suggesting

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that the completion of the Nebraska expressway system trumps everything else in terms of what our roads needs are, we're just saying it is a high priority and one that needs to be recognized. But perhaps the legislation, I can't speak for you, Senator Louden, could be something as directive as that every year the State Highway Needs Assessment will include that provision if that's what they need to have. [LB1034]

SENATOR FISCHER: In a perfect world, we would have funding to take care of every need that we have in this state for roads and bridges that we face at the state level and that we also face at the local level with cities and counties. As we heard from the representative from Omaha on an earlier bill, they have 4,200 miles of streets that they take care of, and I think it was 140 bridges that the city of Omaha is responsible for. We need more funding. I would like to see funding for the expressways. I think they are necessary because we need to look at the state as a whole and the needs of the state as a whole. But the question is, where does the funding come from? I was asked earlier today about this bill. My focus is on the funding because if we can get enough revenue to the state, to the cities, and to the counties, we wouldn't be having this discussion. [LB1034]

LYNN REX: That's true. [LB1034]

SENATOR FISCHER: If we could get enough revenue to state aid to schools, we wouldn't be having school districts arguing over the factors in the state aid formula. So I guess I'm saying I would like to see the discussion focused on funding instead of, we as Senators arguing about where the roads in the state should be built, because I don't think there's an argument there. The roads should be built all over the entire state. [LB1034]

LYNN REX: Um-hum. [LB1034]

SENATOR FISCHER: And I worry when we get into the discussions among ourselves and on the floor of the Legislature on just where the roads need to be built in this state. Do you have a comment? [LB1034]

LYNN REX: Sure. I think that...yes, I do. [LB1034]

SENATOR FISCHER: You looked like you were ready to say something. [LB1034]

LYNN REX: (Laughs) No, I appreciate your insight into this. I think it's really important...we, as an association, obviously we don't think that it is probably the sort of situation where senators ought to be making decisions on where each and every road ought to be placed or which roads ought to be improved first, second, or third. But what we do believe is true is that Nebraskan's business interest and others all across this state rely on information that's put out by the Department of Roads. They rely on it in

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terms of where cities are going to build certain things, whether or not they can zone things in a different way. And so Senator Louden...I think the underpinning of his argument here is to go from being on the 2006 State Needs Assessment Plan, if you will, to go on the 2007 nothing, it just sends a message across the state of, what does this mean in terms of where we're going? And so to that end, I think it is important just to have some expression that, yes, we do have a state expressway system, it's not completed, and there are many, many other needs, too. And I certainly agree with you that if we had appropriate funding on all levels, we wouldn't be having this discussion. But I appreciate your insights into that. [LB1034]

SENATOR FISCHER: I would be willing to work with you on some way, and to work with Senator Louden and this committee, that we do recognize the needs across the state and the need that this body doesn't ignore the majority of, at least the landmass, in this state, because when we talk roads, we are talking distances, too, that cover that landmass. I just don't know if a bill of this sort is the way to do it, so I'm looking forward to the discussion. Thank you. Any other questions? Thank you. [LB1034]

LYNN REX: Just one final thought, again... [LB1034]

SENATOR FISCHER: Oh, I'm going to...yeah. [LB1034]

LYNN REX: ...just to underscore this, very quickly, another way to approach it is to give the directive and on an annual basis, that they include this in their needs assessment. That's another way to approach it. [LB1034]

SENATOR FISCHER: Could you say that, not just to include this in the needs assessment, but maybe to have a historical perspective in the needs assessment on a variety of roads across the state, not just the expressway system? [LB1034]

LYNN REX: Certainly. Well, certainly. Yeah, absolutely. Thank you very much. [LB1034]

SENATOR FISCHER: Thank you. Other proponents to the bill? Are there other proponents? Are there opponents to the bill? Anyone in the neutral capacity? Senator Louden, would you like to close? [LB1034]

SENATOR LOUDEN: Yes, I will for a minute. Thank you, Senator Fischer and members of the committee, and thanks for Lynn Rex for her testimony. And this is what this bill is all about, it's to give some direction to the Nebraska Department of Roads on what this body thinks should be done with some of the roads. Should we just let them decide whether or not to include them as some of their priorities? Or should we, as people that represent our constituents, have some voice in what direction we want to go with the highway funding and highway construction across the state of Nebraska? This doesn't put any particular date on anything to be done, it just puts in there that that will be

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something that needs to be addressed every year and go from there. So, with that...yes, it's a work in progress. And as I said before, this is actually a bill to give direction on what we want and what we expect from the Department of Roads. [LB1034]

SENATOR FISCHER: Thank you, Senator Loudon. Any questions? And I would like to thank you, Senator Loudon, for bringing another important bill to our attention. Thank you. With that I will close the hearing and entertain a motion to go into Executive Session. Moved by Senator Aguilar, seconded by Senator Stuthman. [LB1034]

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Disposition of Bills:

LB837 - Advanced to General File, as amended.

LB741 - Held in committee.

LB1034 - Advanced to General File.

Chairperson

Committee Clerk