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Transportation and Telecommunications Committee
January 22, 2018

[LB860 LB895 LB896 LB901]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, January 22, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB895, LB896, LB901, and LB860. Senators present: Curt Friesen, Chairperson; Jim Smith, Vice Chairperson; Bruce Bostelman; Suzanne Geist; Mike Hilgers; Dan Hughes; and John Murante. Senators absent: Tom Briese.

SENATOR FRIESEN: It's 1:30. So welcome, everybody to this afternoon's public hearing of the Transportation and Telecommunications Committee. I'm Curt Friesen, District 34, from Henderson. A few things I'd like to ask: that you please silence all cell phones and other electronic devices. We'll be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We have set aside an on-deck chair here in the front so the next testifier will be ready to go when their turn comes. If you will be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required but you do have...if you do have a handout, we need ten copies, and the page can assist you if you need some help. When you begin your testimony, it's important that you spell your first and last name; otherwise I will stop your testimony and ask you to do that. We do have a light system. It doesn't look like it's going to be important today, but we will give you five minutes to complete your testimony. When the amber light comes on, that means you have one minute left. And when the red light comes on, you need to wrap it up. We won't be terribly strict with that today. Anybody wishing to testify and not come up, they can sign a pink sheet, by the back, that would indicate their support or opposition to a bill. And with that, I will introduce...the committee legal counsel is Tip O'Neill, the committee clerk is Elice Hubbert. And I will let the senators introduce themselves, starting with Senator Bostelman.

SENATOR BOSTELMAN: Senator Bruce Bostelman, District 23: Saunders, Butler, and most of Colfax Counties.

SENATOR MURANTE: John Murante, senator for District 49, which is Gretna and western Sarpy County.

SENATOR SMITH: Jim Smith, District 14 in Sarpy County.

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

SENATOR HILGERS: Mike Hilgers, District 21: northwest Lincoln and Lancaster County.

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SENATOR GEIST: Suzanne Geist, District 25: the east side of Lincoln, Waverly and Walton.

SENATOR FRIESEN: And one other thing that I wanted to note in the record is that any written testimony submitted for comments on bills needs to be received by our committee clerk by the...5:00 or...yeah, 5:00 the day before the hearing. And so I just wanted to enter that into the record. We will be accepting written testimony 5:00 before the day of the hearing, as far as written testimony to enter into the record. With that, we will open up the hearing on LB895. [LB895]

SENATOR GEIST: Thank you, Chairman Friesen, and good afternoon, fellow members of the Transportation Committee. I am Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t, and I represent the 25th District in the Unicameral. I am before you this afternoon to introduce LB895, on behalf of the Department of Motor Vehicles. The bill amends, revises, and harmonizes certain laws related to the department. Sections 1 and 9 create new language to allow the department to remove an improperly noted lien from a motorboat or motor vehicle certificate of title. Several sections, 2-7 and 13-18, create new language and definitions of auxiliary axles and car toters, or tow dollies, for purposes of exemption from titling and registration. Section 8 clarifies language regarding the issuance of titles for vehicles which have not been previously titled in Nebraska. Sections 10 and 11 create a separate flood damage branded title and definition. This is especially important in light of the hurricanes that have hit the United States. LB895 amends language to make the statute regarding the breast cancer awareness plate consistent with other specialty plates, which are exempted from a refund. In sections 20 and 21, the bill authorizes the department to issue new expiration stickers for handicapped parking permits instead of issuing new tags. Section 22 ensures compliance with the federal Service Members Civil Relief Act, which allows spouses of nonresident, active-duty military members to be exempt from motor vehicle tax. This section also harmonizes the definition of motor vehicles owned by Native American tribes for purposes of motor vehicle tax exemption. They're making quite a stir. Sections 23 and 24 allow a person to change from a Class O operator's license to a state identification card online, and allows individuals, 21 or older, to renew their state identification card on line. And finally Section 25 allows for driver training schools to submit test results to the department electronically. I wanted also to include, for the record, that I have spoken with Larry Dix of NACO, and they have given their support for this bill. And I'm very thankful that Director Lahm will be following me and going into much more detail. I thank you for your time, and I would be happy to take any questions. [LB895]

SENATOR FRIESEN: Thank you, Senator Geist. Are there any questions from the committee? Seeing none, thank you for your testimony. And just as a point that our pages that we have with us today is Lee-Ann Sims from Lincoln; she's a political science major. And we have Kylie...Kotouc? Kotouc? [LB895]

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KYLIE KOTOUC: Kotouc. [LB895]

SENATOR FRIESEN: From Lincoln, a political science major, also. Welcome. [LB895]

RHONDA LAHM: (Exhibit 1) Thank you. Hello, it's good to see everyone again. Good afternoon, Chairman Friesen, members of the Transportation and Telecommunications Committee. I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director for the Department of Motor Vehicles. I'm appearing before you today to offer testimony in support of LB895. I would like to thank Senator Geist for introducing LB895 on behalf of the department. The purpose of LB895 is to modernize and harmonize multiple provisions of DMV statutes that include the Motor Vehicle Certificate of Title Act, the Motor Vehicle Registration Act, and for statutes governing motor vehicle operators' licenses and state identification cards. LB895 provides for the Nebraska Department of Motor Vehicles to remove an improperly noted lien from a motorboat or motor vehicle certificate of title when the department receives sufficient evidence to remove an errantly recorded lien. It requires the department to send proper notice to the lienholder prior to such removal, to ensure the department considers all available information and provide the lienholder the opportunity to provide sufficient evidence that such lien should not be removed. Currently there is no provision in statute which allows the department to remove liens which are improperly recorded. The language in the bill was developed in consultation with representatives from the banking and credit union industry. LB895 provides specific definitions for auxiliary axles and car toter, or tow dollies, for purposes of exemption from titling and registration. This will provide statutory clarification for these small trailers, as they do not meet the standard trailer definition, which causes uncertainty for owners, enforcement, and titling/registration agents. These trailers are currently exempt from title and registration requirements. LB895 harmonizes and expands the list of documentation in Nebraska Revised Statute 60-149(1)(b), which would be acceptable to show proof of ownership when a person applies for a new certificate of title and the previous certificate of title is not available or has not been previously issued in Nebraska. LB895 creates a separate flood damage-branded certificate of title. This brand will remain on the title through title transfers and provides for consumer awareness relative to vehicles which carry this flood brand. LB895 will allow the department to provide better and more convenient service to customers and save money by issuing a renewal decal for handicapped parking permits rather than issuing a new hangtag or a new permit. To ensure compliance with the federal Servicemembers Relief Act (sic: Servicemembers Civil Relief Act), LB895 revises existing statute to allow for vehicles owned by nonresident, active-duty military members' spouses to be exempt from motor vehicle tax. At the request of the revisor of statutes, the bill harmonizes the outdated definition of motor vehicles owned by Indians for purposes of the exemption for motor vehicle tax. To enhance customer service and convenience, the bill will allow additional on-line services for those changing from an operator's license to a state identification card, when the department has a digital image on file and for those renewing their state identification card when the individual is 21 years of age or older. This will allow individuals who have mobility concerns

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to renew on-line more easily rather than to come to the drivers license exam station with every other renewal or when changing from an operator's license to an ID card. It is important to note this provision only applies to state identification cards and not drivers' licenses. LB895 allows for driver training schools to electronically report test results to the department from the driver safety school courses they provide to new drivers. The bill harmonizes breast cancer awareness specialty plates to be consistent with other specialty plates which are exempted from a refund under Nebraska Revised Statute 60-395(1). I encourage the advancement of LB895 to General File. Thank you for your time, and I would be happy to answer any questions the committee may have. [LB895]

SENATOR FRIESEN: Thank you, Director Lahm. Are there any questions from the committee? Senator Bostelman. [LB895]

SENATOR BOSTELMAN: Thank you, Chairman Friesen. Director Lahm, thank you for coming today. [LB895]

RHONDA LAHM: Sure. [LB895]

SENATOR BOSTELMAN: Thank you for having this. I just...the last portion here on the first page of your testimony, at the ownership portion, you know, when they apply for a new certificate of title, and the previous certificate of title is not available, could you just explain that a little bit to me? [LB895]

RHONDA LAHM: Yeah. What that adds into statute is...currently that language is in statute for manufactured homes, mobile homes. So what we're doing is harmonizing it to be the same for motor vehicles as we accept for those other types of vehicles. And those four things address like abandoned vehicles, property dispositions. And pretty much those procedures require to send a certified letter to people and show that you tried to contact the owner and, in the case of the decedent one, they also have to have a death certificate with it. So it's similar provisions we use for other types of vehicles. It just needs to also be in this section so we can use it for a regular motor vehicle. [LB895]

SENATOR BOSTELMAN: Thank you. [LB895]

RHONDA LAHM: You're welcome. [LB895]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions? Senator Hughes. [LB895]

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SENATOR HUGHES: Thank you, Mr. Chairman, and thank you, Director Lahm, for coming. A couple of questions: Can you give me an example of the department receiving sufficient evidence to remove an errantly recorded lien? What... [LB895]

RHONDA LAHM: We have a couple of situations where this is...this is a very rare incidence that this would occur, but we've had a couple of situations that have come up. In one particular situation, the title was brought...or the financial institution came to the county agent and asked the lien to be noted, which is a standard practice, but they didn't produce the title. Normally they're supposed to have the title there and give it to the county treasurer at the time. And so they didn't. The vehicle...they noted the lien. The vehicle ended up being sold but there were...because they had the title, so they sold the vehicle with the title and didn't pay off the lien. [LB895]

SENATOR HUGHES: Hmm. [LB895]

RHONDA LAHM: It went...it was a trade-in, so it went to a dealer. A dealer sold it to another person, and now the lien is out there and that person can't title that vehicle because it was improperly noted. [LB895]

SENATOR HUGHES: Ah. [LB895]

RHONDA LAHM: So that was one scenario. Another scenario came up where we had a person who had gotten a lien and it was noted with the financial institution. The financial institution went under. They had to make their final payment, so they contacted the new financial institution and made the payment. They never got evidence that it was paid off, so now they have a 2,000-pound paperweight that they can't title and register, because we can't get the lien removed. We have the ability to use the same process with titles, to reissue; we just don't have it with liens. So it's a similar process that we would use to reissue a title if it was done errantly, but we just don't have this extra authority to do it with liens, so these people are sitting out there with a vehicle they can do nothing with. [LB895]

SENATOR HUGHES: So who makes the determination if it's sufficient evidence? [LB895]

RHONDA LAHM: Well, we... [LB895]

SENATOR HUGHES: (Inaudible). [LB895]

RHONDA LAHM: Yeah. I mean the department will. We would send it to the...any information that we had about a prior owner, a prior creditor, to try to determine what documents are out

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there that might be...show that it shouldn't be removed. It would not be something we would do, first of all, very often or, second, lightly. [LB895]

SENATOR HUGHES: Yeah, okay. [LB895]

RHONDA LAHM: And that's why we worked with the Bankers Association and also the Credit Union Association (sic: League) to make sure they were comfortable with that because, obviously, we would have no interest in removing a lien that's legitimate or when somebody hasn't paid their lien. [LB895]

SENATOR HUGHES: Okay, thank you. Then the last question about the flood damage-branded titles: Are other states doing this? Is there going to be reciprocity, I mean, if, you know, all the cars coming in from Houston, Texas... [LB895]

RHONDA LAHM: Right. [LB895]

SENATOR HUGHES: I mean, how do we know that they're flood damaged or, you know, how do we know that it should have a flood damage brand on it? [LB895]

RHONDA LAHM: Yeah. Well, I know that in the case of Texas, because I've spoke with their director fairly recently, so they enter it into the system of the flood...they put a flood brand on it. [LB895]

SENATOR HUGHES: Oh. [LB895]

RHONDA LAHM: And every state is not exactly the same, but once that it's branded that way, it would carry it with the vehicle when the transaction continues, because we'll enter it into a national database system that records that. So there...you know, I can't promise that, when we get them from another state, they're going to have that on there, because it's possible that it isn't. But right now in Nebraska if it came in with a flood-branded title, we would just issue it a salvage title. [LB895]

SENATOR HUGHES: Oh, okay. [LB895]

RHONDA LAHM: And there would be no specific notation for flood. So it allows us to carry on that flood designation if somebody brings one in with that on. [LB895]

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SENATOR HUGHES: Okay. [LB895]

RHONDA LAHM: Right now it's all grouped together under salvage. [LB895]

SENATOR HUGHES: Okay, thank you. [LB895]

RHONDA LAHM: You're welcome. [LB895]

SENATOR FRIESEN: Thank you, Senator Hughes. Any other questions from the committee? Thank you, Director Lahm. [LB895]

RHONDA LAHM: Thank you. [LB895]

SENATOR FRIESEN: Any others wishing to testify in favor of LB895? [LB895]

LOY TODD: Good afternoon, Senator Friesen. Members of the committee, my name is Loy Todd, L-o-y T-o-d-d. I'm the president of the Nebraska New Car and Truck Dealers Association. I'm just going to testify one portion of the bill, and that is the flood designator. We are very grateful for that finally being available because what the director has described is a salvage vehicle from some other state, or a flood vehicle from some other state, picked up with the word "salvage" which, in Nebraska under our salvage definition, means 75 percent of the fair market value of the vehicle at the time of damage. We think that flood is a very significant word and factor in the decision about the buying or selling a vehicle and, therefore, we think it's much more appropriate to carry forward a flood brand and to have that flood brand. And so for that reason, we are very grateful for this opportunity to clear that up in the Nebraska law. [LB895]

SENATOR FRIESEN: Thank you, Mr. Todd. Any questions from the committee? Seeing none, thank you for your testimony. [LB895]

LOY TODD: Thank you. [LB895]

SENATOR FRIESEN: (Exhibit 2) Any others who wish to testify in support? We do have one letter here, from the Nebraska Bankers Association, in support. Seeing none, does anybody wish to testify in opposition? Seeing none, does anyone wish to testify in a neutral capacity? Seeing none, do you wish to close on LB895? Senator Geist waives closing, and we will close the hearing on LB895. And we will open the hearing on LB901--oh, got it--LB896. Sorry, we jumped. [LB895 LB896]

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SENATOR GEIST: All right. Thank you again, Senator, Senator...Chairman Friesen, and good afternoon, fellow members of the Transportation Committee. I am Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t, and I represent the 25th Legislative District. I am here to introduce LB896 on behalf of the Department of Motor Vehicles. This bill modifies the implementation date for the Vehicle Title and Registration System, allowing for a date to be determined by the director on, or before, January 1, 2021. The bill also allows electronic reporting for wrecker and salvage dealers when reporting motorboats and vehicles that have been junked or salvaged, and for insurance companies which acquire salvaged motorboats or salvaged vehicles. Trailers which are required to be registered, but do not have a certificate of title, will be assigned an identification number by the county treasurer or the department. And the department is required to furnish the trailer identification number tags, and the owner is required to affix the tag to the trailer. Director Lahm will be following me and can go into more detail. Again, I'd like to add, for the record, that I have also, in this case, spoken to Larry Dix of NACO, and they have also given their support for this bill. Thank you for your time, and I will be happy to take any questions. [LB896]

SENATOR FRIESEN: Thank you, Senator Geist. Any questions from the committee? Seeing none, thank you. [LB896]

RHONDA LAHM: (Exhibit 1) Good afternoon again, Senator Friesen and members of the Transportation and Telecommunications Committee. I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, director of the Department of Motor Vehicles. I am appearing before you today to offer testimony in support of LB896. I would like to thank Senator Geist for introducing LB896 on behalf of the department. LB896 is another preparatory step toward the new Vehicle Title and Registration System for Nebraska. VTR is a system used by the department and county treasurers to register vehicles and boats, titles...title vehicles and boats, and collect and distribute fees and taxes to many government subdivisions. In 2016 the VTR System collected and distributed approximately \$700 million. We anticipate that number to be higher for 2017. LB896 continues the modernization effort by implementing a new, electronic reporting system for salvaged and junked motorboats and vehicles. This electronic system will allow salvage dealers and insurance companies to electronically report junked and salvaged records directly to the department. The present method for designating a motorboat or vehicle as salvaged requires a manual process and unnecessary steps. Currently salvage and junk dealers deliver titles for junked vehicles to their local county treasurer. The treasurer, in turn, mails or delivers the titles to the Department of Motor Vehicles in Lincoln. Insurance companies complete a paper form and mail to the department for vehicles designated to be salvaged. DMV staff then manually enters the title records into the state system. The new electronic reporting system will save the county treasurer from unnecessarily handling the titles, the department from manually entering the information, and be more convenient for salvage dealers and insurance companies, who will be able to use a department-provided Web portal. The electronic process will replace the current process mandated in state statute. The provisions of the bill do not address similar reporting

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requirements at the federal level. LB896 allows for identification numbers to be assigned to untitled trailers, which are required to be registered. Use of identification numbers assigned by the county treasurers and the department will permanently tie the registration record to a specific trailer. We estimate there is approximately 140,000 trailers in the state without a unique identifying number. Trailer identification tags will be required to be affixed to the trailer and provided by the department, at no cost to the trailer owner or to the county. Both changes have an implementation date designated by the director on, or before, January 1, 2021. LB896 will correlate the implementation dates established in LB263 during the 2017 session, with the VTR development and deployment schedule. The schedule will be designated by the director on, or before, January 1, 2021. Lastly, the bill includes intent language supporting the VTR modernization project. I encourage advancement of LB896 to General File. Thank you for your time today, and I would be happy to answer any questions the committee may have. [LB896]

SENATOR FRIESEN: Thank you, Director Lahm. Any questions from the committee? You must have done a really good job explaining it. [LB896]

RHONDA LAHM: Thank you. [LB896]

SENATOR FRIESEN: Seeing no questions... [LB896]

RHONDA LAHM: Thank you. [LB896]

SENATOR FRIESEN: Any others who wish to testify in support? Welcome. [LB896]

DAVID BORSUK: (Exhibit 2) Thank you. Mr. Chairman and members of the Transportation and Telecommunications Committee, my name is David Borsuk, spelled D-a-v-i-d B-o-r-s-u-k. I am an executive with the Sadoff Iron and Metal Company, based in Wisconsin, with three facilities in Nebraska. I'm here representing the Institute of Scrap Recycling Industries, also known as ISRI. ISRI is testifying in support of LB896 and its goal of electronic reporting of salvage and junked motorboats and vehicles by wreckers and salvage dealers when the new Vehicle Title and Registration--VRT--System is implemented by January 1, 2021. Our organization has been working with the DMV leadership for several years in support of the new VTR System. We have been pleased that the DMV is developing the new VTR System, has integrated in its planning the capabilities of the system to report to the National Motor Vehicle Title Information System, also known as NMVTIS, on behalf of the salvage dealers and scrap recyclers. Currently salvage dealers and scrap recyclers have to dual report salvage and junked motorboats and vehicles, both to the DMV and NMVTIS. This is both a waste of time and money. LB896 needs to be followed up next session, in 2019, with legislation to end salvage dealers' and scrap recyclers' dual reporting to NMVTIS and the DMV. The DMV has indicated that they will work with ISRI on

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drafting the authorizing legislation, and is supportive of that goal. In addition to drafting and passing legislation authorizing the DMV to report to NMVTIS on behalf of salvage dealers and scrap recyclers, the proposed legislation for 29 (sic: 2019) will need to identify a funding source to cover the additional cost. Current cost estimates of approximately \$35,000 a year are a concern to the members of ISRI. We have met with the leadership of the DMV, and they have committed to working with ISRI to explore our options to keep NMVTIS reporting costs as low and reasonable as possible. We trust the DMV and look forward to working with them this year as we draft legislation, to introduce in 2019 session, to end dual reporting. This ends my testimony, and I am available for any questions. [LB896]

SENATOR FRIESEN: Thank you, Mr. Borsuk. Any questions from the committee? Seeing none, thank you for your testimony. [LB896]

DAVID BORSUK: Thank you very much. [LB896]

SENATOR FRIESEN: Any others who wish to testify in favor of LB896? Seeing none, anyone wish to testify in opposition to LB896? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Geist, do you wish to close on LB896? [LB896]

SENATOR GEIST: I just wanted to thank the Department of Motor Vehicles for their work on both of these bills, and also thank David Borsuk for flying in from Wisconsin and weathering our lovely Nebraska winter with us. And I would just encourage your advancement to General File on LB896. [LB896]

SENATOR FRIESEN: Any further questions from the committee? Thank you, Senator Geist. [LB896]

SENATOR GEIST: Thank you. [LB896]

SENATOR FRIESEN: That will close the hearing on LB896, and we will open the hearing on LB901. Welcome, Senator Bostelman. [LB896 LB901]

SENATOR BOSTELMAN: (Exhibit 1) Thank you, Chairman Friesen and the Transportation and Telecommunications members. My name is Bruce Bostelman; that's B-r-u-c-e B-o-s-t-e-l-m-a-n. I represent the Legislative District 23, and I am here today to introduce LB901. LB901 is a bill that would amend Nebraska Revised Statute 3-404 to add a requirement that the department...the director of Aeronautics of the Department of Transportation consult with the Military Department in certain structure-permitting decisions when the proposed structure is located

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within an area classified as a terrain flight training area. Currently Nebraska Statute 3-403 requires any person, firm, or corporation to apply for and obtain a permit, in writing, from the Division of Aeronautics of the Department of Transportation to build, erect, or maintain any structure within the state of Nebraska, the height of which exceeds 150 feet above the surface of the ground at point of installation. Statute 3-404 then details what must be contained in such an application, lists what the director of Aeronautics must investigate and consider when determining whether or not to approve the proposed structure application, and with...and what, if any, conditions may be applied. This is done by determining what effect, if any, there is upon air navigation and the health, welfare, and safety of the public. In determining that effect, the director must take the following into consideration, as listed in Statute 3-404: 1st) the character of flying operations expected to be conducted in the area; 2nd) the character of the terrain; 3rd) the character of the neighborhood; and 4th) the uses of...to which the property concerned is devoted or adaptable; 5th) the proximity to existing airports, airways, control areas, and control zones; 6th) the height of existing adjacent structures; and finally 7) all facts and circumstances existing. LB901 simply adds that if the location of a proposed structure is classified by the United States Department of Defense or the Nebraska National Guard as terrain flight training area--for this purpose as we're talking about rotary-wing aircraft, the director of Aeronautics shall consult with the Military Department to determine if the proposed structure will significantly impact the use of such location as a terrain flight training area and, if so, the director shall deny the application. This gives the Guard a necessary voice in the permitting process, which they currently do not have. The training flight areas are used by the National Guard for flight training purposes. In these terrain flight training areas, they fly from the surface just above the highest obstacle, up to 200 feet above the ground. These areas have a historical basis in this state and are areas that have long been utilized for training purposes. The specific locations of these training areas will be indicated, and a map illustrating these specific locations will be published, defining these areas for purposes of this legislation. You've also been handed out this map, which shows you the locations of those specific areas and that will be identified by GAS (phonetic) for the public's use and information at a later time. This map and coordinates will indicate all terrain flight training areas that would be addressed by this bill, and that map indicating those specific locations will be made available to the public and Department of Aeronautics so that everyone can have an upfront knowledge of where these locations are. These areas are key to the Guard to remain mission-ready. Were the Guard to lose the ability to train in these areas, there may be multiple negative impacts for the Guard and the state, to include effects on our economy, personnel, and mission readiness. The Guard may be able to further highlight the potential negative consequences of those...of these areas for terrain flight training purposes, which could include having to leave the state. The Guard currently has their own regulatory process and steps that must be taken for the area to be classified as a terrain flight training area. The representatives from the National Guard will speak more to the specifics...to the specific process, if necessary. LB901 will...with LB901, we're only talking about a handful of areas in Nebraska that do currently classify as terrain flight training areas that this bill would cover. The

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area affected by this bill only accounts for about 1 percent of the total land mass in Nebraska, and the terrain flight training area land which is privately owned would account to even less than the 1 percent. However, that small 1 percent is critical to the Guard's ability to remain mission-ready, and the cost associated with losing the ability to train in these areas is substantial. If these training areas are lost, the operating costs for the Nebraska National Guard would significantly increase. The operating cost of one of the Black Hawk helicopters is \$5,000 an hour. Adding hours of flight time to travel out of state to new training areas diminishes the amount of resources available to reach the most robust training as possible. Our National Guard provides a great service to our country and our state. And having the ability to use these training areas to remain mission-ready is something that we can, and should, do to support them. LB901 simply intends to give the Guard a voice in the permitting process that already exists, and allow these crucial training areas to be considered in such decisions. Again, this bill would only affect a small percentage of land and merely gives the Guard notification and a voice within these areas. Notification of structures over 150 feet in these areas helps address safety concerns during flight training. Structure applications within the terrain flight training areas are also not automatically denied or made impossible by this legislation. This bill works within the permitting process already in place to give the Guard notice and ability to work with the director of Aeronautics to determine how, and if, the proposed structure would significantly adversely affect the Guard's ability to use these terrain flight training areas or if such structure does not affect this ability. This is not an automatic denial of any proposed structure within the areas and, even if a permit would be denied, there is currently an appeal procedure in place to address such concerns. Nebraska Statute 3-405 specifies the bill procedure afforded to the permitting decisions under the terms of the sections...of Sections 3-401 to 3-409, which will include LB901. LB901 simply gives the Guard, once again, a necessary voice and the ability to consult with the director of Aeronautics to determine what may, or may not, significantly affect the Guard's ability to utilize these critical training areas. Furthermore, we have met...in fact, this morning we met with, and had discussions regarding the purpose and the particular language of this bill, with individuals and organizations which include DARE, the Defense and Renewable Energy Strategies, Tradewind Energy, Peetz and Company, the National Guard, and our department of energy (sic: Nebraska Energy Office) representatives. After meeting this morning and discussing any thoughts and concerns that were had about the bill's intent and its specific language, we believe we have a better understanding of any concerns and of a way forward to address them. My office is happy to continue to work with these individuals on process and language specifics, moving forward, and can work on any necessary amendment through my office or as a committee. I therefore ask for your support of LB901 and its advancement to General File. I will attempt to answer any questions at this time. [LB901]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any questions from the committee? Seeing none, thank you for introducing this bill. Those wishing to testify in support? Welcome. [LB901]

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DARYL BOHAC: (Exhibit 2) Thank you. Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee. I am Major General Daryl Bohac, D-a-r-y-l B-o-h-a-c, the director of the Nebraska Military Department. Today I'm offering testimony in support of LB901, concerning permitting decisions when they impact our terrain flight training areas. Nebraska has nine of these training areas across our state and are used in training individual aircraft crews and unit sustainment operations. Training includes techniques for takeoff and landings in unimproved areas, terrain flight navigation, and various flight techniques. Within the areas, three modes of flight are typically used during training: low level, contour, and nap-of-the-earth. This helps mimic how they fly during real world missions in places like Iraq and Afghanistan. It is vital to have our soldiers train like they fight, as the missions they fly are no-fail missions and lives are on the line. For example, last year we had 35 soldiers from Golf Company, 2nd of the 104th, General Support Aviation Battalion deployed to provide aeromedical evacuation services for forward operating bases in Kandahar and Dwyer (sic: Camp Dwyer), Afghanistan. Over the course of their 314 days of deployment, they did not lose a single patient. That training started here in Nebraska, in our terrain flight training areas. We must continue to protect our training areas to help ensure our Nebraska sons and daughters are prepared when they answer our nation's call. This legislative bill is similar to Nebraska Statute 23-114, which states a county planning commission consider a zoning...considering a zoning ordinance or development shall notify any military installation of the proposal. Encroachment next to our training areas and installations is a real concern. For example, we conduct airborne operations, where we practice airdrops, at Mead. Should a wind turbine be placed next to there, it would have to be placed 1,000 meters, or 1,100 yards, from the drop zone, or we would be placing lives of our soldiers at peril. In regards to the specific bill, last year the Division of Aeronautics processed just under 300 permit requests. The majority of the requests were for wind turbine farms in a concentrated area, which would minimize the time it takes for us to determine a potential impact. Our training areas only cover 900 square miles in our state, which is just over 1 percent of the 77,000 square miles. In fact, 85 percent of our training area is in one location near North Platte. We acknowledge an added step in the permitting process, which we see as necessary to protect our training areas. In order to facilitate this process, our agency will publish a map of our training areas, which will allow the Division of Aeronautics and industry partners to better understand where we operate. This will help alleviate potential issues by immediately identifying these key training areas. It's vital we continue to ensure the safety of our soldiers, our equipment, and the public by sustaining training areas here in Nebraska. Thank you, Senator Friesen and members of the committee. I'd be happy to answer any questions. [LB901]

SENATOR FRIESEN: Thank you, Major General Bohac. Any questions from the committee? Seeing none, thank you for your service and for your testimony. [LB901]

DARYL BOHAC: Thank you, Senator. [LB901]

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SENATOR FRIESEN: Any others who wish to testify in support, LB901? Seeing none, anyone wish to testify in opposition to LB901? Welcome. [LB901]

ROB STUPAR: (Exhibits 3 and 4) Welcome. Mr. Chair, members of the committee, for the record my name is Rob Stupar, spelled R-o-b S-t-u-p-a-r. I'm an associate of regulatory and institutional affairs for Enel Green Power North America, Inc., and I manage Enel's legislative affairs in Nebraska. Enel, which is part of the Renewable Energies Division of the Enel Group, one of the largest utility companies in the world, is a leading owner and operator of renewable energy facilities in the United States. Enel has more than 100 wind, solar, geothermal, and hydro projects operating and under development in 23 U.S. states, representing a total managed capacity of 4.2 gigawatts. I provided some additional handouts that give more information on the company's investments in the U.S. and in Nebraska. But thank you for the opportunity to speak with you today about LB901 and how it could impact our investment in Nebraska. I'm here to testify in opposition to LB901 as it is currently written. Enel is new to Nebraska. We are currently constructing our first project here, the Rattlesnake Creek Wind Project. Rattlesnake Creek is a 320 megawatt wind facility, located in Dixon County, that we expect to be on-line by the end of 2018. Rattlesnake Creek signed a 200-megawatt power purchase agreement with Facebook. Facebook secured the long-term energy agreement with Rattlesnake Creek to supply its new data center in Papillion with low-cost, renewable energy. Facebook locates its data centers in places where it can ensure that it will be able to power 100 percent of its facility with renewable resources. In addition to helping attract investment from companies like Facebook, Rattlesnake Creek will provide Dixon County with tens of millions of dollars in tax revenue over the next 20 years. This influx in revenue will help Dixon County provide property tax relief for its citizens. The project will also provide a boost in economic development by creating approximately 500 construction jobs and around 12 high-paying permanent jobs in the local area. Wind projects like Rattlesnake Creek provide rural Nebraskans with many benefits, not just limited to clean, low-cost energy. Nebraska's business-friendly policy environment makes it a great place for us to invest. Legislation like LB824, passed in 2016, has opened up Nebraska for investment and allows the state to take advantage of its world-class wind resource. Energy companies like Enel have many options when deciding where to locate wind projects, and the relative stability and lack of regulatory burden is a major factor in making those investment decisions. As currently written, LB901 presents concerns for the wind industry. Language in the bill would create a redundant regulatory process at the state level that would cause unnecessary risk for the wind industry investment. Now let me be clear. Enel recognizes your concerns about protecting the ability for the state's military installations to conduct their missions and training safely and effectively. Both Enel and our development partners at Tradewind Energy would never construct a project that would jeopardize the base for its mission...jeopardize the ability for the base to complete its mission. We have a proven track record of working with local officials from military installations near our projects, to address their concerns early in the development process. We also comply with the Department of Defense DoD Clearinghouse (sic: DoD Siting

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Clearinghouse) process, which ensures that wind development does not impede military missions. The DoD Clearinghouse process provides robust protection to military bases, and I will allow Tradewind and their DoD Clearinghouse expert, Dave Belote, to discuss this process in more detail. We would be happy to be part of the process to work on the current language in the bill and thank Senator Bostelman for his willingness to entertain our suggestions. I want to thank the committee for the opportunity to address this proposed legislation today, and I am available to answer any questions that the committee might have relative to Enel and its investment in the state of Nebraska. [LB901]

SENATOR FRIESEN: Thank you, Mr. Stupar. Any questions from the committee? Seeing none, thank you for your testimony. [LB901]

ROB STUPAR: Thank you. [LB901]

SENATOR FRIESEN: Any others who wish to testify in opposition? [LB901]

FRANK COSTANZA: (Exhibit 5) Thank you. Mr. Chairman and members of the committee, my name is Frank Costanza; that's spelled F-r-a-n-k C-o-s-t-a-n-z-a. I am executive vice president for regulatory affairs for Tradewind Energy. We are a Lenexa-based company--Lenexa, Kansas-based company--and a developer of renewable wind and solar energy projects. To date we have successfully developed about 2,500 megawatts of wind power. We do so in conjunction with our partner, Enel Green Power. We are also a developer of about 100 megawatts of solar projects, all of this accomplished since 2007. The majority of Tradewind's development efforts are focused in the central third of the United States and, particularly, focused in the central Great Plains wind belt. We are also one of the most experienced renewable energy developers moving energy across the Southwest Power Pool into other regions of the country. Tradewind has been engaged in wind power development in Nebraska since 2008. We are the developer of the recently-announced 320-megawatt Rattlesnake Creek Wind Project now being constructed in Dixon County by our partner, Enel Green Power, which you've heard about from Rob Stupar. I want to thank the committee for allowing me this opportunity to speak in opposition of LB901, as it's currently drafted. Before I start my...the rest of my comments, which I plan to truncate a bit, I want to acknowledge that we did have a very productive meeting this morning with Senator Bostelman, with General Bohac and his...members of his team, and with Secretary David Bracht. I believe--and I'll come back to this meeting at the end of my comments--but I believe there's a basis now for reaching a consensus on how this bill could move forward. But let me say this: Tradewind...certainly we appreciate this opportunity to address you relative to the siting of wind energy facilities in the vicinity of Nebraska's civilian and military aircraft operations. My comments, and those of our consultant, retired Colonel Dave Belote, who will address the committee subsequently, will focus upon mandatory federal siting processes for tall structures

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located in the vicinity of military air operations. I would note that these same federal siting processes apply equally to civilian air operations. Tradewind joins you, Nebraska residents and the uniformed leadership of Nebraska's military, in a collective commitment to ensure that wind energy development does not impede the essential and vital missions that Nebraska's military installations play in the nation's security. Nebraska's military installations, as well as wind energy facilities, have tremendous economic impact on Nebraska and the communities they operate in. We develop these projects in conjunction and under the auspices of the Federal Aviation Administration and the Department of Defense. This department conducts a robust review of every wind project proposed in the vicinity of all airfields, including military airfields and the operating ranges of military installations. Because the FAA maintains jurisdiction over airspace in the United States, the process is led by this federal agency. And applicants like Tradewind seek to receive a "Determination of No Hazard" letter, without which it is impossible to construct a wind project and, equally important, it is impossible for us to secure third party financing and insurance for these wind projects if we do not receive a designation of "no hazard." To be clear, no wind project can be built, and no wind project has been built, over the objection of the Department of Defense or the FAA. Mr. Belote will provide a more detailed explanation of how that federal...that mandatory federal process works. With extensive experience developing wind projects in various states, including Nebraska, Tradewind has found that the FAA/DoD siting review is thorough, highly efficient, and economic. We also contend that the siting review process run at the national level is logical, as traffic air management requires consistency of application in order to yield consistent results across the United States. Additionally, the FAA/DoD have resident, within their organizations, the expertise, staff, and technical tools needed to analyze the very complex issues relative to military operational requirements and radar systems, as well as the ability to manage the large amounts of data and the multitude of proposed wind projects produced. It is our experience that most states do not have the same level of expertise, staff, or budgets needed to efficiently process these analyses. Consequently, most states typically rely upon the FAA/DoD to process these siting requests, as Nebraska has historically done, and simply review the federal filings to ensure this step of the development has been reviewed and completed prior to construction. As I said earlier, we had a very productive meeting this morning with Senator Bostelman and General Bohac and Secretary Bracht. I believe we really did identify the issues at hand. I believe there's a resolution, and I think, with a little bit of modification to the language in LB901, we can accommodate both the Air National Guard's concerns, as well as those of the development community. So I want to thank the committee. We look forward to working with Senator Bostelman on the legislation. We ask that you give us a little bit of time to work through those issues, but I promise you we will be diligent and work as quickly as we can, as Tradewind and as the wind industry. Thank you very much. [LB901]

SENATOR FRIESEN: Thank you, Mr. Costanza. Any questions from the committee? Seeing none, thank you for your testimony. [LB901]

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FRANK COSTANZA: Thank you. [LB901]

SENATOR FRIESEN: Others that wish to testify in opposition to LB901? Welcome. [LB901]

DAVE BELOTE: (Exhibit 6) Thank you, sir. Senator Friesen, members of the committee, thank you for offering me the opportunity to speak in opposition but, again, in opposition as currently written. I concur with Mr. Stupar and Mr. Costanza that we have a great opportunity to get to "yes" on something that will protect everything. [LB901]

SENATOR FRIESEN: Spell your name. [LB901]

DAVE BELOTE: I am Dave Belote, D-a-v-e B-e-l-o-t-e, managing partner and CEO of my own wind and solar and defense industry consulting firm, DARE Strategies, and I'm here representing...here representing Tradewind Energy as my...Tradewind Energy as my client. Being a retired fighter pilot, I've got to speak from PowerPoint slides rather than a script, and I just wanted to highlight a couple of key points for each of you, which is why I have left you with these slides. I have had the opportunity to meet most of you today and go over a little bit of this, put my bona fides on the front: I'm a retired F-16 pilot; my squadron group and wing command tours all involved execution of fixed and rotary-wing schemes of maneuver; I was in the Battle of Fallujah as the senior airman at Multi-National Corps-Iraq; then I was the commander of Nellis Air Force Base, Nevada, where I became closely involved with siting of wind turbines and concentrating solar power towers far enough away from the Nevada Test and Training Range to get the mission done; after that, I created an office in the Capitol--or in the Pentagon, in the Office of the Secretary of Defense, to do mission-compatible, renewable energy siting; then I've developed wind and solar projects, now represent a number of wind and solar companies. If you flip--next page, the federal government has been doing this for more than ten years. As a wing commander, I was first required to figure out where you could site those, and I would never tell a general officer "no"; I would say, "Yes, sir, but if you let me do it this way, I can be even more effective." And I would argue that we do have the federal process that today, under federal law, allows him to protect all and allows you, as the State Legislature, to protect all of those key facilities. I didn't have the capability, in 2008, to do the analysis as the commander of the biggest fighter base in the country. Working through the Pentagon, we used the Massachusetts Institute of Technology to figure out how do you site these things. And everything that's come since then has built on that process. Congress said we want you to do this in the 2011 National Defense Authorization Act, and I created the DoD Siting Clearinghouse and published a federal rule in 2011 so that we could protect training, test capabilities, and radar capabilities. The general highlighted to me today he was nervous that not all of his issues might make it to the Pentagon. He would not be the first officer ever to worry that the Pentagon wasn't paying close attention to something down at base level. And so, regardless of where the legislation goes, my commitment

is to work to connect the folks in the Nebraska National Guard to the right people and make sure that these nine sites are highlighted in the process today. But, because a number of people have worried that the process didn't have enough teeth, the 2018 National Defense Authorization Act, signed just last month by President Trump, took what we put in the Code of Federal Regulations and put it into federal law. So today, under federal law, the general can say: I see an adverse impact on my operations at that site; and DoD can require the developer to come to the table and talk about it. The additional piece that's in the law is a notification to the governor. If a developer has not done this, and DoD issues something called a notice of presumed risk, that notice of presumed risk also goes to the governor of that state, and the governor gets to weigh in and say: here's what I think needs to happen with that particular project. On the slide titled "DoD and Services Protect Training Areas," the key words in law are "unacceptable risk to the national security of the United States," and the law very specifically defines unacceptable risk in terms of significant adverse impact, or you see down here, "significantly impair or degrade the capability of the DoD to conduct training" or "maintain military readiness." So today, in federal law, any respondent can reach out to the Clearinghouse and say: I can't get that military job done. The next page highlights the formal review that we designed in the Code of Federal Regulations. And the key thing here, under III, the only thing that anyone, any DoD entity--Guard, Reserve, Active--has to highlight is an adverse impact--not significant, not, you know, terrible. To request negotiations, all the Guard has to do is say: I detect an adverse impact if that structure gets built there. And DoD can have the developer come in for something called a mitigation negotiation. Next page, I highlighted how this new step...if the developer has gone early--and early communication is always key--you never get to this. If a developer waits until the end and DoD has to issue this notice of presumed risk, bad on the developer, first of all. But, as I highlighted before, the governor gets to pop in and say what he thinks that, or she thinks that, presumed risk means. Next slide--key point to leave you with...in the ten years that we've been doing this since we started at the Nevada Test and Training Range, we're batting 1,000 in terms of military capabilities. There has never, never been a project built where a military man or woman has highlighted an adverse impact from a wind or solar project and it has been built over DoD objections. So the process is very effective. The way forward, I would argue, is to get the words precisely...again, we need to make sure everyone is comfortable that these nine areas are highlighted. When the folks that I work around read the original legislation, it appeared to us to encapsulate roughly a third of the state of Nebraska with a number of military training routes, military operations areas. Once we learned this morning that it is a far, far more restricted view, all of my clients would be more than happy to know, in black and white, that there's 1 percent of the state that's off the table, and my commitment to all of you all, and to my brothers and sisters wearing the uniform, is I'll help you get that exactly right. I leave myself open to any of your questions. [LB901]

SENATOR FRIESEN: Thank you, Mr. Belote. Are there any questions from the committee?
Senator Geist. [LB901]

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SENATOR GEIST: Yes. Thank you for your testimony. Just for clarification for me, can you give me an example of what an adverse impact would look like? [LB901]

DAVE BELOTE: Well, we take a look...three different things: 1) It would be an adverse impact in this case to pure obstruction that prevents a helicopter from being able to get to its particular area and if the helicopter can't get there, it can't do the mission. Okay, that's an adverse impact; it prevents a critical training aspect from being done. There are some places where spinning wind turbines have an impact on radar. In the legislation that created the Clearinghouse, DoD can accept voluntary contributions from developers, and there are a number of places in the country where developers have paid for upgrades to a military radar so that you can put the turbines there but Base-X can still get its particular mission done. So that is a potential adverse impact that can be mitigated through, you know, a developer contribution. There are certain places where test impacts...the third thing that we look at is test capability. And that was very important in my role as the installation commander for the Nevada Test and Training facility. There are some negotiations...we've had 19 signed, and a handful of them involved the developer agreeing to turn off the turbines for some number of hours per year. 8,760 hours in a year...you might need 200-300 hours of an electromagnetically quiet environment to conduct a test. And developers have agreed, in writing with the DoD, to schedule those off times so that unique tests can get done. But those are the three major categories: obstruction that prevents training, spinning turbines that cause either an impact on radar, or a test capability, and all of those can be dealt with through the processes that exist today. [LB901]

SENATOR GEIST: Thank you. [LB901]

SENATOR FRIESEN: Thank you, Senator Geist. Senator Hilgers. [LB901]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you for being here. I really appreciate the background on the federal process, which appears to be pretty robust. So a couple questions on the state involvement...when I'm just focusing on the federal process. So you met...I see in 10 USC 183 that the governor of the state gets notice and he can provide comment. [LB901]

DAVE BELOTE: Um-hum. [LB901]

SENATOR HILGERS: Is that comment made...is that just sort of like what the comment is? It doesn't have any sort of binding authority. Is that...it's just a...it's input, right? But the governor doesn't...I'm assuming the governor doesn't have any particular decision-making authority there. Is that right? [LB901]

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DAVE BELOTE: That is true. [LB901]

SENATOR HILGERS: Yeah. [LB901]

DAVE BELOTE: It's key to note, neither does DoD. And when I was first encountered with this, as a wing commander, the Bush administration was still in office. And the Deputy Under Secretary of Defense told me to pound sand. That was called a takings and, if the Air Force didn't want that particular tower there, it needed to buy the land or buy an easement. And so we had to come up with a different way to solve that problem. And so DoD lawyers will say: we are simply a collaborative agency or cooperating agency. What happens if you can't get to yes, and the single time that it has ever gotten to a developer still trying to get around the system, the Deputy Secretary of Defense wrote a letter to the Secretary of Transportation and said: we object to this particular project for these reasons. It was a wind farm in Maryland that would've had a key impact on test facilities at Naval Air Station Pax (sic: Patuxent) River and, at that point, FAA said: Okay, we're not issuing the determination of no hazard. So technically nobody ever denied a permit; they just didn't give a key piece of paper that you have to have to get insurance and get financing. And so the project went away because, without that FAA DNH...so yes, it is still just input. Key to note that DoD effectively has a veto because they...silence is not consent. Each of the services' military airspace offices and the DoD Siting Clearinghouse, working directly for the SecDef, must physically say no objection, or else the FAA does not issue that determination of no hazard. And without said DNH, determination of no hazard, the project goes away. [LB901]

SENATOR HILGERS: Okay, thank you. So there's a lot of overlap, to some degree, between what this bill covers and what the federal process is. Is there...are there other ways that the state can provide input? Is there any other...it sounds like the state doesn't have the veto under the federal statute and regs. Are there any other ways besides the governor having input? Just to understand the scope of the process...I'm just thinking, that's all. [LB901]

DAVE BELOTE: If 32 Code of Fed, CFR, part 211, the rule that we wrote, much of which has been incorporated now into Title X, the National Defense Authorization Act last year made clear that that federal rule is still in effect in its entirety. And in that federal rule, any state, local, or tribal organization--so from the governor's office, the...today, under 32 CFR, part 211, the director of Aeronautics could input into the process and say, at a state level, we see this. It's in the record and DoD has to either have a reason to say we don't trust you, or we have analyzed this and determined, you know, it can be mitigated. So yes, today you could do it. Obviously, the communication has not been, you know, strong enough that everybody knows you have that today. But it exists. [LB901]

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SENATOR HILGERS: So as I hear...again, this is very valuable for the federal process. So I'm...as you were having your testimony, and Mr. Costanza earlier was testifying, trying to understand what is added from LB901, what we proposed. The standard seems to be, frankly, almost identical--significantly "impacted" in LB901 and then significantly "impairs" is the wording in the federal's. But the way that I view it--just tell me if this is correct, given your knowledge of federal system--the federal procedure--is really the additional...what this would add would be essentially an actual veto at the state level. So in other words, if the state had an objection, they could provide input, the Governor could provide input, the department could add input, the DoD could say: thanks, but we disagree; move forward. This would provide the state a veto on that permitting process that they otherwise wouldn't have under the federal. Is that, I mean, just from a...whether that's good, bad, or indifferent... [LB901]

DAVE BELOTE: Yeah. [LB901]

SENATOR HILGERS: ...is a separate question. is that an accurate sort of description of what that LB901 would add? Or is...do they have that...these types of rights within the federal system? Does that make...does that make sense, that question? [LB901]

DAVE BELOTE: Again, nobody in the federal system, even FAA, has pure land use authority. And I'm not an attorney. All of the...all the times that I dealt either as a wing commander or as senior executive inside the Pentagon, you know, they made it crystal clear that the feds don't want land use authority. It is an incredibly difficult thing to get in to saying just because we fly over your land, Mr. Farmer or Ms. Rancher, we're going to try to prevent you from building something. This... [LB901]

SENATOR HILGERS: But is it the...but just a little, I'll stop you there. But I mean you...I take that but, as I hear you and again, just to clarify, you're talking about the DNH letter. Maybe that's not land use authority, but isn't that sort of (inaudible)? [LB901]

DAVE BELOTE: Is it effectively... [LB901]

SENATOR HILGERS: Yes. [LB901]

DAVE BELOTE: ...without, you know...I know of one case in the entire country where something was built over a DNH, and that is the Stratosphere Hotel in Las Vegas, that we didn't want four and a half miles off the southern end of the runway at Nellis Air Force Base. And Bob Stupak, super casino owner, said: I'm self-funding; I don't care that I can't get insurance. And he

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built it. That is the only place I'm aware. Every other place in the country...you know, if you get...that DNH comes out, it doesn't get built. [LB901]

SENATOR HILGERS: So...so in other words, so its effect, as I understand it, being that the DoD doesn't have land use authority. I take that...I appreciate that clarification. But they have some ability to issue, or not issue, a letter that would have an...a really functional impact on whether a project was built. So with that...in that context, is LB901--again, not asking you to testify... [LB901]

DAVE BELOTE: Yeah. [LB901]

SENATOR HILGERS: I mean, you've already provided your testimony in opposition, and I appreciate that. But just...is that what it...just as I try to understand the state proposal versus what we already have federally, is what it effectively adds, what it would add would essentially allow the state to have a veto that they don't otherwise have now. Is that... [LB901]

DAVE BELOTE: But I would say potentially, but it's duplicative. And the difficulty for both DoD and the wind industry is having 50 different systems. You know, right now we've got one and, having been both a base commander and a Pentagon staff "weenie"--if you'll excuse the term of art, you want the base commander to have a very robust voice. And with some pride in authorship, I believe that was provided. The difficulty is, especially given the unique role that the Guard has with a state hat and a federal hat, what if the federal side says: we've looked at it and we're okay, and the state side says: but, for some reason, we want to prevent this? That's the uncertainty that is devastating to the wind industry. What this would provide, once we get to, you know, language, those nine sites are perfect. The industry and DoD love clarity and, if we are able to define those nine sites and very simply say: don't build here, the wind industry--99 percent of them--you will find a couple of, you know, rogue actors in every...in every place. But if we are able to clarify precisely what these critical nine areas are, and define them geographically, I think you're going to find the entire wind industry saying: thank you for the clarification. We want to see soldiers, sailors, airmen, and Marines trained effectively. We'll help. [LB901]

SENATOR HILGERS: Thanks. [LB901]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? I have just one question. You mentioned, in your...part of your testimony you talked about the impact it might have on radar stations. So do wind generators affect weather radar, for instance, if they're located in the wrong spot? [LB901]

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DAVE BELOTE: Yes. The tips of utility-scale wind turbines travel at roughly 200 knots. And every surface-to-air and air-to-air radar that's out there is mechanized not to sense the physical object, but the change in velocity. You know, it is trying to track what's called the pulse Doppler, and so every radar is looking at those turbine blades spinning and saying: that is moving through the air; I...you know, want to either display something or try to track it. With weather radars as well, those spinning turbines can look like, you know, the Doppler shifts inside a weather system that would indicate a tornado, for example. The physicists and radar engineers know exactly what's going on. In a resource-unconstrained environment, we could solve it tomorrow; we're not resource-unconstrained. The FAA puts a tool, for free for developers, that NOAA has already plugged into, the National Oceanic and Aeronautics Administration, and so you can type in any set of coordinates in the country and it will give you a snapshot with a whole bunch of caveats--this is not official, you have to talk to the Pentagon and to NOAA and everybody--but you could today go to the FAA's Web site, and it can tell you are you in a critical zone, a possible zone, or a green zone for weather radars, for Air Force and Navy radars, and for military operations. [LB901]

SENATOR FRIESEN: What kind of distance requirement before it doesn't have an impact? (Inaudible). [LB901]

DAVE BELOTE: Well, in most it...that depends on the curvature of the earth. Roughly, depending on height, anywhere from 20 to 30 miles. And even a 500-foot-tall structure is not seen from the radar. That's purely geometric. In a lot of cases, the precise answer for an ASR-11 airport surveillance radar is 6.8 miles. I don't know the precision for a NEXRAD weather radar, but the weather folks know. [LB901]

SENATOR FRIESEN: Okay. Hmm, that's interesting. Any other questions from the committee? Thank you, Mr. Belote. [LB901]

DAVE BELOTE: My pleasure, thank you. [LB901]

SENATOR FRIESEN: Any others who wish to testify in opposition to LB901? Seeing none, anyone wish to testify in a neutral capacity on LB901? Seeing none, Senator Bostelman, do you wish to close? [LB901]

SENATOR BOSTELMAN: Yes, and I'll get a drink of water first. I'd like to answer...a little bit of comment back to Senator Hilgers' question. I...the Guard, the National Guard would be glad to give you more detailed information with what you're asking. Basically we're talking about rotary-wing aircraft, not fixed-wing aircraft. And what this is with these terrain flight training areas, they exist below the FAA and DoD regulations what we're talking about, what's been

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discussed earlier today, what he was just testifying on. And we'd be glad to...the National Guard would be glad to give you additional information, as well as the rest of the committee. Exactly where that falls, that's the...one of the important reasons for this is there is no comment period, there is no purview for them, at this point in time, for these type of areas that's...that currently exist. So we'll give you that information. We can provide you that information afterwards.
[LB901]

SENATOR FRIESEN: Thank you, Senator... [LB901]

SENATOR BOSTELMAN: I don't know if I could...I don't know if we can answer that any...completely better. I mean I think we got...our Guard folks can help you out with that, if you have more questions. I would like to thank all the testifiers today that came in, those who flew in from out of state and those that are here, for General Bohac for coming in and testifying, giving the information. And we are...I think a working spot with everybody from our discussions this morning, as all the testifiers commented on, that we have a document, I think, we can get to a point we all agree upon, and it will be a good document to have for the state of Nebraska. I would just like to reiterate the importance of these terrain flight training areas to the Guard and our state, and the need for the Guard to have some voice in this permitting process and what we were getting up to before. Don't...this does not currently exist, and so it's something that we need to put into statute for our Guard to be able to do that, clarifying all the things we need so we have a very specific, clear picture for any developer who wants to develop potentially in those sites where we're doing this training. We're talking about less than 1 percent...I'm talking about...about 1 percent of the state, even less, that would be...if it would be privately owned. If you look at the dots, over half the facilities that we're talking about are National Guard property. The bill utilizes a permitting process already in place by the Nebraska statutes and allows for an appeal of the permitting decision, as well. This bill does not automatically deny any permits and only affects the permit process at all in areas designated only for those terrain flight training areas. Again, these areas are crucial to our military to remain mission readiness and, if these training areas are lost, there will be a negative consequences to our state economic and...to economic impacts and otherwise. I'm happy to continue to work, as I said, with the specific language of the bill..of all the testifiers that mentioned that we have a workable solution to this, and I look forward to completing that work and bring that bill amendment to you, for the committee for consideration, and then to move this on to the General...on to the General File. Thank you. [LB901]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any questions from the committee? Seeing none, thank you. We will close the hearing on LB901, and I will turn the meeting over to Vice Chairman Smith. [LB901]

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SENATOR SMITH: Give just a minute for folks to transition out of the room. Welcome, Senator Friesen, to open on LB860, which is to provide for compensation for motor vehicle dealers affected by recalls and stop-sale orders. [LB860]

SENATOR FRIESEN: Thank you, Vice Chairman Smith. Members of the Transportation Committee, my name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n, and I represent District 34. I'm here today to introduce LB860. LB860 was introduced because many used motor vehicles in Nebraska are currently subject to recall. In many cases, the parts and the required fixes for many of those vehicles are not yet available from the original vehicle manufacturers. If those used vehicles are subject to federal recall, and the manufacturer orders that their franchisee is not to sell those vehicles in the dealer's inventory until the necessary repair is available, the dealer suffers a financial burden. LB860 addresses this by...this issue by requiring the manufacturer to compensate the dealer 1 percent per month of the dealer's cost of the vehicle until the required repair is available. The bill only applies to...between franchise dealers and their franchisor, and only when the franchisor, who manufactured the defective vehicle, orders its franchise dealer not to sell the vehicle. So I would be happy to answer any questions you may have. [LB860]

SENATOR SMITH: Thank you, Senator Friesen, for your opening on LB860. Any questions from the committee for Senator Friesen? I see none. We now invite proponents, those wishing to testify in support of LB860. Welcome, Mr. Todd. [LB860]

LOY TODD: Good afternoon. Senator Smith, members of the committee, my name is Loy Todd; that's L-o-y T-o-d-d. I'm the president of the Nebraska New Car and Truck Dealers Association. We represent every new car dealer and truck dealer in the state of Nebraska. I could have brought several dealers here to say, "Me, too," but for the sake of time and the consideration of the committee, we haven't done that, as you can see. Former Senator Wesely is there, watching me to make sure what I say is accurate, I'm sure. The...but actually we have this worked out with the manufacturers. And this is a very narrow bill. And some people wonder why do we bring things like this to the Legislature. And what I can say to you is that, as an organization, we simply cannot collectively bargain on behalf of our members. It would be antitrust for us to do so. We can't collectively bargain, so the methodology that we have of seeking a compromise, or seeking some uniform solution for problems like this, is to come to the Legislature. Virtually every state has franchise laws like ours, and that's why we come to you to sort these things out. And as Senator Friesen described, what we have is...these are vehicles that were designated by the federal government as subject to recall. It could be anything. It could be a true, serious safety defect down to a sticker not being in the right place on the vehicle. There are just countless reasons why the vehicle might be recalled. These are not vehicles that are designated by the federal government as not being able to be driven or to be sold. That's a very, very rare thing that that happens. These are vehicles that are in commerce, that later found out they have a defect. And then, even more narrowly, this is when a particular manufacturer might say, for their own

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concern about liability or other concerns, they are ordering their dealers: don't sell this. So for example, GM might tell a Chevy dealer: don't sell this Camaro. Well, every used car dealer in the country, every private citizen, every Ford dealer, anyone else who had that vehicle can sell it, no problem at all. But that particular manufacturer tells its franchise dealer: you can't sell it; you hold it in your inventory. And my dealers go along with that. They may not have the total legal right to tell them that they can't do that, but we go along with it. And in that case, that dealer is stuck with a vehicle that they can't sell, that they're paying, probably, interest on, that's depreciating every month, and it's taking up space. And until that fix is available, they're simply stuck with it. Now this bill is...a similar bill is being introduced all over the country and, you know in other states, they're still quarreling about it. But they're not quarreling about the concept; they're quarreling about the money. And we chose 1 percent because, for one thing, we're hoping for a quick, easy solution. To sit around and fight for a couple of years about another percent just doesn't make sense to us. We also...we're not in the business of asking our manufacturers to do things that make them uncomfortable or unfair. And so we have an agreement with the Alliance of Motor Vehicle (sic: Automobile) Manufacturers' representative in Nebraska. They're not going to testify, but they've agreed. We've arrived at 1 percent. We're hoping for a quick, easy solution to this and get this thing moving. And so that's our goal. I can tell you that there's about...about one in six vehicles is subject to recall at this point. And there's about 2.4 or 2.5 million vehicles in Nebraska, which means that this will potentially affect about 150,000 vehicles. But very few of those are subject to the manufacturer being concerned enough to say: Don't sell it. And so it's not a huge problem, but you are our only uniform solution. Every manufacturer will be bound by this, as will be all of my dealers. And so, for that reason, we're here. 95 percent of the time we agree with the manufacturers through some kind of compromise; that's where we are now. Thank you. [LB860]

SENATOR SMITH: Thank you, Mr. Todd, for your testimony. Questions from the committee? I do appreciate the manufacturers and the dealers getting together and working through this before they got here. So thank you. [LB860]

LOY TODD: Thank you. [LB860]

SENATOR SMITH: Next proponent of LB860, anyone else wishing to testify in support. Seeing none, anyone wishing to testify in opposition to LB860. Seeing none, anyone wishing to testify in a neutral capacity to LB860. Seeing none, we go to closing, and Senator Friesen waives closing. And that concludes the hearing on LB860. And does that conclude the hearings for the day? Yes, it does. Thank you. [LB860]