

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

[LB217 LB220 LB257 LB418 LB484]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 7, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB217, LB220, LB257, LB418, and LB484. Senators present: Deb Fischer, Chairperson; Galen Hadley, Vice Chairperson; Kathy Campbell; Annette Dubas; Charlie Janssen; Scott Lautenbaugh; LeRoy Loudon; and Scott Price. Senators absent: None.

SENATOR FISCHER: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Deb Fischer, I am the Chair of the committee and I'm the senator from District 43, Valentine, Nebraska. At this time I would like to introduce to you my committee members. On my far right is Senator Scott Price from Bellevue. Next to Senator Price is Senator Kathy Campbell from Lincoln. To my immediate right is our committee counsel, Mr. Dustin Vaughan. To my immediate left is our committee clerk, Ms. Laurie Vollertsen. Next we have Senator Scott Lautenbaugh and he is from Omaha. And next we have Senator Annette Dubas who is from Fullerton. Our pages this year are Crystal Scholl who is not in the room at the present time, she is from Lincoln; and Kyle Johnson who is from Sutton, Nebraska. I would like to make note on our agenda for today we will begin with LB418. The next bill LB484 is being introduced by Senator Hadley. He is in another committee right now introducing some legislation; so I would like to say that if Senator Hadley is not back in time to introduce his bill, we will move on to the next bill and LB484 will move to the last bill on the agenda, as you all raise your eyebrows, I know. But Senator Hadley, of course, needs to be here in order to introduce his bill and to hear the testimony on that bill. Those wishing to testify on a bill, I would ask that you come to the front of the room and be ready to testify as soon as possible. Please complete the yellow sign-in sheet at the on-deck table and have that ready to hand in to our committee clerk before you sit down to testify. We do use a computerized transcription program and so it's very important that you state your name and also spell your name for the record. If you don't want to testify, but you still want to voice your support or your opposition to a bill, you need to indicate that at the on-deck table. There's a sheet that is provided there and that will be part of the official record of the hearing. However, if you want to be listed on the committee statement, you do need to come forward, sit in the testifier chair, state your name and your position on the bill and that is the only way you will be listed on the committee statement. We do accept written comments, so if you would like to submit those, that would be fine, and those will be part of the official record. At this time I would ask that you please turn off your cell phones. Even though this is the Telecommunications Committee, we do not allow cell phones on in this committee and that means no texting also. So if you have an important message, I would ask that you step out of the room in order to do that. So at this time I see Senator Nelson is present, so we will open the hearing on LB418. We have also been joined at this time by Senator LeRoy Loudon on my far left. Senator Loudon is from Ellsworth, Nebraska. And good

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

afternoon, Senator Nelson.

SENATOR NELSON: Good afternoon. Thank you, Chairman Fischer and members of the Transportation and Telecommunications Committee. For the record, my name is John E. Nelson, spelled N-e-l-s-o-n, I represent Legislative District 6 in midtown Omaha. I'm here today to introduce LB418. I should say that this is the first time in my four years here that I have had the honor of introducing a bill in this committee. LB418 is a simple proposal which seeks to simplify the process of regulating so called political robocalls. At the present time, such calls are regulated by two separate governmental agencies: the Nebraska Accountability and Disclosure Commission and the Public Service Commission. Two agencies regulating the same activity creates confusion and is not good policy. This problem came to my attention when both agencies defined the term "telephone message" in different ways. The confusion that followed resulted in a number of candidates inadvertently violating the law even though they complied with the law as they understood it. A confusing process serves no legitimate public purpose and is unnecessary to protect the public from campaigns which might wish to use robocalls to annoy and harass our citizens. My solution is simple, put the agency responsible for regulating political activity in charge of political robocalls. The Nebraska Accountability and Disclosure Commission is well-versed and perfectly capable of handling these robocalls. Placing the regulatory authority exclusively under the jurisdiction of the NADC protects the public without unnecessarily burdening those individuals who wish to participate in the political process. My proposal will not substantially change how political robocalls are regulated, but it simply addresses who will be responsible for enforcing the regulations. I would like to thank the Public Service Commission and its staff for working with my staff to craft language which makes LB418 a better bill. Thank you for the opportunity to introduce LB418. I urge that you advance the bill to General File as amended and I would entertain any questions that you may have. [LB418]

SENATOR FISCHER: Thank you, Senator Nelson. And it's a pleasure to see you here at the Transportation and Telecommunications Committee. Are there questions for Senator Nelson? Senator Dubas. [LB418]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Senator Nelson. Is there a reason why we had it in both places, or it was just something that got overlooked originally? [LB418]

SENATOR NELSON: I think...thank you, Senator, apparently it just got overlooked. We...this may be...I'm guessing that the NADC came along after the Public Service Commission and in drafting the things that they have cognizance of, it was put in there and never really got compared with what appears in the Public Service Commission regulations and statutes. [LB418]

SENATOR DUBAS: Thank you. [LB418]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB418]

SENATOR NELSON: Thank you. [LB418]

SENATOR FISCHER: Are there proponents for the bill? Any proponents? Please step forward. I see none. Are there opponents to the bill? Any opponents? I see none. Anyone wishing to testify in the neutral capacity? Good afternoon. [LB418]

FRANK DALEY: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. My name is Frank Daley, D-a-l-e-y. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. I'm here today to speak on behalf of the commission in a neutral capacity as to LB418. LB418 does not really change the law that the commission administers and that's the reason for our neutral testimony. What it does is eliminates the jurisdiction of another agency. However, while it doesn't change really what we do, there are two issues that I think you need to be aware of as you move forward with this bill. First of all, under the current law the automatic dialing machines are registered with the Public Service Commission and the script of the so-called robocalls are filed with the Public Service Commission. There's also an additional obligation that the callers announce at the beginning of the robocall who is actually paying for the call. Now that's the current law. Under LB418, the Public Service Commission's jurisdiction would go away and the Accountability Commission would still have the authority to regulate the disclaimer, that is the announcement at the beginning of the call as to who is responsible. However, the Accountability and Disclosure Commission would not be in the business of registering automatic dialing machines and it would not have scripts filed with it as to the contents of the robocall. So that would be a change in what is available out there. The second change...the second consideration, I should say, really is one of political speech. Any legislation dealing with political speech which is really the topic of this bill, puts us into somewhat of a constitutional land mine field because it invokes the first amendment. The current law that's applied by both the Accountability and Disclosure Commission and the Public Service Commission is what is known as a time, place and manner regulation. That is, it regulates the timing of communications, in other words certain hours of the day; the manner of robocalls and some other things about it, and probably constitutionally permissible because the content of the call is largely irrelevant. Now under the bill, political speech will be treated differently than a lot of other speech and robocalls because it is being (inaudible), change is being made to the way it is being regulated based upon the content. Now I'm not saying that makes it unconstitutional, in fact, the fact that there appears to be less restriction may actually help the change and make it...help it pass constitutional muster. But I guess what I'm suggesting is that as you move forward, that you do so keeping in mind constantly that because this involves political speech, you always have to keep in mind the various court cases and so forth on political speech that may apply here. And in fact, that brings up the response to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

Senator Dubas' question; the reason it's in the jurisdiction of both agencies was that several years ago there was an attempt to regulate robocalls and place the entire authority with the Accountability Commission and it was the opinion of a number of folks, I believe the Attorney General's Office included, that because it regulated just political speech that it was potentially unconstitutional. And so the Legislature came back and redid the legislation so that it included the Public Service Commission and all types of speech that was being transmitted via robocalls and not sectioning out political speech. So that was the rationale for that. That's all I have to say. Thanks for the opportunity to testify before you today. [LB418]

SENATOR FISCHER: Thank you, Mr. Daley. I think this is your first time before the committee too, is that correct? [LB418]

FRANK DALEY: It is indeed, quite an honor. [LB418]

SENATOR FISCHER: Nice to have you. [LB418]

FRANK DALEY: Thank you so much. [LB418]

SENATOR FISCHER: Any questions? Senator Lautenbaugh. [LB418]

SENATOR LAUTENBAUGH: Thank you, Madam Chair Fischer. And thank you for coming today, sir, it takes me back to my days on Government Committee, except the Common Cause isn't waiting behind you. (Laughter) So what you're saying is, political speech is the most protected kind of free speech. I think the court decisions are clear on that. [LB418]

FRANK DALEY: It is. Yes. [LB418]

SENATOR LAUTENBAUGH: This move from where it is now, with some responsibilities from the Public Service Commission, over to Accountability and Disclosure while you have to be careful because this is the area where we're supposed to be most hands-off, the move will also end in less regulation of political speech? [LB418]

FRANK DALEY: I think it will, yes, because there would be no longer the obligation, as I read the law, to register the automatic dialing machine if all you're doing is political speech. And there would be no reason to file a script of a political speech with anyone, so it's probably less regulation and so that probably helps it pass constitutional muster. Nevertheless, because of the area, caution is required. [LB418]

SENATOR LAUTENBAUGH: I understand. Thank you. [LB418]

SENATOR FISCHER: Other questions? I see none. Thank you, Mr. Daley. [LB418]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

FRANK DALEY: Thank you very much. [LB418]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? Good afternoon, Commissioner. [LB418]

TIM SCHRAM: (Exhibit 1) Good afternoon. Good afternoon again, Chairperson Fischer, and members of the Transportation and Telecommunications Committee. I'm Commissioner Tim Schram, spelled T-i-m, last name S-c-h-r-a-m, chairman of the Nebraska Public Service Commission representing the Third District. I am here today in a neutral capacity regarding LB418. The Legislature has put the commission in charge of administering and overseeing the Automatic Dialing-Announcing Device Act, or to short for brevity, we will call it the ADAD Act. Under the ADAD Act, any party using an autodialer to send prerecorded messages, or robocalls as they are sometimes called, to citizens in Nebraska must first receive approval from the commission. The commission regulates autodialer devices in two ways, through permits and registrations. Those seeking to use an autodialer to solicit business, basically telemarketers, must have a permit from the commission. There is a statutory fee associated with the permit application. Those seeking to use an autodialer for purposes other than telemarketing must receive a registration from the commission. There is no fee for a registration. Both permit and registration holders must file a copy of the scripts of the robocalls with the commission. These are then available for public review. The ADAD Act is limited to those using autodialers to place unsolicited calls. Businesses and schools that use an autodialer for the convenience of their customers, patients, students, or employees are exempt from registration and permit requirements. However, unsolicited robocalls, such as political calls, nonprofit fund-raising calls, and calls conducting automated polling, require the dialer to be registered and to abide by the requirement in the ADAD Act. LB418 exempts autodialer calls for political advocacy purposes from the registration requirements of the ADAD Act. The bill provides that political calls regulated by the Accountability and Disclosure Act would be exempt from the ADAD registration. Under the Accountability Act, only robocalls considered a reportable expenditure would be exempted. However, under Section 49-1419 of the Accountability Act, reportable expenditures do not include expenditures for communications on a subject or issue if the communication does not support or oppose a ballot question or candidate by name or clear inference. In other words, a campaign or group using an autodialer to make...advocating for a candidate or issue not to have to use a registered dialer or file scripts with the commission. However, the same group or campaign making nonadvocacy calls, for example, Get Out the Vote calls, neutral polling calls, these would still need to be registered dialer and file those scripts with the commission. The result would be strange distinctions that would be difficult for those using autodialers to determine which commission regulates which calls. One call must follow accountability and disclosure rules, the next call must follow PSC rules. Most likely those using autodialers for campaigns or other groups would be forced to follow the provisions of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

both acts to avoid accidentally violating one or the other. The commission urges careful consideration so the results of passing LB418 do not cause more confusion. The commission takes no position on LB418. My purpose in testifying today is simply to give the committee some information on what the ADAD Act requires, the commission's role in regulating autodialer devices, and our concerns with the potential confusion that could arise by inconsistency between the two acts for the committee's consideration. I thank you for your attention this afternoon and would be happy to answer any questions. [LB418]

SENATOR FISCHER: Thank you, Commissioner. Are there questions? Senator Dubas. [LB418]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Commissioner Schram. So am I correct to understand that the only call that has to file a script with you would be...clarify for me, what are the types of calls that have to file a script with you right now? [LB418]

TIM SCHRAM: The prerecorded political messages, and I'm looking to see as far as registration on the telemarketers. The telemarketers are required to maintain a Do Not Call list. I do not see that they have a script requirement. [LB418]

SENATOR DUBAS: So then it is just basically the political-type calls that have to file a script. [LB418]

TIM SCHRAM: Correct. [LB418]

SENATOR DUBAS: Have you found, has the commission found that that has been something the public has appreciated? Are they aware that those scripts have to be filed? Are there people calling up and saying, tell me what...what's on these scripts? [LB418]

TIM SCHRAM: Our staff receives calls at the commission, at least if the script is on file and if there is an individual that may have been called outside of the hours they're specified, which are between 8:00 a.m. and 9:00 p.m., both for telemarketers and political autodialers, that at least we have some record to go on if a consumer has a complaint to file with the commission. [LB418]

SENATOR DUBAS: So in general, just in general on all types of robo-type calls do you get, does the commission receive quite a few calls, questions, complaints on these types of calls? [LB418]

TIM SCHRAM: You know, I didn't bring an exact record with me, but we certainly can find out that information for you and find out in the last election cycle how many calls we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

may have received and get that information to you, Senator. [LB418]

SENATOR DUBAS: I would appreciate that. It seems to me that I get a lot of those types of calls, political and otherwise, and so I guess I was just wondering if there are concerns that the general public brings to your attention. And I'm also kind of wondering does the general public even know that they can go to the Public Service Commission with questions about these types of calls? [LB418]

TIM SCHRAM: You know, I don't know how much public information is out there. I do know that, especially during the election cycles, we do receive some calls. [LB418]

SENATOR DUBAS: And I know that there is a lot of confusion surrounding specifically the political-types of calls and making sure you're complying or not complying, so I would agree with you that we need to proceed cautiously so that we don't make something that's already confusing more confusing. So I appreciate your testimony today. Thank you. [LB418]

TIM SCHRAM: Thank you. [LB418]

SENATOR FISCHER: Commissioner, currently all the robocalls have to file their scripts with you, correct? [LB418]

TIM SCHRAM: Yes. [LB418]

SENATOR FISCHER: And under this proposed legislation it would only be the political calls then that would file, or? [LB418]

TIM SCHRAM: I know the political calls, it's a requirement. As far as telemarketing, I can't give you an honest answer, but we can...at this point... [LB418]

SENATOR FISCHER: But currently they all have to, correct? Even the telemarketing calls. [LB418]

TIM SCHRAM: Um. [LB418]

SENATOR FISCHER: If you could get back to us on that to clear that up. [LB418]

TIM SCHRAM: Yes, I will. [LB418]

SENATOR FISCHER: I think they all have to currently. [LB418]

TIM SCHRAM: What I have in front of me is that the scripts...before the call can...can be submitted to the commission, but not required within 24 hours, but I need to make sure

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

that also includes the telemarketers. [LB418]

SENATOR FISCHER: Okay. Other questions? Senator Campbell. [LB418]

SENATOR CAMPBELL: Thank you, Senator Fischer. Commissioner Schram, this is kind of an example, if you're going to do a poll or survey and do those run through the commission, those scripts? [LB418]

TIM SCHRAM: Yes, those scripts do. And there has been some question by candidates' consultants as whether a poll is a message and I think our staff struggles with that as to a clear definition if you're asking would you vote for candidate A or B or ballot issue A or B, that's clearly a poll, but when you interject other statements beyond...beyond...going beyond that point, our staff has the difficulty of determining whether that is a true message or a poll. [LB418]

SENATOR CAMPBELL: Okay. And I'm here also specifically thinking about, okay, you might say, well if you're just going to poll or survey, that might be fine, but we all know that there are push poll type calls and surveys where it's not really a survey, it's the way the questions are worded as to get you, the listener, to kind of think differently. So when you look into what calls might need to be separated, I think we do need to think about that aspect of surveys that push poll calls to residents. [LB418]

TIM SCHRAM: Yeah. I'll reiterate that our staff has discussed that a number of times on autodialers of...what is a clear definition of a poll, and what is a clear definition of a message. [LB418]

SENATOR CAMPBELL: Yeah. Thank you, Commissioner. [LB418]

SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB418]

SENATOR LAUTENBAUGH: Thank you, Chairman Fischer. Sir, is it possible that we're struggling so much with clarifying this because we're in an area that we don't have any business being in as far as regulation goes? [LB418]

TIM SCHRAM: That could be argued legally. [LB418]

SENATOR LAUTENBAUGH: Thank you. [LB418]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in today. [LB418]

TIM SCHRAM: Thank you. [LB418]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. Senator Nelson, would you like to close? [LB418]

SENATOR NELSON: Thank you, Senator. Just very briefly, I'd like to follow up on the question that Senator Campbell asked about the push polls, this is precisely one of the problems that we have is that if you're going to conduct a poll that was the interpretation of what is a message and if it's strictly...and first of all, this is the type of thing that there would be no script for under the NADC. It says here, if you don't have it available to you, what would be exempt is a message otherwise regulated pursuant to Section 49-1474.02 which reads in part: what we're dealing here with is a prerecorded message or a recorded message relating to a candidate or ballot question, it shall include immediately preceding the message the name of the person making the expenditure. So, but it's not required that you give a script. And when we talk about push polls where the questions are so formulated that it might influence, there is the example the regulation that we don't want to get into. We don't want either agency to say, well, I don't agree with the form of the questions here, I mean, it's going to be up to the recipient of the phone call to determine whether they want to proceed with the poll or go ahead and just click and terminate the call. So I think we've had a good discussion here. I appreciate the neutral position that both the NADC and the Public Service Commission. I think you can see that it is a bit complex. We're trying to simplify it here with this simple amendment to make it more clear where these messages should be regulated and our contention with this bill that those we're talking about today will be regulated by the Nebraska Accountability and Disclosure Commission. Thank you very much. [LB418]

SENATOR FISCHER: Thank you, Senator Nelson. Any questions? Senator Lautenbaugh has a question for you, Senator Nelson. We're not going to let you leave us yet. [LB418]

SENATOR NELSON: All right. [LB418]

SENATOR LAUTENBAUGH: Yeah, Senator Hadley isn't back yet. Senator, thank you for bringing this bill today. You've received these advocacy calls and robocalls yourself, haven't you? [LB418]

SENATOR NELSON: My wife has more than I have. I'm not home that much. [LB418]

SENATOR LAUTENBAUGH: Understand. [LB418]

SENATOR NELSON: But yes, we get them at home. [LB418]

SENATOR LAUTENBAUGH: Probably relatively few in the month of February, so far I would imagine. [LB418]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR NELSON: That's correct. [LB418]

SENATOR LAUTENBAUGH: You probably don't have any reason to anticipate them in March through December of this year, do you? [LB418]

SENATOR NELSON: No, no campaigns. [LB418]

SENATOR LAUTENBAUGH: Probably not early next year either, early in the year? [LB418]

SENATOR NELSON: That would be true. [LB418]

SENATOR LAUTENBAUGH: These are largely confined to just when there is an election going on. [LB418]

SENATOR NELSON: That is correct. [LB418]

SENATOR LAUTENBAUGH: And that's what you're seeking to clarify the regulations for, correct? [LB418]

SENATOR NELSON: That's right. [LB418]

SENATOR LAUTENBAUGH: Thank you. [LB418]

SENATOR FISCHER: Nice closing, Senator Lautenbaugh. Other questions? (Laughter) I see none. Thank you, Senator Nelson. [LB418]

SENATOR NELSON: Thank you, Senator Fischer. [LB418]

SENATOR FISCHER: Nice to see you. Senator Hadley is not back yet so we will pass over LB484 at this time. I will open the hearing on LB257. Good afternoon, Mr. Vaughan. [LB418]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB257 makes a small change to the Telecommunications Rate Regulation provisions to remove a Public Service Commission filing requirement with regard to business service by a telecommunications company. Currently Section 86-143 requires the telecommunications company to file rate list with the commission for each service provided when the commission has declared local competition to exist in the exchange. The bill amends the statute to exclude filing rate lists, tariffs, or contracts for business services. The telecommunications company may remove any business service rate list,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

tariff, or contract filed with the commission if written notice is provided to the commission and the company post the rate terms and conditions on their Web site. And with that, Senator Fischer, I will end my testimony and answer any questions for the committee. [LB257]

SENATOR FISCHER: Thank you, Mr. Vaughan. Any questions? I see none. Thank you very much. Are there proponents to the bill? Good afternoon. [LB257]

RICHARD SEVERY: (Exhibit 2) Good afternoon, Chairman Fischer, members of the committee, my name is Richard Severy S-e-v-e-r-y. I'm assistant general counsel for Verizon. Verizon appreciates the opportunity to appear before you today and to voice our support for LB257. As we just heard that there's a historic requirement that telecommunications carriers file tariffs with the Public Service Commission listing the rates, terms and conditions of service. In reality, few, if any, customers ever look to the tariff to learn about the details of their service arrangements. And business customers in particular have no need for tariffs to inform their purchasing decisions or to protect their interests. The services offered to business customers are highly competitive and customers have many choices in terms of the services they purchase and the service providers that provide them. Verizon's large business customers typically operate in multiple states nationwide or even globally. These customers want their service providers to offer consistent processes, terms, conditions, business arrangements, product descriptions, billing arrangements wherever they do business. To achieve consistency and satisfy the customer's particular needs, customers purchase service through individually negotiated contracts. These contracts reference our service guide which is publicly available on our Web site and provides customers with a single, easily accessible source where they can view the rates, terms and conditions for virtually all the services we provide nationwide. The contract and on-line service guide govern the customer/vendor relationship except in those few states where Verizon is still required to file tariffs. Because of today's competitive environment and commercial realities, state-specific tariffs and regulations interfere with businesses' legitimate desires to obtain service under a uniform set of terms and conditions. Eliminating the tariffing requirement and posting prices and terms on public Web sites as LB257 proposes, benefits customers by making service available...information available in a more efficient and customer-friendly way. The public Web-based guide also keeps state commissions fully informed about our service offerings and it is updated when appropriate. Eliminating tariff requirements also promotes fair competition. This is so because many competitors in the business market are not subject to regulation by the Public Service Commission. They do not file tariffs and therefore have greater of freedom in addressing customer needs. Updating the law will let market forces, not regulatory rules, determine success in the market. At least 30 other states have already removed tariff filing requirements for business services. In the Federal Communications Commission eliminated all tariffs for interstate long-distance services more than 10 years ago. That transition occurred without disruption, inconvenience, or customer

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

complaint. And as a result of that experience, customers today expect to obtain relevant information from carriers' Web sites rather than tariffs filed with regulatory agencies. In short, the filing requirements serves no useful purpose and can hinder or delay customer desire to implement new services on a consistent basis. Eliminating the rule as LB257 proposes will benefit customers in Nebraska. We have worked with the Public Service Commission and legal counsel from the committee to draft an amendment to insert the same language in one other section of the Nebraska Statutes to ensure that the change in regulation is effective in all of Nebraska whether or not there has been a determination that competition exist in that area. I've distributed copies of that amendment for your consideration. Finally, it is important to point out what LB257 does not do. It does not affect any regulations relating to residential customers, nor does it eliminate the commission's jurisdiction and the authority to regulate service quality or the business practices of communications carriers, rather the bill is narrowly tailored to remove an outdated requirement that is of no benefit to business customers and to allow customers to obtain relevant information about their services in a more effective way. I urge you to advance LB257. I thank you for your time and I am happy to answer any questions that you might have. [LB257]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you very much. [LB257]

RICHARD SEVERY: Thank you. [LB257]

SENATOR FISCHER: Are there other proponents for the bill? Any other proponents? Any opponents to the bill? Anyone wishing to testify in a neutral capacity? Welcome. [LB257]

TIM SCHRAM: (Exhibit 3) Good afternoon, Chairperson Fischer and members of the Transportation and Telecommunications Committee. I'm Commissioner Tim Schram, spelled T-i-m S-c-h-r-a-m, chairman of the Nebraska Public Service Commission, representing the Third District. I'm here today in the neutral capacity regarding LB257. Under current provision of law, telecommunication companies certificated to do business in Nebraska must file rate lists and tariffs with the commission. These constitute the public offering of the company and are publicly available for inspection. LB257 would exempt business services offered by telecommunication carriers in exchanges where competition exists from filing rate lists and tariffs under Section 86-143. Instead they would maintain the rate list and tariff provisions on the company's Web site. The commission is not opposed to the provisions of LB257, however, we believe the bill needs to be modified to include similar language in Section 86-144 regarding exchanges where no local competition has been determined to exist. To date, no exchange has been determined to have competition, therefore the provisions in the green copy would not be applicable currently. With or without such an amendment we have no issue with the provisions of the bill. We do, however, ask that it be made clear

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

that relaxing the tariff filing provisions to allow for an on-line tariff does not in any way lessen or impact the commission's authority over quality of service regulation. Again, the commission takes no position on LB257 and is not opposed to the provisions of the bill. We ask for careful consideration of the bill as drafted as it is our belief that the bill does not accomplish what it is intended. We would be happy to offer any assistance to the drafting of an amendment to remedy any issues with the bill. I thank you for your attention this afternoon and would be happy to answer any questions. [LB257]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you very much. Anyone else wishing to testify in the neutral capacity? I see none. We will waive closing. The hearing is closed on LB257. I will open the hearing on LB217. Good afternoon. [LB257]

DUSTY VAUGHAN: Good afternoon again, Chair Fischer, and members of the Transportation and Telecommunications Committee. For the record again, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n and I'm the legal counsel for the committee. LB217 is a bill being introduced on behalf of the Public Service Commission. The bill is an attempt to begin collection and remittance of the Telecommunications Relay System surcharge from prepaid wireless carriers. To provide a little background for the committee, the Telecommunications Relay System Act, or TRS for short, was passed by the Legislature in 1990 in response to Title IV of the Americans with Disabilities Act of 1990. TRS allows a person who has a hearing or speech disability to access the nation's telephone system to communicate with voiced telephone users through a relay provider and specialized communications equipment. The program is funded through a monthly surcharge on all telephone numbers. There's a statutory cap on the TRS surcharge of 20 cents, but it has never been higher than 10 cents. Currently the commission has set the TRS surcharge at 5 cents per telephone number. LB217 would create a process for the establishment of a TRS surcharge for prepaid wireless carriers and authorize the commission to develop methods for collection and remittance of the surcharge. The bill is modeled after a current statutory program for the collection and remittance of the wireless E-911 surcharge from prepaid wireless carriers. And there is a representative from the Public Service Commission to discuss how they would implement it. So I will turn it back to you, Senator Fischer. [LB217]

SENATOR FISCHER: Okay. Thank you, Mr. Vaughan. Questions? Thank you. First proponent for the bill please. Are there proponents? I'm sorry, I thought you were coming up. Are there opponents to the bill? Any opponents? Anyone wishing to testify in the neutral capacity? Are you an opponent? [LB217]

LEIGHTON LANG: Opponent. [LB217]

SENATOR FISCHER: Oh, please come up. Everybody is jumping out of their seats so fast, I can't keep it straight today. Yes. [LB217]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

LEIGHTON LANG: This one is a little more comfortable. [LB217]

SENATOR FISCHER: That's right. Good afternoon. [LB217]

LEIGHTON LANG: Good afternoon, Chairman Fischer. My name is Leighton Lang, L-a-n-g, I'm assistant general counsel of Tracfone Wireless. It's probably not too smart to come in and be an opponent of the Chairman's bill, so I would qualify that by saying it's not so much that I oppose the language of the Chairman's bill, in fact I supported almost identical language in 2007 in the 911 Act. So the language itself is perfectly fine, but it's how...it's the implementation of this language which has not worked in the past, the identical language was passed in 2007 with respect to the 911 surcharge. And unfortunately that legislation has not been successful due to the way it has been administered and interpreted. And I'll go into that momentarily. Fees and taxes on prepaid wireless services have been an issue in this committee and before the Public Service Commission at least since 2005. In 2006, the Legislature passed methods of collection of 911 fees from prepaid wireless customers. It turned out those methods were not workable in 2007. These methods were repealed and the Public Service Commission was authorized to come up with new methods. But instead of coming up with new methods, the PSC reinstated the old methods which only three months before had been repealed through legislation in this committee and by the Legislature. So we've been wrestling with those particular methods that were adopted since 2007. We're four years into this. It has not been solved. So the reason I'm here today is to ask don't take the same language that has proved unworkable with 911 and reenact that for the relay fees. And another issue with regard to the implementation of the current methods on 911, the Department of Revenue issued a regulation last year, last June I believe it was, which reflected a long-standing notice of the commission that you cannot charge sales tax on sales of...on 911 fees or on relay fees. So to the extent, some carriers in attempting to collect the fees on 911 or imbedding those fees in the retail price of the products, then that's creating an overcharge of sales tax because the retail merchants in Nebraska who sell most of the prepaid cards cannot separate out the 911 fees from the remaining price of the product. So that is going on today, this overcharge of sales tax on the purchasers of prepaid wireless because of the imbedded 911 fees. And I'm asking the committee not to pass another bill that repeats that with respect to the relay fees. I'll get into some specific issues with LB217. As I said, it has the same provisions as the 911 law, virtually the same. As I said, the language of this works perfectly. It says, the telecommunications company is not liable for any surcharge not paid by a subscriber. Now that's a fair provision because it's supposed to be a fee on the subscriber, that's the way it has always been administered with your local phone companies here. It's the way it's always been administered with your wireless billed providers, but when you get to prepaid, that provision is not enforced. In fact, just the opposite is enforced. It says, the policy here is, the prepaid carrier will pay this whether or not it can be collected from subscribers. Now the Nebraska Supreme Court

addressed this very issue a few months ago in 2010, but made a very fundamental error of fact. It said the prepaid carrier can collect it because nothing prevents the prepaid carrier from recouping the surcharge from the retail merchant. Well it just so happens that's not true because after that decision came out, we tried to recoup the surcharge from the retail merchants and the retail merchants would not pay the surcharge. So that surcharge is currently not being collected under...at least by my company, and I don't know any company is able to recoup the 911 fee as a surcharge from a retailer. If they are, I would like to know how they do it. But that was fundamental to the court's decision. The court insisted a prepaid carrier, you can collect it because you can recoup it from the retailer. And I think most of you know how prepaid wireless works, it's not a billed service, there are no monthly bills. Most of the service is sold in retail stores, they're in the form of prepaid cards. You can go into any major retail chain here, Kmart, Target, many others, many smaller stores as well, and buy the cards. Since there's no billing, there's no way to collect that fee. So consequently this particular provision, the telecommunications company is not liable for any surcharge not paid by a subscriber. The Legislature can pass this, but unfortunately it's not going to be observed. Because of the way the 911 surcharge is administered today, there's virtually no prepaid customer in Nebraska that's paying a monthly 50 cents 911 charge because there is no way to assess it on the customers, there is no way to collect it. Some people may be...some carriers are probably remitting under some method or another, but it probably does not amount to 50 cents per customer per month because they have to improvise on how to collect it. Perhaps they're imbedding it in the retail price of the product, but since the customer does not buy a prepaid card every month, he may buy five a month, he may buy two every six months, it never comes out to 50 cents per month per customer. And if it is imbedded as I just said, then this particular customer is being overcharged a sales tax and that's not fair. So will the commission administer the relay fee, this language exactly as it has the 911 statute? I don't know. I think it's very likely that they will unless the Legislature steps in and says, well, it should be administered in another way. That's the way it's headed. It's supposed to be a fee on a prepaid customer, just as it is on other phone companies. But the way it is administered is a tax on a carrier. I think it's probably...I don't think it's fair; it's probably not constitutional and it results in sales tax overcharges. It's not very effective because it does not collect the revenue equal to 50 cents per customer per month. So to the extent it brings in money, it's much less than a fair collection method would be. So I don't think a prepaid carrier should be singled out for some special type of collection where they simply had to pay out of the pocket when all the other local phone companies in Nebraska all the while is postpaid bill companies they simply put it as a surcharge on the bill. It's a 50 cent fee. It's fair, the customers don't object to paying it. It brings in money...revenue for the system. It works fine. But when you say one class of carrier has to pay out-of-pocket and cannot collect that, then I just don't think it's fair and the Supreme Court has said it's legal because we can recoup it from the retailers, but we can't. So it just doesn't work. So fortunately not everything I've got to say is negative, there are solutions to these things. And the way it's been done, and so far it's been done this way in 15 states. Fees

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

and taxes on prepaid customers can be collected when a customer purchases the product which is in 80 to 90 percent of the time it's purchased in retail stores. A surcharge can be added to the prepaid card when the customer buys it. Just like sales tax, it's collected today on prepaid. An extra fee can be added for 911, for relay, it can be added for universal service for that matter. It would be much more effective; it would be fair; it would raise more money and it would avoid a lot of litigation and a lot of future disputes, I think. So that is my testimony, Chairman. And like I say, I like the language of your bill, it's just the administration of that particular language that I'm concerned about. [LB217]

SENATOR FISCHER: Thank you, Mr. Lang. Are there questions? I have a couple questions for you here. You mentioned the court decision and that was that a company such as yours could recoup the cost from the retailer and you said that that surcharge is not being collected from the retailer. You can embed that in your price though, correct? To make up for the taxes that you aren't collecting back? [LB217]

LEIGHTON LANG: Well that's difficult to embed a fee of...that turns out to be exactly 50 cents per month, particularly when our prepaid cards are sold at wholesale at major distribution centers around the country. We don't know what state a card is going to. That would be up to the retailers to account for that and maybe charge more for a card in Nebraska than they did in Texas or Colorado or however they want to do it. [LB217]

SENATOR FISCHER: But if you...if you...you have no billing, correct? [LB217]

LEIGHTON LANG: No billing, no. [LB217]

SENATOR FISCHER: You have no billing you send out to collect that fee and your suggestion, as I understand it, is to have the retailers collect the fees. But how does a retailer collect 50 cents a month if you have customers that are purchasing it? How do you know its going to meet that specific 50 cents a month? [LB217]

LEIGHTON LANG: Well you couldn't make it exactly 50 cents, because the prepaid customer doesn't purchase every month. What you can do is come up with a figure that is comparable that would provide a...impose a similar burden on the prepaid customer as on the monthly billed customer. [LB217]

SENATOR FISCHER: So the problem then isn't the...I guess I understood part of your problem with it was how do you collect that 50 cents a month. So that's really not the problem. The problem is you don't want to raise the price of your Tracfone, of your card, you don't want to raise that price and possibly discourage a customer from purchasing your card. You would rather the retailers add on a price at the cash register then in order to collect it? [LB217]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

LEIGHTON LANG: That's true, Chairman. But the difficulty I mentioned is setting a retail price of the card without the cooperation of the retailers. We don't control the retail price of the card. We have suggested retail prices which some follow and some don't. One of the giant discount retailers doesn't sell it for our suggested retail price. This particular retailer sells it for less. So they control what the retail price is and they can charge more in Nebraska, or more in Colorado, or less in this state or that if they wanted to. But they don't charge different things for the cards in different states. And I can't tell them, well, raise the price of cards by X-amount in Nebraska and then remit that additional amount back to me, they won't do that. So it's nice in theory, but it doesn't work in practice. [LB217]

SENATOR FISCHER: Okay, so in practice how does it work? You sell your cards to a large retailer. In Nebraska then, what is your next step? What do you have to do? Who do you send your...how do you determine how much you're going to remit then in fees? [LB217]

LEIGHTON LANG: Well we remit under one of the provisions that the Public Service Commission approved and it's called a collection method. It's actually a pay-out-of-your-pocket method. We calculate an estimate, pretty close estimate of what our revenues are attributable to Nebraska customers, and then we simply pay a tax on that amount. You know, hopefully somewhere throughout our national sales we can recover those costs as another cost of doing business and if we're lucky we'll make a profit and stay in business. But there's no assurance we can recover that at all because the methods are approved here legally, just aren't effective. [LB217]

SENATOR FISCHER: How do other companies do it? We had a gentleman who was up previously from Verizon, how do they remit these? How do they collect it and remit it, through their billing process, correct? [LB217]

LEIGHTON LANG: For their postpaid wireless I'm pretty sure they would agree that I'm not talking out of turn. That they put it on the bill, they collect it, remit it, and it works fine. As far as their prepaid wireless, all the major carriers, including Verizon, have prepaid wireless. There are many other smaller companies that offer prepaid. I don't know exactly how they do it, but I think it's probably through some makeshift system that I just described the way we do it. But it's not a...whatever it is, it's not a 50 cents a month per customer because it just doesn't add up. [LB217]

SENATOR FISCHER: And how would you determine what that should be then? If it's not 50 cents, what would...how would you determine it? [LB217]

LEIGHTON LANG: Well the National Council of State Legislatures made recommendations on this and their recommendation was that for prepaid, because many of the customers were small users, they may buy two, three, or four cards per

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

month, that the fee should be one-half of what it is for the regular monthly fee. So it would be 25 cents per card. Now some customers would still end up overpaying. Some customers who bought only one card every two months might underpay compared to the 50 cents per month charge. But overall, the idea...this was worked out with NCSL and the wireless carriers and they felt like on average this would be comparable. So it would vary by customer, but...and another way to do the same thing would be to express it as a percentage of the retail price much like the sales tax is done. It could be 2 percent, 1 percent, whatever was felt to be a comparable burden on prepaid versus postpaid. But the main advantage it has, it's actually...it's collected every time a sale is made; there's no guess work about it, adding it up, computing it two months later and remitting...trying to figure out some way to collect it. It's definitely collected; it's remitted; it works. It's in effect in 15 states; it just went into effect in your neighboring state of Colorado. So it's very effective and I would recommend it to the committee and perhaps the committee would want to appoint a group, a study group, or whatever to look into it. [LB217]

SENATOR FISCHER: Okay. Thank you very much. Other questions? I see none. Thank you very much. [LB217]

LEIGHTON LANG: Thank you. [LB217]

SENATOR FISCHER: Are there other opponents to the bill? Any other opponents? I see none. Anyone wishing to testify in the neutral capacity? [LB217]

TIM SCHRAM: (Exhibit 4) Good afternoon, Chairperson Fischer and members of the Transportation and Telecommunications Committee. I'm Commissioner Tim Schram, spelled T-i-m S-c-h-r-a-m, chairman of the Nebraska Public Service Commission, representing the Third District. I apologize to the committee and to the Commission. My testimony was supposed to be in support. But I realize I'm in the neutral chair now, so I do want to clarify that for the record. The Telecommunications Relay System or TRS for short, allows individuals who are deaf and hard-of-hearing, or speech impaired to place and receive telephone calls. The commission administers the Relay System and the TRS Fund. The telecommunications carriers collect a surcharge from each of their subscribers and remit it to the commission to support the Relay System. LB217 seeks to clarify that the requirements to support the TRS system applies to all telephone users, including traditional landline and wireless telephone users and prepaid wireless telephone users. There is a disagreement between the commission and prepaid wireless carriers over whether prepaid wireless customers are required to support the Relay System under the current language of the TRS Act. The Legislature and this committee has dealt with similar issues regarding the Enhanced 911 Fund and prepaid wireless carriers. The commission also administers the E-911 Fund. The Legislature added language to the E-911 statutes clarifying that prepaid wireless telephone users, along with all other telephone users, are required to support the E-911 Fund. Prepaid

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

wireless users have access to and utilize the Relay System to call and receive calls from deaf, hard-of-hearing and speech impaired individuals just like all other telephone users. It is in the matter of fairness and consistency that all telephone users in Nebraska with access to the Relay System support the system. LB217 adds language to the TRS statutes that mirrors the language the Legislature included in the E-911 statutes, making the collection of surcharges for telecommunication services consistent for all telecommunication programs administered by the commission. I thank you for your attention this afternoon and urge your support of LB217. If you have any questions I'd be glad to answer them. [LB217]

SENATOR FISCHER: Thank you, Commissioner. I apologize for the confusion at the beginning. If you would like your testimony to be listed as in support we can do that. Would you like it listed that way? [LB217]

TIM SCHRAM: I would greatly appreciate that, Madam Chair. [LB217]

SENATOR FISCHER: Okay, we will list it as support from the Public Service Commission. Any questions? I see none. Thank you very much. [LB217]

TIM SCHRAM: Thank you. [LB217]

SENATOR FISCHER: Now I'll ask are there are any testifiers wishing to testify in the neutral capacity? Good afternoon, welcome to Nebraska. [LB217]

BETH CANUTESON: Thank you, Madam Chair. My name is Beth Canuteson, it's C-a-n-u-t-e-s-o-n and I'm representing AT&T. I'd like to speak in a neutral capacity because AT&T has no problem with collecting TRS funds. We do so on all of our postpaid accounts and landline accounts as well. We're happy to work with the committee going forward to look at the point-of-sale legislation for next year, but I think we're fine with having something passed this year that models the current TRS...or the current 911 funding mechanism. What I wanted to take the opportunity to talk about a little bit is the national model that Mr. Lang spoke of from Tracfone, that is the point-of-sale legislation. In 2007, AT&T, with other carriers, began working with the retailers of common interest organization at the federal level, specifically with their tax folks to work and look and see how we can better collect these fees from our customers which is the original intent of legislation on 911 funding and other funding under other fees and such. So we began working with them and we, in coordination with them, developed this model legislation that NCSL has had an opportunity to look at and pass. It has passed in 15 states and I know we've got a lot of leg work to do here on the ground in Nebraska beginning with the retailers, of course, and with the Department of Revenue who would collect the surcharge and then remit it back to the commission. And on 911 fees to the commission as well, I guess, here in Nebraska. So, that's kind of where we're heading as an industry. It makes a lot of sense because obviously the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

intent is not to have a tax on the carriers, but to collect the fee from the consumers so that is where we're heading ultimately. And I'm happy to answer any questions. [LB217]

SENATOR FISCHER: Thank you, Miss Canuteson. [LB217]

BETH CANUTESON: Thank you. [LB217]

SENATOR FISCHER: Are there questions? I see none. Thank you very much. [LB217]

BETH CANUTESON: Thank you so much. [LB217]

SENATOR FISCHER: Any other...anyone else wishing to testify in neutral capacity? I see none. We will waive closing and close the hearing on LB217. And I will open the hearing on LB220. Welcome back. [LB217]

DUSTY VAUGHAN: Thank you again, Senator Fischer, and members of the committee. For the record my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I'm the legal counsel for the committee. LB220 is being introduced on behalf of the Public Service Commission once again. Hopefully, they'll support this one right away this time. The bill changes the appeal process from a commission decision. Prior to 2000, statutory law required appeals from a commission order to be filed with the court of appeals. Over the course of several bills between 2000 and 2003, the procedure was changed to follow the Administrative Procedure Act, which requires judicial review to be initially conducted in the district court of the county where the action is taking place. This change in law has proved time consuming and costly for the commission and participants of the process. LB220 will streamline the process by bypassing the district court and giving original jurisdiction back to the Nebraska Court of Appeals. The bill also states an appeal from a commission order shall trigger an automatic stay of enforcement from the order. And the Public Service Commission is here to testify on behalf of this and I will end my testimony. [LB220]

SENATOR FISCHER: Thank you, Mr. Vaughan. Questions? Thank you very much. We will begin with the proponents please. First proponent. And since we closed the blinds, I expect we'll...softer atmosphere now in here on this bill. Good afternoon. [LB220]

JERRY VAP: (Exhibit 5) Good afternoon, Madam Chairperson, and members of the Transportation and Telecommunications Committee. I'm Commissioner Jerry Vap, that's spelled J-e-r-r-y V-a-p, representing the Fifth District of the Public Service Commission. I am here today to testify in support of LB220. The commission has a broad spectrum of regulatory authority including telecommunications, passenger transportation, grain warehouses and grain dealers, natural gas, manufactured housing, and recreational vehicles. Additionally, the commission administers the Enhanced Wireless 911 Service Fund and the Nebraska Universal Service Fund. LB220 directs appeals from decisions

of the commission to be filed with the Court of Appeals rather than pursuant to the Administrative Procedure Act which requires appeals to be filed in the district court. Prior to LB187 in 2003, appeals from orders of the commission were appealed to the Court of Appeals. The change was sought in an attempt to avoid the automatic stay of orders entered in communications orders during a time when several disputes arose between two Omaha carriers. However, it has resulted in significant time delays for all parties that come before the commission and an increased cost for those parties. As a constitutional agency, the commission often acts in a judicial capacity in which cases are contested with both sides of the issues presented by sophisticated parties represented by legal counsel. The issues presented to the commission are industry specific and technical in nature. The additional appellate review by the district court results in an increased and unnecessary burden on the courts and additional costs to the parties and significant delays. The vast majority of the appeals from the commission orders are filed in the Lancaster County District Court. The records from these appeals are typically very large and the subject matter is highly technical. Returning to the original method for appeals would lessen the burden on the court and reduce costs for the parties involved. In certain areas of the commission's regulatory authority, the review by the district court appears unnecessary and the delay results in significant hardship for claimants. For example, with respect to claims filed against grain proceeds and grain warehouse bonds resulting from the commission's decision to close a warehouse, the Grain Warehouse Act specifically allows either the commission to conduct the hearing and determine claims or to commence a suit in district court for the benefit of claimants, Nebraska Revised Statute Section 88-547. It would appear that the Grain Act places the commission and the district court on equal footing with respect to the claims process. If that is the case, it seems redundant to require a review of the commission's order determining claims by the district court. Additionally, with respect to the most recent grain warehouse claims hearing and subsequent appeal, claimants had to wait almost a year and a half for payment. If the appeal would have been filed with the Court of Appeals rather than in district court, it would have eliminated seven months from that process. The problem is compounded by the fact that an appeal by one claimant can prevent payment to all other claimants pending the resolution of the appeal. The additional delay resulting in natural gas rate cases is also problematic. Interim rates are implemented during the pendency of a rate case and are subject to refund based upon final rates. Typically, no refunds are made until the final rates are determined after resolution of any appeal. The longer period of time that passes between the date that interim rates are instituted and final rates are determined makes it more difficult to ensure that the appropriate people are receiving any refunds or adjustments. The commission is looking for ways to increase effectiveness and efficiencies and decrease costs for all parties that come before the commission. Returning to the previous appeal process can accomplish that goal. I ask for your support of LB220. The commission welcomes the opportunity to work with you and other interested parties on the bill. I am available to answer any questions you may have. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR FISCHER: Thank you, Commissioner. Are there questions? Senator Campbell. [LB220]

SENATOR CAMPBELL: Thank you, Chairman Fischer. Commissioner Vap, on just on average, how many cases would you set in a year of a judicial capacity? And maybe you said that and I missed it, but. [LB220]

JERRY VAP: I don't have...would not have an exact, but in the last two years we've probably had a dozen cases appealed. The significant ones have been the natural gas rate cases and the grain warehouse cases. Natural gas rate case, the most recent one, the decision was just rendered by the district court about a week ago, a little over a week ago. That case is close to two years old. It spent almost a full year in the court. And it went to the court in March of 2010 and the decision was finally rendered almost...the first part of February, so. And that kind of a delay costs a lot of money and those interim rates are continued to be collected until the rate in this was affirmed by the court or changed by the court, whichever the case may be. [LB220]

SENATOR CAMPBELL: So that would use a significant amount of your time and the (inaudible) I'm assuming. [LB220]

JERRY VAP: We spend a significant amount of time just doing the rate case and that case was filed in July of 2009, I believe, and it went on into 2010 before the commission issued an order. And then in 2011 we finally get a court order on it. And all this time there are attorneys on...our staff attorneys are working, but also the Attorney General's Office is working on it. The courts have their staff that are tied up with this. It's volumes of discovery. We had a 3.5 day hearing for that case. And the discovery was a pile about that high. It's still sitting on my credenza in my office. And then, of course, the company has got their attorneys that are working on this. So...and the ultimate payer is the ratepayer because all these expenses can be put back into a rate case in the future for the company. The commission assess whatever our costs are for the public advocate in the commission and the ratepayers pay it. So it costs the ratepayer a lot of money if these drag out in court. [LB220]

SENATOR CAMPBELL: Thank you. [LB220]

SENATOR FISCHER: Thank you, Senator Campbell. Senator Price. [LB220]

SENATOR PRICE: Senator Fischer, thank you very much. Commissioner Vap, thank you for coming before us today on this issue. My question is, I'm trying to understand the outcomes. Right now we have a...we go to court for appeals or we...they go to you. What are the differences in the outcomes? We (inaudible) see that there is a timing and a cost, but do we end up being in the same place that we would have been one way or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

the other? [LB220]

JERRY VAP: We think we are. The Court of Appeals doesn't look at the case as it's all brand new material, that's the way the district court has to look at it, and completely go through all that. They generally look at it to see whether it's...the decision of the commission is arbitrary and capricious and whether all due process was afforded the company and the ratepayer. [LB220]

SENATOR PRICE: So the value at...kind of a...kind of a...not there you would say. [LB220]

JERRY VAP: We think that the same result would be achieved by going directly to the Court of Appeals. [LB220]

SENATOR PRICE: Thank you very much, sir. Thank you, Chairman. [LB220]

SENATOR FISCHER: Any other questions? Senator Dubas. [LB220]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Commissioner Vap. So, in 2003 LB187 was passed trying to address some specific concerns. [LB220]

JERRY VAP: That's correct. [LB220]

SENATOR DUBAS: But in essence it created more problems than it solved? Would that be maybe an overgeneralization, but to a point true? [LB220]

JERRY VAP: Well it's unintended consequences. [LB220]

SENATOR DUBAS: So with this LB220, we would go back and we would rectify those unintended consequences, but still get to what we wanted to get to with LB187. [LB220]

JERRY VAP: We believe that's correct. [LB220]

SENATOR DUBAS: All right. Thank you. [LB220]

SENATOR FISCHER: Other questions? I see none. Thank you, Commissioner. [LB220]

JERRY VAP: Thank you. [LB220]

SENATOR FISCHER: Other proponents to the bill. Good afternoon. [LB220]

ERIC CARSTENSON: Good afternoon, Senator Fischer. Members of the Transportation and Telecommunications Committee my name is Eric Carstenson, E-r-i-c, Carstenson is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

C-a-r-s-t-e-n-s-o-n. I'm president of the Nebraska Telecommunications Association and we're before you today to testify in support of LB220, I'm also a registered lobbyist for that group. Last year you heard testimony on LB811 which was very similar to this legislation. Our general counsel, Jack Shultz, gave you our support last year and our position this year would be very similar to what it was last year. Because of that, I'm before you to offer our support. I'll refer you back to his testimony and I'm ready to take any questions. [LB220]

SENATOR FISCHER: Mr. Carstenson, thank you for your short testimony. Are there any questions? I see none. Thank you very much. Are there other proponents? Any other proponents to the bill? Are there opponents to the bill? Good afternoon and welcome. [LB220]

ANDY POLLOCK: Thank you. Madam Chairwoman and members of the Transportation and Telecommunications Committee, my name is Andy Pollock and I'm here as a registered lobbyist on behalf of Northwestern Natural Gas and I speak on behalf of the Nebraska Natural Gas Association, NNGA. My name is spelled A-n-d-y, Pollock is P-o-l-l-o-c-k. And I will do my best to try to come close to the standard that Mr. Carstenson set here in terms of brevity. [LB220]

SENATOR FISCHER: That's going to be hard to follow after this one. [LB220]

ANDY POLLOCK: I won't make any promises. [LB220]

SENATOR FISCHER: Yeah. [LB220]

ANDY POLLOCK: We oppose the bill, the green copy of the bill, just like we opposed LB811 last year which Mr. Carstenson made reference to. We certainly understand and appreciate the commission's desire to try to streamline the appellate process, we don't have any objection to that. The cost savings involved in that are admirable as well. Our concern is the standard of review. And that was mentioned briefly by Commissioner Vap. Recently, as he mentioned, there was an appeal decided in a case involving a natural gas company, not the one that I serve as registered lobbyist for, but another. It was handed down last Monday and parts of that decision by the commission were reversed and parts were affirmed. My point in bringing that up is that about the same time LB187, which you've heard mention of today, about the time that was passed, the Natural Gas Regulation Act was passed as well, that was 2003. This is a substantial comprehensive body of law that basically changed the way that natural gas companies, utilities were regulated, at least investor-owned utilities. The point here is that this is still a relatively new body of law. There are still kinks and other things that need to be ironed out. I think this is apparent in the SourceGas case decided last week. And I think the standard of review is an important element of working those kinks out, of ironing the decisions out. That's the standard of review used at the district court level is to de novo



on the record. And that means, basically, that the district court looks at the entire record of the commission; they don't make a new record, but they look at the record of the commission and they independently come to their own decision based on the record before them. De novo means anew. They look at it anew. The standard on the other hand, applied by the Court of Appeals is arbitrary and capricious. So what we're really concerned about is the significant difference between those two standards of review. De novo is not very deferential to the lower court's decision; arbitrary and capricious is about as deferential as you can get. And our concern is because this body of law still needs to be ironed out, it's better to have a lower level of deference given to the administrative body. That's not to question the integrity of the commission's decisions, but there are hotly contested issues in these natural gas rate proceedings which are different from some of the issues you see in telecommunications, in grain warehouse storage, and I would also point out, those decisions in those kind of cases are made on a much more settled bodies of law. So for that reason we're concerned about the standard of review. That's something we have had conversations with the telecommunications industry about; something we have had conversations with the commission about; and we would pledge our willingness to work with this committee and with those two bodies, the commission and the telecom industry, to just come to some resolution on that particular issue. Another issue I bring up real briefly that we brought up last year was motions for reconsideration. We see this bill as a good opportunity to talk about the time period that the commission has to resolve motions for reconsideration. The current time period is just 30 days. I think everybody agrees that that is not enough. So we looked at language last year which would have extended that to 60 days and I think people are in general agreement that that would be a good idea to give the commission more time to consider a motion for reconsideration before a party has to take a commission decision up on appeal. And that's something we will talk to the commission and the telecommunications industry about as well. Again, we support the idea of expediting appeals. We support the idea of reducing costs. We just think there are some issues, particularly with the standard of review that need to be discussed and sorted out. With that I would conclude my testimony. I should have mentioned at the beginning, in addition to Northwestern, the NNGA consists of SourceGas and Black Hills Energy. [LB220]

SENATOR FISCHER: Thank you, Mr. Pollock. When you were stating that there's kinks and we need to iron this out, were you referring to your group continuing to work with Public Service Commission and this committee; or are you talking about it being ironed out by the courts? [LB220]

ANDY POLLOCK: I was speaking specifically about the courts ironing out kinks in the law. And kinks is obviously not a technical word. Kinks is to say that there... [LB220]

SENATOR FISCHER: I thought maybe it was something you learned in law school, I didn't know. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

ANDY POLLOCK: (Laughter) There are issues that the industry does not see eye to eye on with the public advocate. The public advocate is a creation of the 2003 law that gave rise to the Natural Gas Regulation Act. And the commission, as an adjudicatory body in those cases has to decide who is on the right side of that issue. So it's coming to the right correct decisions on those types of issues. There are many that have been appealed and there probably will be several that will be appealed in the next few years. [LB220]

SENATOR FISCHER: Do you think it's a right that this body, this Legislature should wait and not try to pass laws that we feel are necessary in order that the courts can determine what's necessary in regard to this? [LB220]

ANDY POLLOCK: I think if there are issues that need to be addressed in the Natural Gas Act itself, it's up to this body to resolve those issues. Some of those issues are just matters that have to be taken up on a case-by-case basis. And that's currently...the Legislature, obviously, establish the bodies of laws. There are still issues that come up in terms of the interpretation of those laws. Some of those issues may be resolved expeditiously by this body, by the Legislature; others, it's up to the courts to work through those. And I would say, I guess, in answer to your question that both bodies...both branches of government have a duty in terms of working out some of those kinks. [LB220]

SENATOR FISCHER: With our current statute being passed in 2003, this is now 2011, I guess I would propose to you that it's time for this body to try and clarify some issues. [LB220]

ANDY POLLOCK: I certainly don't disagree with that comment. [LB220]

SENATOR FISCHER: Thank you. Any other questions? I see none. Thank you very much. [LB220]

ANDY POLLOCK: Thank you. [LB220]

SENATOR FISCHER: And I appreciate your history and your insight on this issue since you have served as executive director of the Public Service Commission, so thank you. [LB220]

ANDY POLLOCK: Thank you, thank you, Madam Chair. [LB220]

SENATOR FISCHER: Anyone else in opposition? Anyone else wishing to testify in opposition? Anyone in the neutral capacity? I see none. With that I will close the hearing on LB220. We're going to take a break until 3:00 and I will try to find out Senator

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

Hadley's status during that time. So we'll take a break until 3:00. [LB220]

BREAK

SENATOR FISCHER: (Recorder malfunction) ...Senator Hadley, the timing was great. He had just finished with his bill in the Banking Committee. So I will open the hearing on LB484 and welcome Senator Hadley. Senator Hadley is a member of the committee, he is the Vice Chair and he is also from Kearney, Nebraska. So good afternoon. [LB484]

SENATOR HADLEY: Senator Fischer, members of the Transportation and Telecommunications, it is always a pleasure to be in front of the most outstanding committee in the Legislature. I'm here to introduce LB484, often referred to as the Digger's Hotline bill. It is a very short bill with some very interesting ramifications which I'm sure you'll hear from people on both sides as we go through the testimony. LB484 would expand current exemptions under the one-call Digger's Hotline provisions in Nebraska law. Currently, there has been agricultural exemptions for tilling of soil and gardening for seeding and other agricultural purposes. LB484 clarifies other agricultural purposes to include soil sampling for agricultural nutrient and water management purposes; soil sampling performed to meet requirements of local, state, or federal regulations like NRD sampling, confined cattle operations sampling and the like. Soil sampling performed for manure management and for the installation of soil moisture monitoring equipment. To put this in perspective, I have heard estimates of anywhere between 750,000 to 770,000 soil samples taken yearly in the state of Nebraska which is a significant number that we're talking about. The reason we're here today is soil samplers have never called the Digger's Hotline. And the ag exemption in current law could cover the procedure, but due to an Attorney General's informal ruling I believe clarification was needed. And that's the purpose behind this hearing, because there has been an Attorney General's informal ruling that basic soil sampling does not come under the agricultural exemption of tilling of soil and gardening for seeding and other agricultural purposes. I know there are significant number of people on both sides of the issue. So I would be happy to answer any questions and I appreciate the time and I'm sorry I was a little late. [LB484]

SENATOR FISCHER: Thank you, Senator Hadley; it worked out just fine. Thank you. Any questions? I see none. Thank you very much. Could I have the first proponent please step forward. How many people are here today to testify on this bill? If you could raise your hands. Okay. We are going to limit testimony to five minutes and I'm going to ask committee counsel, we're going to use the lights please. When you...oh, we're going to have...I'm sorry, we're going to have testimony three minutes with the lights. When you see the yellow light come on, try and wrap it up a little bit. I use my discretion if I ask you to continue with your testimony or not, but as you viewed the other hearings, you know that we do ask questions too. So I'll ask committee counsel to run the lights at three minutes please. And good afternoon. [LB484]

KARL HENSLEY: (Exhibit 7) Good afternoon. Chairman Fischer and members of the Transportation and Telecommunications Committee, my name is Karl Hensley, K-a-r-l H-e-n-s-l-e-y and I appear before you on behalf of Central Valley Ag Cooperative and the Nebraska Agri-Business Association. Central Valley Ag is a company with 43 locations in northeast Nebraska and we serve 12,000 farmers providing fertilizer chemicals, seed, grain, merchandising, and storage, and soil testing services. The Nebraska Agri-Business Association represents fertilizer, agricultural chemical and seed retailers, both cooperative and independent, product manufacturers such as soil testing laboratories and related equipment manufacturers in Nebraska. I appear before you in support of LB484 and we thank Senator Hadley and all the sponsors for the introduction of this legislation. LB484 is a bill introduced to address the problem which arose at the first of December of 2010. Two of our employees were out in a farmer's field doing soil sampling and they were approached by two employees of Northern Natural Gas who told them they were required to call the One-Call Digger's Hotline prior to taking soil samples. This notification began a chain of events which culminated in the introduction of LB484 before you today. Agricultural soil samples are taken by agricultural input suppliers and retailers like our firm, farmers, crop consultants, soil laboratories, the University of Nebraska, natural resource districts, livestock feeding operators and other agriculturalists. Soil samples are necessary for the following reasons: (1) to determine the appropriate amount of fertilizer for a crop; (2) to prevent the over application of fertilizer as the soil sample provides a measurement of nutrients in the soil; (3) to allow fertilizers to be variable applied in a farm field. Many samples are done at a 2.5 acre grids and geo referenced on a field, rather than taking just one sample for the entire field; (4) to prevent environmental problems in groundwater by providing a profile of nutrients in the soil and to determine if these nutrients will leach into the groundwater; and most importantly to provide economic benefits for our farmers. Soil sampling has been around for over 50 years and in all those years, soil samplers in Nebraska have never called the One-Call Digger's Hotline. And in all those years, soil samplers in other states have not been required to call Digger's Hotline. This information has been provided to us by our like-trade associations in those states as well as other national associations representing our industry. We are not aware of any mishaps due to soil sampling in Nebraska. We have heard rumors in the capitol that a utility indicated someone may have hit a phone line in western Nebraska, but we have not been able to confirm this. With us today is Tim Mundorf representing a soil laboratory in Nebraska who will address the total number of soil samples the laboratories in Nebraska handle each year and other scientific statistics surrounding soil sampling and testing. Following our employees being notified by the utility, agricultural groups began working together to find a solution to this problem. Senator Tom Carlson, Chairman of the Agriculture Committee, requested an Attorney General's ruling to determine if soil sampling would be exempt under the current state law. State law provides an exemption for calling the Digger's Hotline in Section 76-2308, tilling of the soil and gardening for seeding and other agricultural purposes, a copy of that informational ruling is attached. The utility in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

question sent a letter to the Attorney General's Office requesting, they believed, we were in violation and if the Attorney General agreed, they should enforce the law against our employees and our firm. Agricultural groups have met with utility companies three times, including one meeting with the Digger's Hotline board of directors. We have not been able to come to a resolve with these companies concerning this issue. At our last meeting we discussed agricultural practices, such as soil ripping done by farmers on farmland to a depth of 18 inches which would be exempt under the current law. Soil samples range in depth from 8 inches to 48 inches depending on the nutrient management plans and water quality issues. Following our company being turned in, we began calling Digger's Hotline for our soil sampling and the following are the responses we received from them. The utility companies ask us to document our calls by ticket number and I would like to introduce these on record. I have these such. [LB484]

SENATOR FISCHER: Thank you, Mr. Hensley. I see that you have a number of pages yet to go in your testimony. I don't think you need to go through the ticket number part. [LB484]

KARL HENSLEY: Okay. [LB484]

SENATOR FISCHER: Do you have anything you would like to say in the next minute to wrap this up? [LB484]

KARL HENSLEY: I guess... [LB484]

SENATOR FISCHER: I mean, we can read your testimony. [LB484]

KARL HENSLEY: Sure. Okay. I guess to maybe summarize, 70 percent of 4 per acre at 160 acres represents a 105,000 locations; 30 percent of samples at 50 samples per 160 acres would represent 36,000 locations for the Digger's Hotline, so that's a total of 141,000 locations. We feel that that would be almost impossible to...for the Digger's Hotline and the utility companies to locate in a month and a half period. That is an average of 2,999 calls per day to Digger's Hotline in the state of Nebraska to identify lines. So we're asking that we support the...the introduction of the bill as written. And I would take any questions at this time. [LB484]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Price. [LB484]

SENATOR PRICE: Thank you, Senator Fischer. Sir, real quick, what's the breakdown between 8 inches and 48 inches? How much of your soil sampling is done as a distribution between those depths? [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

KARL HENSLEY: Zero to 8 inches; an industry in Nebraska would say that approximately 80 to 85 percent of our samples are taken in that zero to 8; the remaining amount anywhere from 8 to 48 inches. [LB484]

SENATOR PRICE: We're having this discussion over 20 percent of your sampling. [LB484]

KARL HENSLEY: Approximately, yes. [LB484]

SENATOR PRICE: All right, thank you. [LB484]

SENATOR FISCHER: Thank you, Senator Price. Other questions? Senator Dubas. [LB484]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Hensley. So when you're doing soil sampling, are you just like picking one area of the field and you're doing soil sampling, or are you going through various parts of the field to do the sampling, would that be correct? [LB484]

KARL HENSLEY: That would be correct. We typically go through various types of...through the field based on topography and variability and those kind of things. [LB484]

SENATOR DUBAS: And quite often, you know, not all the time, but most of the gas lines and those types of things tend to follow fence lines, don't they? And there's usually some kind of a notification that...be careful. [LB484]

KARL HENSLEY: Yes. The majority of the utilities do follow fence row...fence line areas and typically they are marked as gas lines or something like that. [LB484]

SENATOR DUBAS: How often would you be doing any type of soil sampling in the fence line? [LB484]

KARL HENSLEY: Never. [LB484]

SENATOR DUBAS: Thank you. [LB484]

SENATOR FISCHER: Other questions? Senator Louden. [LB484]

SENATOR LOUDEN: Yes, thank you, Senator Fischer. As I've read this, your presentation here, what started it all is you had people out there soil sampling and a couple of folks from this gas company came out there and notified them they needed to...now did Northern Natural Gas have a pipeline in the area anyplace? [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

KARL HENSLEY: Yes, they did. [LB484]

SENATOR LOUDEN: Did they have signage up? [LB484]

KARL HENSLEY: At the...in the field there was your normal gas marking. [LB484]

SENATOR LOUDEN: Did that pipeline go across this field? [LB484]

KARL HENSLEY: Yes it did. [LB484]

SENATOR LOUDEN: And did they have any signage as it goes different ways. If they go across a person's field or something, do they have any kind of signage out there so they can locate that pipeline? [LB484]

KARL HENSLEY: There might be a location at the opposite end of the field, but typically not through the middle of the field would you find that. [LB484]

SENATOR LOUDEN: Okay. Well, what I'm wondering is, when I've been involved with the hotline is it took them a week or so before they ever got there and if everybody is soil sampling all over the state of Nebraska, the logistics isn't there to take care of it. So I'm wondering if there was something in there that if there isn't some signage present, then you would be exempt from having to call them and that's the reason I was wondering what signage they had present in that particular field. [LB484]

KARL HENSLEY: There are typically markers at the approach of the field marking it as a gas line. [LB484]

SENATOR LOUDEN: Okay, but not every field has a gas line through it, nor a pipeline or anything else, so not every field you soil sample, unless there's signage there, you shouldn't have to call the Digger's Hotline, is that correct? [LB484]

KARL HENSLEY: That would be our hope, yes. [LB484]

SENATOR LOUDEN: But the way the Attorney General's opinion, and some of them, if you went out to soil sample a field where there was signage or not, you still had to call a Digger's Hotline, isn't that the problem? [LB484]

KARL HENSLEY: Anything past 8 inches today we are calling the Digger's Hotline. [LB484]

SENATOR LOUDEN: Yeah, but whether there's...whether... [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

KARL HENSLEY: Whether they have a utility or not. [LB484]

SENATOR LOUDEN: Whether there's anything out there or not. [LB484]

KARL HENSLEY: That's correct. [LB484]

SENATOR LOUDEN: Yeah. And in our country out there on the ranch and stuff, where they run a telephone line, why every time they go through a fence why they put up a sign so...but there's a whole lot of country out there that doesn't have anything in it, so it would be a waste of a lot of precious time to have to...to Digger's Hotline, that's the reason why I'm wondering if we had something to include signage in this bill if that would make a difference. [LB484]

KARL HENSLEY: Quite possibly it is. [LB484]

SENATOR LOUDEN: Okay, thank you. [LB484]

SENATOR FISCHER: Senator Dubas. [LB484]

SENATOR DUBAS: Thank you, Senator Fischer. Another question, do you use...what's the probe like that you use to take these samples? [LB484]

KARL HENSLEY: Tim Mundorf and his... [LB484]

SENATOR FISCHER: No, you can't bring up any props. Sorry. [LB484]

KARL HENSLEY: Typically it is an inch to an inch and a half piece of metal that we take the core approximately 8 inches deep. We can go 30 inches deep with that probe as well, but it's typically a hand probe that goes down. [LB484]

SENATOR DUBAS: And you use your own pressure,... [LB484]

KARL HENSLEY: Our own force. [LB484]

SENATOR DUBAS: ...you're not using any kind of machine pressure on these probes? [LB484]

KARL HENSLEY: Not...no, no, ma'am. In the wintertime or if we're having to do a deep sample of 30 inches, we will use mechanical. [LB484]

SENATOR DUBAS: Thank you. [LB484]

SENATOR FISCHER: Other questions? Senator Louden. [LB484]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR LOUDEN: Yes, thank you, Senator Fischer. Well, gee, in our part of the country and some of these probes, they have a pickup drive around and the guy never even gets out of the pickup as the machine goes down and do it. Because, see, they took soil samples all over Sheridan County to get our soil profiled for your valuation purposes. And nobody got out and probed, they did it all from that, there was no one calling a Digger's Hotline on that. So I'm wondering, is that the only way you do it, is with a couple of sticks or do you have the pickups with the machines on there that automatically does it? [LB484]

KARL HENSLEY: We do it in various ways. The majority of ours are done with a hand probe. Then we also do mechanical that are mounted on a pickup or are mounted trailer that we do anywhere from 24 to 48 inches deep if it's required for NRD purposes or for NRCS. [LB484]

SENATOR LOUDEN: Okay, thank you. [LB484]

SENATOR FISCHER: Other questions? Have you called the Digger's Hotline in the past? Have you personally had to call them ever? [LB484]

KARL HENSLEY: No, ma'am, not until the letter. [LB484]

SENATOR FISCHER: And have you called them then since you've received the letter? [LB484]

KARL HENSLEY: Yes, we have, on every sample that we've taken and that is what you have in front of you in my testimony. [LB484]

SENATOR FISCHER: And then how long for them to respond? [LB484]

KARL HENSLEY: Typically less than 48 hours. We have a few instances that I've indicated that are a lot longer than that. [LB484]

SENATOR FISCHER: And how many times have you called them? [LB484]

KARL HENSLEY: I will take a guess at this, I don't know exactly, I can get that information for you, but I would say our company has probably called in the last two months over 150 times. [LB484]

SENATOR FISCHER: So in a two-month time period, you've called about 150 times and they've been able to come out within two days. [LB484]

KARL HENSLEY: The majority of the time they have been able to do that. But this is not

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

our busy season for taking samples. Our really busy time is from October, September, and November when we're really concerned. The other issue that we run into is with local utility companies in our local communities when they call us to have the lines located, they don't want to come out because they feel like there are no issues which I've indicated in my testimony. [LB484]

SENATOR FISCHER: Okay. Thank you very much. Other questions? Senator Louden. [LB484]

SENATOR LOUDEN: Yeah, this Digger's Hotline, now the Digger's Hotline people don't come out and do anything, all they do is notify the entity or the wire company or the gas line whoever has that property there and that's up to them to decide how quickly they're going to get there, isn't it? [LB484]

KARL HENSLEY: No, sir. They're required to be there within 48 hours after the One-Call system contacts the utility company. [LB484]

SENATOR LOUDEN: And can they always locate those lines? [LB484]

KARL HENSLEY: Not always. They can locate the lines. We've had some circumstances, which I've indicated in our testimony, where it's been past the 48 hours and they call us and tell us that we have to wait until they can get there. [LB484]

SENATOR LOUDEN: Because our problem always was that they...it was about two or three days before they got there because they had a lot further to travel and a lot of times they were within 200 yards of the line anyway when they did paint their strips and stuff like that. That's the reason I'm wondering now how accurate they are. [LB484]

KARL HENSLEY: Yeah. [LB484]

SENATOR LOUDEN: Okay, thank you. [LB484]

KARL HENSLEY: Thank you. [LB484]

SENATOR FISCHER: Other questions? I see none. Thank you very much for coming in today. [LB484]

KARL HENSLEY: Thank you. [LB484]

SENATOR FISCHER: Next proponent please. I would like to remind you that we don't have props or visual aids and that is because we do have a legislative transcript going on here, legislative record, and you holding up a prop cannot be entered into that record, so you need to describe whatever you would, in effect, be showing us. Good

afternoon. [LB484]

RUSSELL CALLAN: (Exhibit 10) Senator Fischer and members of the Transportation and Telecommunications Committee, my name is Russell Callan, that's R-u-s-s-e-l-l C-a-l-l-a-n. I'm the assistant general manager of the Lower Loup NRD. I'm here on behalf of the Nebraska Association of Resource Districts to give supporting testimony to LB484. The Nebraska Association of Resource Districts believes that the proposed changes are needed to exempt soil sampling and soil moisture monitoring. The previous legislation intended to have an exemption for agricultural activities. The act of soil sampling for crop nutrients and moisture is definitely an agricultural activity. Soil sampling is not a new activity. Sampling has been going on for years from surface sampling to depths below 3 feet. We are not aware of any instances where sampling has conflicted with underground utilities. Soil sampling and water monitoring are activities that are used by producers throughout the state to assist them in determining their fertilizer and irrigation needs for the growing season. These practices assist the producers, NRD and the state of Nebraska to protect groundwater quality from potential contamination caused by over application of fertilizer and/or water. It can also save the producers money by applying the amount of fertilizer and water necessary to grow the crop. In areas of the state that the NRDs have designated as water management areas or where state agencies require soil sampling for areas that have been targeted as having water quality problems caused by excess nutrient applications, there is a designated time line that those samples need to be taken. An example is the Phase III Water Quality Area that is located in part of Nance and Platte County. This area is approximately 50,000 acres or 78 square miles and it is required to sample every irrigated field within its boundary. There are over 400 fields in this area that would have to be called in and located prior to the sampling. This is just a small example of the increased work load that the producers, utilities, ag businesses and the One-Call Notification System would have to undertake if soil sampling and soil moisture monitoring were not clear exemptions in statute. Thank you for your time and I would be willing to answer any questions you may have. [LB484]

SENATOR FISCHER: Thank you, Mr. Callan. Are there questions? Senator Price. [LB484]

SENATOR PRICE: Thank you, Chairman Fischer. Sir, I just have a quick question, with 20 years of weather background, soil moisture sampling is something I'm familiar with. How deep do you do your soil moisture probes? [LB484]

RUSSELL CALLAN: It could be from very shallow to two or three feet, depending on whether you can push it. Basically what they're doing is trying to push the probe in to see how far they can push it in and measure the amount of water or moisture there. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR PRICE: Do you know if the NRDs (inaudible) leading soil of moisture probes in the ground in different locations? [LB484]

RUSSELL CALLAN: Sure, we do both. Just, you know, the hand filled method where you...like I described earlier, and then when you actually install a moisture sensor. Either way you go in and read by hand...or actually have it attached to a data logger so there's both. [LB484]

SENATOR PRICE: All right. And do you have any siting requirements when you're doing that that say that you don't want to put them under a tree or along a fence line; when you're doing that sampling, do you have some guidelines for where you put these probes? [LB484]

RUSSELL CALLAN: Yeah, sure you try to get it in as good a representative of the field, of the entire field or a portion of it that you're trying to monitor for irrigation. [LB484]

SENATOR PRICE: Thank you. [LB484]

SENATOR FISCHER: Thank you, Senator Price. Other questions? I see none, thank you very much. Next proponent please. Good afternoon. [LB484]

DEL FICKE: Thank you, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record my name is Del Ficke spelled D-e-l F-i-c-k-e and I farm and raise cattle near Pleasant Dale. I also serve as member at-large of the board of directors from Nebraska Farm Bureau Federation. I come before you today representing the Nebraska Farm Bureau Federation. I would like to begin by thanking Senator Hadley for introducing this legislation. I believe the testifiers before me have done an excellent job of explaining the history of this legislation, but I wanted to take this opportunity to weigh in with our support of the legislation and share with you some information regarding soil testing and how it impacts our farm practices. As the statute currently reads, tilling of soil and gardening for seeding and other agricultural purposes is currently exempted from contacting Digger's Hotline. It is extremely important for farmers and ranchers to retain this exemption. On average, a farmer will have soil testing completed every year between harvest and planting and much of this is done in the fall prior to the ground freezing, but some of this is done during the spring shortly after the ground thaws. This soil testing is extremely important as it helps a farmer to determine the soil quality, what kind of nutrient management is needed and what crop should be planted in the upcoming year. As technology has increased, so has the importance of these soil tests. Often we rely on third party people to perform the tests for us, but in some cases the farmers and ranchers do the testing themselves. We have a great deal of concern with our partners being required to call into Digger's Hotline in order to take a soil sample in our fields. While we understand the need for safety, we also see this as an additional burden one that should be handled with a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

commonsense approach. In our fields with our everyday practices of disking, tilling or ripping, practices that are currently exempt under the law we typically cut into the soil anywhere from 4 to 18 inches, and in some parts of the state, up to 36 inches. Commonsense approach in our eyes would be to allow our partners to provide the service of soil sampling for us; to sample at a similar level without having to contact Digger's Hotline. The additional time such a call would take, the 48-hour delay we may experience receiving all the information we need and the potential cost increases associated with the coordination are all additional burdens on our farms, burdens that could easily be prevented through common sense. Soil sampling has taken place in fields for over 50 years. In that time period we are not aware of a widespread problem associated with these practices. This practice should be encouraged to allow the proper use of water and nutrient management. Farm Bureau has hosted two extensive meetings for all interested parties and we would like to continue to be at the table with all parties and the committee as you look for the solution to this problem. With that, thank you for your time. I'd be happy to answer any questions. [LB484]

SENATOR FISCHER: Thank you, Mr. Ficke. Are there questions? I just have a couple. Have you called the Digger's Hotline in the past? You're in agriculture, correct? [LB484]

DEL FICKE: That's correct. [LB484]

SENATOR FISCHER: And have you had occasion to call them in the past? [LB484]

DEL FICKE: For doing things around the farm? Yeah, nothing out in the fields, just on the farm place, like around the buildings. [LB484]

SENATOR FISCHER: Okay. And that was because of a buried line, correct? [LB484]

DEL FICKE: Yes, that construction purposes. [LB484]

SENATOR FISCHER: And if you had not called them and something had happened, what is the penalty? Do you know? [LB484]

DEL FICKE: We probably called them about ten times and actually one time we cut right through a pipe that they said they had marked. They also gave us a disclaimer that's good only within 15 or 20 feet of where they're making those marks. [LB484]

SENATOR FISCHER: But since you had called them, you were not liable, is that correct? [LB484]

DEL FICKE: Right, right. [LB484]

SENATOR FISCHER: Do you think with this bill you're asking that you shouldn't have to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

call them for soil samples. Do you think under this bill then that you should assume liability if there is a cut, you know, wire and a pipe and a hazardous material pipe, how would...would that be reasonable do you think? [LB484]

DEL FICKE: I don't know exactly where you would place the legal burden on that part. I do know, in effect, that we don't have anything going through any of our fields, it's all along the side of the road, so that's where...we never soil sample there. So I guess I can't really answer that question. [LB484]

SENATOR FISCHER: Most farmers who belong to Nebraska Farm Bureau would you say that they have the same conditions you do where everything is going down the side of the road or does it cross fields? [LB484]

DEL FICKE: I would say for the most part, everything is on the right-of-way. [LB484]

SENATOR FISCHER: Do you know everything that is under your ground? [LB484]

DEL FICKE: I do because we've had our farm for 125 years. So we got it mapped out. [LB484]

SENATOR FISCHER: Congratulations. But I guess I'm getting at if...who is responsible if there is a problem especially if there is a major leakage, a major outage, who is going to be responsible for that if we just say, okay, go ahead and take your soil samples and best of luck? [LB484]

DEL FICKE: There should probably be something in place like what we were talking about at least in those soil depths of 4 to 18 inches, you know, that excluded out of that part and on my particular operation we use all hand probes and if you would come across a power line or a pipeline or something you could not push through it. [LB484]

SENATOR FISCHER: Because they're very light-weight probes. But that's for a shallow probe, is that correct? [LB484]

DEL FICKE: That's up to two... [LB484]

SENATOR FISCHER: What's a shallow probe? [LB484]

DEL FICKE: I'd say a shallow probe is 8 inches or less. I'm sure there are guys here that could answer that better. [LB484]

SENATOR FISCHER: Okay. I imagine there will be some people coming up and I can...I'll try and remember to ask them how...what's the depth of their particular apparatus that's under the ground then too. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

DEL FICKE: And it depends on soil types as well. [LB484]

SENATOR FISCHER: Okay. Thank you very much. Other questions? Senator Price. [LB484]

SENATOR PRICE: Senator Fischer, thank you. Sir, just from the Farm Bureau perspective there, is it a common issue where you have to worry where farmers are deep disking or ripping that the utilities have placed their lines through the center of their fields at 8 inches or 12 inches? [LB484]

DEL FICKE: No. It's not a problem, and in fact with all the conservation tillage with no-till and everything, there is some deep ripping on occasion now, but very little ground is even disturbed. [LB484]

SENATOR PRICE: Okay, thank you. [LB484]

SENATOR FISCHER: Other questions? Senator Dubas. [LB484]

SENATOR DUBAS: Thank you, Senator Fischer. How long have farmers been using soil sampling in their operation? I guess what I'm saying, is this something fairly new that farmers have just started doing? [LB484]

DEL FICKE: No, absolutely not; at least 50 years. [LB484]

SENATOR DUBAS: And in reference to the types of tillage, and I know there is a lot more no-till or minimum till, but some of the tillage where we're doing the deep ripping and that type of thing, how deep are we going into the ground with those really deep tillage? [LB484]

DEL FICKE: Probably around that 18 to 20 inches. [LB484]

SENATOR DUBAS: And to your knowledge and I think maybe you said it in your testimony, but I just like to make sure you're clear on it, has there ever been an instance where through soil sampling or deep tillage we've had an issue to your knowledge of cutting into a pipe or something like that? [LB484]

DEL FICKE: No, not my knowledge. [LB484]

SENATOR DUBAS: Thank you. [LB484]

SENATOR FISCHER: Other questions? I see none. Thank you very much, Mr. Ficke. Next proponent please. Good afternoon. [LB484]

KRISTEN KOCH: Good afternoon. Madam Chairwoman, members of the Transportation and Telecommunications Committee, my name is Kristen Koch, that's spelled K-o-c-h. I'm a registered lobbyist for the Nebraska Cattlemen and I'm here today on behalf of them in support of LB484. You've heard about a lot of the uses today that soil sampling does for agricultural producers. Beef producers in this state utilize it primarily to make environmentally conscious and efficient land application decisions for their manure. We use soil sampling then to determine the nutrient content of the soils and then accurately spread our manure to meet the needs of the crops. Soil sampling is also a mandatory requirement on Nebraska livestock producers in order to comply with the livestock waste management regulations of the Nebraska Department of Environmental Quality. We're required to have a nutrient management plan on file and do soil sampling prior to every land application of manure. Nebraska stands as the number two beef producer...number two beef cattle feeding producer in the United States. We market, on average, 5 million fed-beef cattle every year. This means that we actually produce millions of tons of manure that has to be applied to our soils every year. The optimal time for when we apply manure is approximately 30 days after harvesting crops. So this means all beef producers in Nebraska are planning to apply manure at exactly the same time or within the same three- to four-week period. You can obviously then understand the congestion that would occur in that three- to four-week period by obligating producers to make notification requirements to the Digger's Hotline. We see this as a substantial burden on producers as well as the Digger's Hotline and the services that they then have to provide to the state. We know of no issues in the past where there has been a problem (inaudible) soil sampling for manure application and so we also see this as an unnecessary obligation. And the Nebraska Cattlemen's board of directors felt so strongly about this bill that they deemed it a priority and so we would encourage you to advance this bill. And at this time I would be happy to answer any questions. [LB484]

SENATOR FISCHER: Thank you very much. Are there any questions? I see none. Thank you very much. Next proponent please. [LB484]

MILT MORAVEK: (Exhibit 11) Thank you, Senator Fischer and remaining committee members. My name is Milt Moravek, M-i-l-t M-o-r-a-v-e-k, I'm representing the Central Platte Natural Resources District headquartered at Grand Island, Nebraska. Our district was the first district in the state to implement groundwater management plans when it comes to high nitrates in the groundwater and that is where most of the districts in the state have that high nitrate problem if they have implemented a program. We implemented ours in 1988, so we've been doing this for 23 years and it's been very successful. The reason it has been successful is because we require 3-foot deep soil samples on every field in about 650,000 acres of our district which is mostly irrigated land. If you put the calculation to that, that comes to 130,000 soil probes down to 3 feet either in the fall or in the spring. Historically in our district about half of the probes have



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

been done in the fall after harvest and the other half have been done in the spring. There's about a 3-week period in the fall and a 3-week period in the spring that these are usually carried out. So what I'm saying is, 65,000 probes, 3-foot deep over that 650,000 acre area is being done in the fall and the same 65,000 probes in the spring. Now we don't get that many soil samples, but we require 8 probes per 40 acres for one composite soil sample. So that producer would have to go out there and flag those 8 locations and each one of those 40-acre fields and then the utilities would have to come out and probe each one of those 8 locations in each of those 40-acre fields every year. I'm just letting you know that that is an impossible task. I don't think anyone is going to be able to do that. But I just want to also tell you that the deep soil probing is totally necessary in our district because we have been able to reduce our nitrates in our groundwater dramatically because of the utilization of the residual nitrates in those 3-foot soil samples where the producers can cut back on their applied nitrogen and still have the same yield. We always tell them, you paid for that nitrogen once or more than once when it went below the root zone and got away, this is a way you can retrieve that nitrogen and you do not then have to pay for it again. With that I'd be happy to answer any questions you might have. [LB484]

SENATOR FISCHER: Thank you very much. Are there questions? Senator Dubas. [LB484]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Moravek. So of all these samples that have been taken in your particular NRD, have you ever had an encounter or a bad (inaudible). [LB484]

MILTON MORAVEK: We have never had a report from a utility or from a crop consultant or from a farmer that they caused a problem with a utility line or wire or pipeline. [LB484]

SENATOR DUBAS: Thank you. [LB484]

SENATOR FISCHER: Other questions? When you take these samples, do you do it in the same fields every year? Do you go back to the same fields? [LB484]

MILTON MORAVEK: Yes, they are done in the same fields every year. A lot of times those locations of where those probes are taken are changed though, sometimes they're taken close to the same location, sometimes they're changed because there may be a different farming practice that is used on that particular year on that field. But there are approximately 300...or 130,000 soil probes that we require of our producers in that area to get our nitrates down to an acceptable level. [LB484]

SENATOR FISCHER: Since 1988, correct? [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

MILTON MORAVEK: Since 1988; 23 years. [LB484]

SENATOR FISCHER: And so do you map out the fields where the probes are taken? Do you have a map showing this? [LB484]

MILTON MORAVEK: No, we do not. We leave that up to the farmer. If the farmer does that, him or herself, that probably 90 percent of the time crop consultants do these soil probes and it's usually done with some type of a mechanical probe mounted on a pickup. [LB484]

SENATOR FISCHER: Do you know if there's any mapping that's been done on those fields by Digger's Hotline in the past? Have you visited with them about it? [LB484]

MILTON MORAVEK: There would not be because they have not been called. [LB484]

SENATOR FISCHER: But have they been called by an individual farmer on any of that land? [LB484]

MILTON MORAVEK: I would not know. I would not know. I do know that when we plant trees, we call Digger's Hotline. But of course, that's a specific one spot location where those trees are going to be planted. I do know that the well drillers call Digger's Hotline. But here again, they GPS the site of where the well is going to be and so then they come out and they probe in the one location. This is 8 probes every 40 acres across two-thirds of our district. [LB484]

SENATOR FISCHER: Do you just...you said they GPS the wells, do you...when you take these soil sample probes, do you just walk out and do it, or do you have places that you're specifically looking for in order to take them? [LB484]

MILTON MORAVEK: These crop consultants have gone to school and refresher classes and they look at the different types of soils whether it's a highly erodible soil or whether it's a sandy soil or a very heavy soil, and then they calculate how they can get an average, proper nitrate reading from all those different sources. And so it's their expertise that is used to determine where those probes go. [LB484]

SENATOR FISCHER: And do you know if the people who participate in your program for the nitrates, do they have soil probes done on their own too? [LB484]

MILTON MORAVEK: Some of them do it on their own, but above and beyond the 650,000 acres that I talk to, there's another 350,000 acres of irrigated cropland in our district that's not in our phased program. A lot of those producers just for their own management knowledge do the 3-foot probes on their own or they hire a firm to do it for them. So it's not just the 130,000, it could be 180,000, we just don't have that count

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

because we do not require it in that part of our district. [LB484]

SENATOR FISCHER: And have you ever heard of any problem happening? [LB484]

MILTON MORAVEK: No. [LB484]

SENATOR FISCHER: Okay, thank you. Other questions? I see none. Thank you very much. [LB484]

MILTON MORAVEK: Thank you. [LB484]

SENATOR FISCHER: Next proponent please. Good afternoon. [LB484]

TIM MUNDORF: (Exhibit 12) Good afternoon. Thank you for allowing me to testify. My name is Tim Mundorf, T-i-m M-u-n-d-o-r-f. I'm the field representative for Nebraska for Midwest Laboratories, an independent testing laboratory in Omaha. I'm here to testify in support of LB484 on behalf of Midwest Laboratories, the Nebraska Agri-Business Association, and the many dealers and crop consultants who have expressed concern to me about having to call the Digger's Hotline before taking soil samples for agricultural purposes. In 2010, Midwest Laboratories analyzed 143,888 soil samples that originated in the state of Nebraska. The Nebraska Agri-Business Association surveyed the six major soil testing laboratories in Nebraska and found a combined 562,913 samples that were analyzed in 2010 and came from Nebraska fields. These samples were analyzed for nutrients necessary in crop production for the major field crops of this state. The reasons for this analysis are to make fertilizer recommendations for the current growing crop and also future seasons. We commonly analyze and make recommendations for nitrogen, phosphorus, potassium, magnesium, sulfur, zinc, other micronutrients and for liming to correct low soil pH. Our test results provide the information necessary to decide if a field needs a specific nutrient, and if so, how much should be applied. These applications affect the yield of the crop being grown, the profitability of that crop. They also can have negative impact on the environment if these excess nutrients are applied and then they move to unintended areas such as our groundwater or streams and lakes. As you can see by the information I've handed out, the samples that we received are not evenly spread out throughout the year, but are concentrated during a few months when dealers, farmers, and consultants can access the field with proper conditions for sampling. For example in 2010, 56 percent of our annual samples were taken in the months of October and November. Factors that affect our clients' ability to take soil samples are the timeliness of harvest, soil moisture, freezing conditions and snow fall. For this reason we support LB484 to allow our clients to take samples as soon as field conditions allow. Depth of sample varies with 6 to 8 inch deep samples being the most common for many nutrients. The nutrients that are more mobile in the soil, especially nitrogen, benefit from deeper sampling to assess the full amount of the nutrient that might be available for the crop. According to the University of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

Nebraska-Lincoln Extension publication, "Fertilizer Suggestions for Corn", EC117, a 4-foot deep residual nitrate sample is recommended annually to fine-tune a farmer's nitrogen recommendation for corn production. We see a variety of sampling depths for nitrate from our clients. A summary of these deep nitrate tests is attached for your review. I brought some examples of the soil sampling probes that our laboratory sells to clients. I have also included an example of a soil test report in the handout provided. And I'm happy to take questions from you at this time and my contact information is on page 2 if you think of a question later. [LB484]

SENATOR FISCHER: Thank you, Mr. Mundorf. Are there questions? I see none. Thank you very much. Next proponent please. Good afternoon. [LB484]

BEN PINKELMAN: (Exhibit 13) Good afternoon, Senator Fischer, and members of the Transportation and Telecommunications Committee. My name is Ben Pinkelman, B-e-n P-i-n-k-e-l-m-a-n. I am president of the Nebraska Independent Crop Consultant Association and I'm a crop consultant myself up by Hartington, Nebraska. As a group, we are 76 consultants spread across the state of Nebraska. We consult on about 1.4 million acres of crop ground, of which about 1 million is sampled every year at various steps from zero to 6, to 24 to 36, to probably some 48s, depending on what's needed. Personally I sample about 18,500 acres a year, of which two-thirds is in the fall, October, November and the remaining third in March. Over all these years, I've never had an issue. Talking with members of my organization, nobody knows of an issue of hitting anything. The other issue I'd like to bring up is the soil, water monitoring that we're highly involved with. I passed out an example of some soil probes and what they look like. They are put in at 18 inches to 24 to 36 inches. Currently I look at 48,000 acres every summer, my crop scout and I look at and those acres are probed for moisture through a depth of 2 foot, occasionally to three foot. So under current regulations, we're going to have to call all that in with a growing crop out there because we do not start until July. For northeast Nebraska, generally, we get away with that. We're not with a small crop. So I'm voicing my support for LB484 and I'll take any questions you have. [LB484]

SENATOR FISCHER: Thank you very much. Are there questions? I see none. Thank you very much for coming in today. Next proponent please. Welcome. [LB484]

ED WOEPPEL: (Exhibit 14) Thank you. I'm Ed Woeppel, and that's W-o-e-p-p-e-l, here today representing the Nebraska Cooperative Council. And I've got the information coming around, a statement from Robert Andersen, president of the council and I...we'll move through this quickly. I know you will appreciate that. But I think there's some interesting points. Senator Fischer and members of the Transportation and Telecommunications Committee, my name is Robert C. Andersen, I serve as president of the Nebraska Cooperative Council. The council is a trade organization representing approximately 92 percent of Nebraska's farmer-owned grain and supply marketing

cooperatives. We want to extend our appreciation to Senators Hadley, Carlson, Dubas, Hansen, Utter and Wallman for introducing this legislation. Attached to this testimony is the informal Nebraska Attorney General's Opinion of January 21, 2011, provided to Senator Tom Carlson. Also attached is a copy of a February 7, 2011, legal opinion from council attorney, Rocky Weber with Crosby Guenzel LLP which was addressed to Bob in which he is advising our cooperative members that until such time as the Legislature clarifies the scope of the agricultural exemption to clearly include soil sampling by entities other than the farmer, the cooperative is at risk of strict liability for substantial damages to the cooperative in the event it damages an underground facility if it hasn't made a call to the One-Call center. In visiting with our membership, it has been estimated that statewide 70 to 80 percent of the soil samples are done at a depth of 8 inches. Today our farmers are using some ag production tillage practices in the 12 to 16 inch range. We do not impose a request that farmers need to call the One-Call Notification System. Yet the proponents of the One-Call System are seeking to have soil testing be subject to the One-Call Notification System when the vast majority of the soil testing depths are in the same range as the depths that producers are regularly tilling soil. To us this is a commonsense issue. Also, there is attached a January 31, 2011, communication from Frenchman Valley Cooperative in Imperial outlining the impact of their situation in reaching out to the One-Call System. Their concern is paralleled among the cooperatives. So we encourage the Transportation and Telecommunications Committee to advance LB484 and I would try to answer any questions that the committee may have. [LB484]

SENATOR FISCHER: Thank you, Mr. Woepfel. Are there questions? I see none. Thank you very much. Next proponent please. Are there other proponents for the bill? I see none. We will start with the first opponent please. Could I have a show of hands of how many opponents plan to testify? I see three others. If you'd like to...four others, if you'd like to move to the front, that would be good. Good afternoon and welcome. [LB484]

VAL SNYDER: (Exhibit 15) Good afternoon, Senator Fischer, members of the Transportation and Telecommunications Committee. My name is Val Snyder, Val is spelled V-a-l, Snyder, S-n-y-d-e-r and I'm here today to oppose...in opposition of LB484 in the capacity as a member of the One-Call board of directors. The purpose of the One-Call board in Nebraska is to ensure the safe excavation practices are established in Nebraska. The One-Call board is committed to protecting the safety of the excavators, the safety of the operators, and the safety of the underground facilities. With that in mind, the One-Call board is adamantly opposed to LB484 as it is currently written. The current language would exempt all soil boring at all depths up to and beyond 36 inches, depths which pose a huge risk to the safety of the citizens of Nebraska, the underground utilities and infrastructure and potential...risk potential interruption to the productivity of agricultural processes in the event of an underground damage. The One-Call Notification System Act was put in place in 1994 for the safety of

the public, excavators and underground facilities. Unfortunately, people were being put at risk and being injured because excavators were freely digging with no regard to the location of underground facilities. Financial burdens were assumed on the utility industry and the associated end users to replace and repair damages to various underground utilities. The federal governing agency, The U.S. Department of Transportation and now the Pipeline and Hazardous Material Safety Administration--PHSMA, took steps to change this trend and passed down in rules and regulation provisions that require each state to develop the One-Call Notification System Act. This requirement would be for all operators for underground facilities transporting hazardous materials to report to an agency in order to allow underground operators to locate and mark their facilities in an effort to control the number of line hits, with the goal of zero line hits all in an effort to protect those conducting excavations going forward in a safe manner. Current underground facilities in Nebraska are: pipelines carry natural gas, refined fuels, crude oil, anhydrous ammonia, and nitrogen; we have underground electrical power; underground telephone and communication cables; municipal sewer and water; rural water; and lines used by the natural resource district. Allowing soil boring at depths using various hand held and high-powered technologies moves us backwards rather than forward in the safety standards set and adopted by both utility and excavating industry in the state of Nebraska over the past 15 years. The consequences of failing to request a locate could entail, but are certainly not limited to the following. A damaged telecom line could disrupt essential services such as 911 access, essential federal communications such as air traffic, daily business functions involving Internet and phone. A pipeline could be shut down due to a hit that has created a leak, therefore shutting off fuel used to heat the home during heating season and a potential environmental impact to the farmer and surrounding land and water basins. An underground electrical facility providing needed power to a piece of medical equipment that is providing life to the elderly and to the very young or could disrupt essential agricultural needs such as irrigation to crops and livestock. You should also consider what a cut line could do to an excavator. If the excavator is not killed, but badly injured we are placing our emergency responders in harms way when it could simply be avoided by a simple, free 3-digit call--811. Several attempts have been made with the proponents of LB484 and have failed. Accordingly, I restate that the One-Call board of directors for the state of Nebraska is opposed to LB484 as written as it would create a huge safety concern to the public, property and environment in the state of Nebraska. Thank you very much. I'll be open to any questions at this time. [LB484]

SENATOR FISCHER: Thank you, Mr. Snyder. Are there questions? Senator Dubas. [LB484]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Snyder, for being here and for the work that the One-Call board does because I do know you provide an invaluable service to our state and it saved us lots of time and money. My question would be, knowing that these practices are not new practices, we've had farmers soil

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

testing and doing these kinds of things for years and years. Has this ever been discussed among your board about, you know, maybe we need to be looking at the practices that farmers are doing, you know, they have an exemption, do we need to reexamine them, or deep tillage, those types of things, have you ever discussed these things before? [LB484]

VAL SNYDER: We've discussed it from time to time, but really have never taken any action on it until now...at this point. [LB484]

SENATOR DUBAS: Because, I mean, you're stating that this could cause some very serious damage... [LB484]

VAL SNYDER: Absolutely. [LB484]

SENATOR DUBAS: ...and I'm not questioning what you're saying there, but if it's been...if it's that much of a concern, I guess I'm just wondering why this was not...this issue hasn't been raised until now? [LB484]

VAL SNYDER: A lot of it is the fact we weren't aware it was going on. Now that it's been brought to the forefront, we can address it. [LB484]

SENATOR DUBAS: Thank you. [LB484]

SENATOR FISCHER: Other questions? Senator Louden. [LB484]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. If...first of all, in the hotline you got to tell them two business days ahead of time, is that correct? [LB484]

VAL SNYDER: That is correct. [LB484]

SENATOR LOUDEN: Yeah, and then is...if someone is digging out there in a field and there aren't any signs indicating that there's any buried lines or anything, do they have to call the hotline? [LB484]

VAL SNYDER: By current law, anybody that is doing an excavation in the state of Nebraska should call two business days prior to and not before and not to exceed 10 days prior to the dig. [LB484]

SENATOR LOUDEN: No matter if they're digging out in the middle of the Sandhills or someplace and there isn't lines for miles around? By law you think then you still got to call a hotline in order to dig...go down there and dig a pit or doze out a hole or something like that, that's what you're saying? [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

VAL SNYDER: Yes, for the safety of the underground facilities and the safety of the excavator, yes. [LB484]

SENATOR LOUDEN: It's a little bit kind of unreasonable isn't it in some of this rural areas to have to...someone would have to call a hotline just to, oh, say I want to bury a horse if I want to go out there and doze out a hole and bury my horse and I got to call a hotline two days ahead of time so that I can do that and there probably isn't a line within five miles? [LB484]

VAL SNYDER: I can...coming from the farm, I can understand what you're saying, sir. However, again, I have to just stay committed to the fact that if you're going to be doing an excavation, you should be calling Digger's Hotline. Not only for the excavation safety of the excavator, the underground facilities, but also yourself. [LB484]

SENATOR LOUDEN: Okay. Thank you. [LB484]

SENATOR FISCHER: Other questions? Senator Price. [LB484]

SENATOR PRICE: Thank you, Senator Fischer. A couple my own (inaudible), Senator Campbell asked me to ask one, given that we've tried to size the level of effort based on what we know now, do you feel that the Digger's Hotline and the people who are going to have to do the marking for half a million (inaudible) for co-ops and the other half a million for farmers, do you have the capacity to do it within 48 hours? [LB484]

VAL SNYDER: Because of the large...if they're calling in an area of probes, 95 percent of those will probably be able to be cleared by a simple phone call. [LB484]

SENATOR PRICE: Okay. How are these inspections paid for? I know I call and I'm not given a bill. Someone somewhere pays somebody to go out there, there are no free lunches, how does that happen? [LB484]

VAL SNYDER: Are you referring to the ticket? [LB484]

SENATOR PRICE: Well I'm talking about some actual body going out to the paint can, rolling its detectors and spraying some ground. [LB484]

VAL SNYDER: The underground operators are. [LB484]

SENATOR PRICE: The underground operators pay for that. [LB484]

VAL SNYDER: Yes. [LB484]

SENATOR PRICE: Okay. Thank you for that. Senator Campbell, the question was she



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

had, I hope I do it justice, but she said, do you currently have guidelines for dealing with depths and how you go about performing these inspections and when they're supposed to be performed, (inaudible) if you break the soil you have to do it or how does that go about? [LB484]

VAL SNYDER: Currently in Nebraska, as I stated earlier, if you have the intent to dig, you're supposed to call Digger's Hotline two days prior, but not ten days before you do the dig. The exemption as written was for the farmer in 1994 to not...what I guess I want to say here, to not impede the performance of production of the farm products in Nebraska. [LB484]

SENATOR PRICE: Great, because that's my final...I appreciate you enduring me. So we've heard testimony earlier that there may actually be a soil-moisture probe going on in the growing season, is the Digger's Hotline prepared to deal with the fact that they may have to go through an active growing farmer's field and drive around looking to paint lines? [LB484]

VAL SNYDER: Are we prepared, is that what you saying, Senator? [LB484]

SENATOR PRICE: Yeah, I mean, (inaudible) let's say you go through and you...I'm not saying that you would do that, but to me not having a clue might drive over the guy's crops or damage crops or do something to try to get to the point. I mean, it's like a conundrum, I have to go check where these lines are because I'm going to do some excavating, but the guy is growing crops, so my question is then, who is going to pay for the crops if there were some damage in trying to find the power line that might not be there in the middle of the field? [LB484]

VAL SNYDER: Most of the facilities, or I would say all of the facilities have diagrams and maps that show them exactly where their facilities are at. So that maybe no need to enter that field that time. [LB484]

SENATOR PRICE: So I do a site survey, a table top site survey, go, you're good to go. [LB484]

VAL SNYDER: Correct. [LB484]

SENATOR PRICE: Thank you so much, that's a key piece. Thank you. [LB484]

SENATOR FISCHER: Other questions? Digger's Hotline is financed how? Isn't it by fees that the utilities pay? [LB484]

VAL SNYDER: We pay...it's financed through the fees that we pay for each ticket that the individual utility receives. Okay, an underground operator pays so much per ticket

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

for the...and that then goes back towards the center. [LB484]

SENATOR FISCHER: Did I hear you correctly that they pay so much per ticket?  
[LB484]

VAL SNYDER: Yes. [LB484]

SENATOR FISCHER: So they only pay if there's a call? [LB484]

VAL SNYDER: We pay...they pay if there's...and I apologize if I'm reverting back, because I'm also an operator in the state of Nebraska. We pay for tickets...I mean, a normal notice ticket, we pay for emergency tickets, and we even get tickets that are an updated ticket, in other words, if they're being updated, we pay for that ticket also.  
[LB484]

SENATOR FISCHER: Okay. How many employees do you have with Digger's Hotline that go out and do the site inspection? [LB484]

VAL SNYDER: Digger's Hotline itself is just a call...I mean, Digger's Hotline is just the call center. [LB484]

SENATOR FISCHER: Right. They don't accompany the utility people when the utilities go out to mark? [LB484]

VAL SNYDER: No, they do not. [LB484]

SENATOR FISCHER: Okay. Okay. Thank you very much. Other questions? I see none. Thank you. [LB484]

VAL SNYDER: Thank you. [LB484]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB484]

ANDY HARTMANN: Good afternoon. I'm Andy Hartmann, A-n-d-y H-a-r-t-m-a-n-n and I'm on the One-Call Board as the excavator of the state's representative and I'm here today opposing this bill. And another reason I'm here is because I'm doing my best to make sure that the state of Nebraska...the people of the state of Nebraska are safe from any gas hit, electrical hit, or telecommunication hit because some day down the road someone...and I've got some examples of lines that are not...were not as deep as they said they were supposed to be and I can give you those. But when someone hits somebody I'm here today to do my best in opposition to this bill because when someone gets killed or hurt, I do not be...I want to be here, because if I go home and someone hits somebody because they...didn't want to do it because of inconvenience, I want to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

do...make sure that I did my best to kill this bill because I do not want to sit in the background and let this bill be passed without my input. That's the main reason I'm here because somebody will get killed. I have three examples of gas lines that were not as deep as they were supposed to be. One of them, my pet story is in Beaver Crossing where I was doing some work for a farmer and he said, Andy, would you go over there and take this root out of my field, I've been hitting it for years with my plow and I cannot get rid of it. Sure, I'll go over there. I drove over there in his pickup; I said that's not a root, that's a gas line. That gas line was on the surface. It used to be 30-some inches deep. It was not 30 inches, it was on the surface. There was a gas line in Lincoln, Nebraska, near Lincoln; we called a gas company, we hit some yellow tape. I said, hey guys, we've got a gas line out here that wasn't supposed to be here. Yeah, don't worry about it, it's abandoned. It was only 12 inches deep. By an act of God, I'm here, my brother is still living and one of my employees is still here because we hit a 4-inch gas line, plastic, thank God. The gas got into the back engine of the scraper and that engine was roaring because the gas will do that, natural gas. I jumped up for some reason, shut the engine off and brother took the cap the other way and got out and the guy on the scraper pulled ahead. By an act of God we're here today. Twelve inches deep, remember that. It was supposed to be a couple of feet deep or whatever. Another one was on a line in a field that we had to dig a ditch to drain some water for a farmer; called One-Call which I do all the time, they said the gas line...the representative from the gas company called me and said it was 36 inches deep but we better go out and probe it. He came out and probed it, it was 15 inches deep, 8 inch. It was supposed to be 36 inches deep, it was 15 inches deep and we had to cut two foot to make this work. Thank God, I called One-Call. All I heard today was the inconvenience of making a One-Call. I wonder how inconvenience it's going to be when someone has to go up to someone's wife, mother, kids, and say, well I didn't want to make the call to One-Call, but now I'm here to tell you how he died or was injured. That's what my testimony is about today. The what ifs in this world, and we've got a lot of them. The One-Call...I know I'm supposed to quit here pretty soon, the One-Call board is set up to take the calls no matter how many there are. It's not the...it's the utilities' problem after the One-Call board gets it. They have so many hours, by law, 48 hours to mark them. That doesn't mean they have to mark every single 4 by 4 square. If that field is free, they can just say free, you're ready to go. If the people that want to make the One-Call...the...get the, what do you call it, the locates, just say within the fields, no ditches, no road probe is going to be taking place. That can eliminate about 95 percent of the utilities that are...out in the land today. And there are pipelines and there are telecommunication lines all over the field; they just do not go down the ditch, along fence lines, in straight line, they go all over the place. I know my time is up, if you have any questions, go ahead and ask. [LB484]

SENATOR FISCHER: Thank you, Mr. Hartmann. The previous testifier said that 95 percent of these calls can be cleared by phone. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

ANDY HARTMANN: That is right. Probably more, hard to say. A lot of times these are...calls can be...if you use...which I do as an excavator, I don't wait two days, sometimes I have to, but a lot of times I will call maybe weeks, maybe even a month ahead, say I've got this job over here is there anything in that area? One call to One-Call, they fax me a sheet back because I'm still using a fax, because they will say, no, there's nothing on that piece of ground, so I know in a month or whenever I'm going to go there I don't have to worry about calling them again, even though I will because by law I have to. But then I know ahead of time there's nothing on that piece of ground. You just have to use the system, it works for you, if you just work with it. [LB484]

SENATOR FISCHER: Okay. Thank you. Other questions? Senator Louden. [LB484]

SENATOR LOUDEN: Thank you, Senator Fischer. When you mentioned some of those where the lines were only 12 inches and that, was there any signs or anything out there that that gas line was there? [LB484]

ANDY HARTMANN: Yes. [LB484]

SENATOR LOUDEN: Then you knew there was a gas line out there someplace. [LB484]

ANDY HARTMANN: The one. A couple of them they were out... [LB484]

SENATOR LOUDEN: Then, I mean, there was no problem then if you knew it to do the One-Call if you knew, if signage was there. [LB484]

ANDY HARTMANN: Oh, you do it anyway. [LB484]

SENATOR LOUDEN: Yeah, I know, but I mean, you...that's the reason I mentioned on these if there isn't signage there then it probably isn't anything there. [LB484]

ANDY HARTMANN: Well there's supposed to be something there. [LB484]

SENATOR LOUDEN: Well I know, but it didn't make any difference if the signage was there or not, you know, because like you say, and that's a problem I've had with the One-Call is they've told you there wasn't anything there, but, yes, there was there, because like I say, they probably missed it by 200 yards where their lines were and this is... [LB484]

ANDY HARTMANN: And is that the gas company? [LB484]

SENATOR LOUDEN: ...it's because we have that in there doesn't mean it's going to keep you from running into a line someplace. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

ANDY HARTMANN: No, no, there could, but you covered yourself. Because if you did hit that line and it was not marked, but it was supposed to be, if it was off a ways, there are laws out there that the utility company...the utility company, not the One-Call, but the utility customer, or not utility person, the company, they are at fault for not marking it correctly. [LB484]

SENATOR LOUDEN: Well that's the reason I did it is for liability purposes. [LB484]

ANDY HARTMANN: Right, exactly. [LB484]

SENATOR LOUDEN: And they were... [LB484]

ANDY HARTMANN: That's right. [LB484]

SENATOR LOUDEN: ...main telephone lines, yeah, if I didn't call them and cut it, then I was. But on the other hand when I did call them, they couldn't find it anyway so this is what...and this is what we're getting with these probes, if there isn't signage there that say there isn't something, I don't see where they would have to call into the One-Call. [LB484]

ANDY HARTMANN: But do they really know? It takes one time, one hit and then you're going to find out. [LB484]

SENATOR LOUDEN: Well, does anyone...when you go all over the state of Nebraska, do you know anyway or would you know any more if you call in than if you don't I guess. [LB484]

ANDY HARTMANN: No, you don't. In our excavating business we travel, not all over the place, but, you know, quite a few miles and sure, I know my backyard, but I sure as heck don't know 20 miles from here what's out there. [LB484]

SENATOR LOUDEN: But most utility companies, they're supposed to have a map and everything when they put anything in whether it's a gas line or phone line or electrical line or anything like that, it's supposed to be all mapped out. [LB484]

ANDY HARTMANN: Yeah, sure, well it is, and that's where the One-Call system has all that. You know, that's why you just call in. [LB484]

SENATOR LOUDEN: One other question, or one other answer for you, when you talk about being 12 inches deep, the phone company put in a phone line to one of my places once and the bulls dug it out. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

ANDY HARTMANN: Yeah, it's kind of aggravating I know. [LB484]

SENATOR LOUDEN: They weren't very deep. [LB484]

ANDY HARTMANN: It's aggravating. [LB484]

SENATOR LOUDEN: Thank you. [LB484]

ANDY HARTMANN: You bet. [LB484]

SENATOR FISCHER: Other questions? Senator Dubas. [LB484]

SENATOR DUBAS: Thank you, Senator Fischer. Thank you, Mr. Hartmann. Anybody who knows me, especially my family, knows I always...I'm the nay sayer, I'm the one that something...can say something bad will happen, so I do appreciate where you're coming from with your concerns. But I've also...the testimony that has been brought forward today...these types of practices have been going on for years and years and years and we haven't run into any problems and I know there's always, you know, what's that one time. And you made a comment about someone calling in and they weren't given accurate information, that there was a pipe that wasn't buried as deep as it was supposed to be. [LB484]

ANDY HARTMANN: No, I got the right information. They just wanted to make sure that it was as deep as their map showed it was. And it wasn't. [LB484]

SENATOR DUBAS: So it was where they said it was? [LB484]

ANDY HARTMANN: Yeah. [LB484]

SENATOR DUBAS: Okay, I'm sorry, I misunderstood that then. All right. So I guess again, the same question that I asked to the previous testifier, if this could have the potential to be as serious as you're laying it out to be, why hasn't it been brought to our attention before now? [LB484]

ANDY HARTMANN: I guess I...in my opinion, I don't...I think farming practices meant tilling of the soil. I just...I assumed the probe was there. I just assumed they did. You know, if you're going to go 36 inches deep or 48 inches deep or whatever the thing is over 8 inches, I just assumed people did it. I didn't know that...I didn't know you...I mean, you can do it, you can do whatever you want, you get caught once and you're done. [LB484]

SENATOR DUBAS: So when someone calls into the One-Call, are they saying, okay, I'm going to do soil samples or are they saying I'm going to actually be trenching so

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

would you know if they're calling in about soil samples or are they calling in to do deeper excavation? [LB484]

ANDY HARTMANN: They usually ask what type of work are you doing? [LB484]

SENATOR DUBAS: So you would be able to know then if those types of calls had been made? [LB484]

ANDY HARTMANN: Sure. I mean I'm assuming so because I'm on the excavating part. And I don't do soil sampling. [LB484]

SENATOR DUBAS: All right, thank you. [LB484]

SENATOR FISCHER: Other questions? Senator Price. [LB484]

SENATOR PRICE: Senator Fischer, thank you very much. Thank you for your testimony, sir. [LB484]

ANDY HARTMANN: Sure. [LB484]

SENATOR PRICE: One quick, I didn't get to it before, when the Digger's Hotline is compensated for their tickets, is it the same compensation no matter what type of ticket? You know, like a flat rate fee when you open a ticket, whether you do a table top or anything else it's a flat rate fee? [LB484]

ANDY HARTMANN: I cannot tell you that because I'm not the head of the One-Call. I'm just one of the board members and I just got on it about three months ago. There's a representative from the One-Call board that can give you more information, probably more accurate than I can give you. [LB484]

SENATOR PRICE: Okay, great. Would you know what the formation of the One-Call, is that a not-for-profit, nonprofit, or for-profit business? [LB484]

ANDY HARTMANN: I think Susan could probably answer that. I think it's for-profit. I mean we, you know, I can't tell you that exactly. [LB484]

SENATOR PRICE: Okay. Thank you. [LB484]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB484]

ANDY HARTMANN: Thank you. [LB484]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

KRISTEN GOTTSCHALK: Good afternoon, Chairman Fischer, members of the Transportation and Telecommunications Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I am the government relations director and registered lobbyist for the Nebraska Rural Electric Association and I'm here today to testify on behalf of our 35 rural electric public power districts and electric cooperatives. I'm also here to testify on behalf of the Nebraska Power Association which represents all of the electric utilities in the state of Nebraska. And in addition to that, I'm also going to testify on behalf of the League of Municipalities, so I'm going to try and get as much packed into one as I can. I guess I want to start out, and we are testifying in opposition to LB484 as written. Now we certainly don't disagree with the benefits of soil sampling, soil moisture probing, in fact we think that those are highly laudable activities that need to take place. But simply because they are beneficial activities does not mean that they can be undertaken without risk. And as you get deeper into the soils, there are risks involved. Yes, soil sampling has been going on for a long time, but we are seeing an increase in the number of soil samples. We're also seeing an increase in the depth and more technology used in the manner that these samples are taken which can lead to the greater possibility of contact with underground utilities. Now that's why we're here because safety is a priority in these issues. Contact with a buried power line can cause damage to the system, okay, that's more of a nuisance. But it can also cause injury and death and those are things that we are very concerned about. We've heard testimony today that to the best of their knowledge there's never been an incident where there has been a contact. Well let me tell you the type of sampling that is taken at the depths taken with metal soil probes can nick the covering on a power line. You may not have an immediate failure with that facility, but 6 months, 12 months down the line you can have a complete failure because of the degradation of the line and the damage to the facility. Even with strict liability in place, 6 months, 12 months down the line, we may not know how that line got damaged. Now if there had been a call to One-Call, the power line locations were marked, soil sampling did not take place at that point, no damage would happen. So there's a benefit there. So there may have been some contact with facilities that was unknown at the time that it happened. Now we do have facilities that run in the ditch just inside the property line and we also have some that may crisscross property line. The lines that run out to irrigation system, the majority of the time those are owned by the landowner, but there are times when those are owned by the utility as well. And so it's important that those be identified in the process of taking soil sampling. We've heard the concerns here that sometimes, you know, when we place a power line, if it's a primary line, a secondary line, it's going to be at least 42 to 48 inches underground. The lines, the feeder lines, the little 480 lines that run out to the irrigation system, that might only be 24 inches. But over time as we farm and we have soil erosion, those lines may come up. So they need to know where they are, even when taking a 10-inch or 12-inch sample is important to preserve safety in those situations. And we do feel that that is important. One-Call, I should say, I feel very strongly about this, it's not a punitive requirement. It's a safety act, it's a simple matter of making a



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

phone call. And the more specific in the activity that's going to take place and where it's going to take place ensures that you can get greater accuracy and you may, in fact, get clearance for 30 acres of sampling with one phone call. With that I would be happy to take questions. [LB484]

SENATOR FISCHER: Thank you. Are there questions? I have one here. Currently if you don't make the call, do you know what the penalties are? [LB484]

KRISTEN GOTTSCHALK: It depends. I believe if you come into contact with a gas line, it's \$1,000 a day. I don't know if the One-Call gal is going to come up. With other facilities, it may be \$500 a day. [LB484]

SENATOR FISCHER: So besides the penalties that a person can be faced with, what is also the liability concerns if one of your lines is hit by someone? [LB484]

KRISTEN GOTTSCHALK: If a line is...well... [LB484]

SENATOR FISCHER: And they don't make the call. [LB484]

KRISTEN GOTTSCHALK: The main concern is risk of injury or death and that's probably the primary reason that we're involved with One-Call. The liability concerns, if One-Call is not called, somebody slices through a power line, hopefully they survive that, then they would be responsible for repair of that utility line. I don't think they want to face their neighbors in that aspect. [LB484]

SENATOR FISCHER: With this bill, if the people don't...aren't required to make that call, do you think there should be something in here with regards to liability? [LB484]

KRISTEN GOTTSCHALK: As I mentioned before, even with liability in place, if there's minor damage to facilities, and this can happen with electric and gas, and phone lines, and the failure doesn't occur for several months, you have a problem proving who is liable in that situation. So in some situations, you know, you would need to ensure that strict liability stays in place. But strict liability doesn't cover every situation. [LB484]

SENATOR FISCHER: I don't know if you can answer this with regards to pipelines, you know, we're facing pipeline issues, if there is a pipeline and a call isn't made and there is leakage from that pipeline into our aquifer, and they don't make the call, who is responsible? [LB484]

KRISTEN GOTTSCHALK: If they did not make the call, it's the excavator's responsibility. [LB484]

SENATOR FISCHER: Would it be the property owner who hired someone to come out

and do a soil sample? [LB484]

KRISTEN GOTTSCHALK: It would be the individual taking the soil samples. And that's where it becomes a bigger issue, you know, where we have the ag exemption in place that was done as you read through the Attorney General's Opinion it was believed that the landowner has an intimate knowledge of what's on their ground. And we feel comfortable with that to an extent. A third-party individual coming on to that property does not have that same intimacy, should not be exempt under this same provisions and would be held liable. It would be the person making the excavation that is liable, my understanding of the law. [LB484]

SENATOR FISCHER: With the number of calls that some of the proponents gave us information on, we'll see the calls increase, if this soil sampling is done, do you think that your people are capable of handling those calls within two days? [LB484]

KRISTEN GOTTSCHALK: Well I think in some ways when we started talking about the number of soil samples being taken and equating each punch in the ground as a call to One-Call, I think that's kind of unrealistic. We're going to be given an area for a call, an area for a locate for those, so while the call numbers will increase and we have an obligation through safety to mark those, we will handle it. [LB484]

SENATOR FISCHER: Okay, thank you. Other questions? Senator Campbell. [LB484]

SENATOR CAMPBELL: Thank you, Senator Fischer. Ms. Gottschalk, and I want to go back to a line of questioning that Senator Dubas had and that is, over the years, have your associations been able to do educational with ag community about these issues and what's a safe depth and what's not and any guidelines? [LB484]

KRISTEN GOTTSCHALK: I would say that our systems do a significant amount of education with respect to electric safety with our consumers. One of the things is, is education on the need for One-Call and the education for trying to differentiate between when One-Call should be called and when there are common ag practices that probably don't require that. We do that now; I think we will continue to do that now that it's become more apparent that more soil samples are taken. You know, we heard that all those soil samples, nothing has happened. Well my dear friend, Bill Hartman (phonetic) out there has been driving a car for more than 65 years and in those 65 years he never hit a deer until this year. Just because it has never happened before, doesn't mean that there's not a risk factor involved. So we need to beef up our education now that we know more about what is going on. [LB484]

SENATOR CAMPBELL: You just mentioned...you just said, well, there were situations or there were examples of when, no, you didn't call them, what would the utilities say those are? [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

KRISTEN GOTTSCHALK: When we have a failure in a line? [LB484]

SENATOR CAMPBELL: Well no, you said that there was a point...we try to provide information about when you need to call and when you don't need to call and that's what piqued my interest when you do not need to call. [LB484]

KRISTEN GOTTSCHALK: Well if in the interest of safety, calling every time is a wonderful thing. It's not practical for a typical day-to-day farm operations tilling that. We try to explain the parameters of the One-Call. So that would mean tilling of the soil for gardening and ag practices. Digging fence posts, typically, is included in that, but we encourage calling One-Call when you're putting in a new line where you haven't had an existing line and you're unaware of exactly where a utility feature may be. So it goes across the board. Ideally, you know, any time you put a shovel in the soil there's a potential for contact, we understand it's not practical to call every time. And we're excavators too. We want it to be a commonsense approach. We don't want it to be a burdensome or punitive approach. [LB484]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB484]

KRISTEN GOTTSCHALK: Thank you. [LB484]

SENATOR FISCHER: Next opponent please. Are there other opponents to the bill? We have two more? Okay. Good afternoon. [LB484]

JOHN JORDISON: (Exhibit 17) Good afternoon, Senator Fischer. Members of the committee, my name is John Jordison, for the record that's spelled J-o-h-n J-o-r-d-i-s-o-n. And I'm employed by Great Plains Communications, but I am also currently serving as the chairman of the Nebraska Telecommunications Association's Legislative Committee and it's on behalf of the NTA that I appear in opposition to LB484. Our opposition is based on our longstanding policy of opposing any exemption to the One-Call Notification Act. In my own company's case we have hundreds of miles of buried fiber optic cable across the state of Nebraska. Fiber optic cable that just the cost of the cable and burying that cable can run to \$14,000 or \$15,000 per mile. And not only Internet and voice traffic is carried over that fiber optic cable, but also the services utilized by the Nebraska Telehealth System and by the Distance Education System. I would just make two points in the interest of brevity. One is to read a letter...a paragraph from a letter from Nebraska Central Telephone Company citing an instance where they located cable for an entity that was doing core sampling to detect, in this case, underground storage tank leakage, the quote, we located our facilities in the area requested, but the contractor took core samples beyond the area of the requested locates and bored through conduit and fiber optic cable. This resulted in a 14-hour outage to the Region 26 Public Safety Answering Point and the entire Taylor, Nebraska,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

exchange and the damage required a replacement of over 125 feet of fiber optic cable and conduit. The last point I would make, I know there's been a lot of discussion about the number of samples that might be taken, as one of my colleagues suggested, when you put in a fence in your backyard, you only make one call, you don't make a phone call for every one of the 24 postholes required to be dug for that fence. Senators, thank you for your time; I'd be happy to answer any questions if there is some. [LB484]

SENATOR FISCHER: Thank you, Mr. Jordison. Are there questions? I see none. Thank you very much. [LB484]

JOHN JORDISON: Thank you. [LB484]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB484]

JOHN LINDSAY: Senator Fischer, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y. I'm appearing today on behalf of the Nebraska Natural Gas Association and its members of Black Hills Energy, SourceGas and Northwestern Energy. We're here in opposition to the legislation. I think the history of the act, the goal of the act has always been safety and reliability. And I don't think we can stress enough the importance of those goals. I think Mr. Jordison just talked about the inefficiencies that can be caused through a large number of people when you lose...when you have an outage of computer and telecommunication services over a large period of time. Other testifiers have talked about the inefficiencies that can be...that can happen when you lose...whether it's a power to an area or if you lose natural gas, if your restaurants have to close down because there's no way of heating food, a lot of inefficiencies can be achieved. I think the effort of making a call, I think Mr. Jordison is absolutely correct, making one call for a field as opposed to each individual, as he used in his example, each individual post that is put into a fence in your backyard. That, while it does take some time, as Mr. Hartmann testified, it's a...it's kind of...it can be a pain to make that call, but keeping, in his case, his employees safe, it's worth it. I'd be happy to answer any questions. [LB484]

SENATOR FISCHER: Thank you, Mr. Lindsay. Are there questions? Senator Campbell. [LB484]

SENATOR CAMPBELL: Thank you, Senator Fischer. Mr. Lindsay, are there any guidelines nationally on One-Call? I mean, we're talking pretty much Nebraska here, but you're representing the companies, do you know anything? [LB484]

JOHN LINDSAY: I don't know if there's guidelines. I know there's legislation that was introduced, I believe in the last week, at the national level that would actually remove some of the exemptions that are currently in some of the state laws. But I don't know if there are any guidelines other than that type of a thing. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR CAMPBELL: I guess I just keep questioning that we've just...we've been doing this for so long and everyone is out there and providing education and yet we're just coming to this point that it's...I'm just trying to go through that information and figure out why we are at that point. (Inaudible) Senator Dubas' typical question here. [LB484]

JOHN LINDSAY: I think some of that is, I believe the legislation arose in '92 and '93 when I think the utilities...those who have underground infrastructure started working from their own...they had a loose affiliation of "call before you dig" type thing, but wanted to expand that. And based on, again, safety and reliability came together and worked over a couple of sessions back at that time, ended with Senator Kristensen carrying the bill in, I believe, '94, and I actually carried the bill in '93, didn't have the success he did, but the...that...in '94 I know there was extensive discussion about production agriculture, and so there was some of these questions were anticipated. Just having a farmer who does what a farmer does every day doing that, it's difficult to interfere with that. I think what's happened, I don't believe the soil sampling was as extensive or pervasive as it is now because I think that has developed as farming has become more and more of a science and more and more of a...really gauging the inputs. So I think that has developed over time that it is an industry that has grown to get to the level of where we are. So I think it's just...I think the way things have developed that the law has to...is...now has to respond to or not respond to. [LB484]

SENATOR CAMPBELL: And I would guess some of that early legislation really piqued most of the urban nature of calling and checking. I know from our own business that in a very dense population you are checking pretty much constantly on certain issues. But it just still seems strange that we've reached, you know, we've gotten to this point. I was just trying to figure out if you have any insight to that. [LB484]

JOHN LINDSAY: That's just my guess. [LB484]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB484]

JOHN LINDSAY: Thank you. [LB484]

SENATOR FISCHER: Next opponent please. Good afternoon. [LB484]

MIKE LOEFFLER: (Exhibit 16) Good afternoon. Thanks for having us. It's always hard to be the last person of the day. [LB484]

SENATOR FISCHER: You're not. [LB484]

MIKE LOEFFLER: Oh, there's someone behind me? Good. My name is Mike Loeffler, and my last name is spelled L-o-e-f-f-l-e-r, and I'm here testifying on behalf of Northern

Natural Gas Company. Northern Natural Gas Company would like to go on record in opposition to LB484. Northern Natural Gas Company operates an interstate pipeline system of approximately 15,000 miles of pipe. It extends from southwest Texas up into our market area up in Minnesota, Wisconsin, the Upper Peninsula. We have more than 1,600 miles of pipe here in the state of Nebraska. As an interstate pipeline, Northern is proud of its safety record and the focus we place on safety. Northern is a member of the Common Ground Alliance which supports Nebraska's One-Call System. Northern, we do receive requests. Every year we receive approximately 17,000 locate requests. Of this number approximately 90 percent can be handled over the phone. That is, we do not have to go out and do physical markings. In addition, our safety policies require that whenever an excavator is digging within 25 feet of one of our facilities, our personnel remain on site during excavation to ensure the safety of the workers and the integrity of Northern's pipeline. Now earlier today you were given some bad information about pipeline location. I don't believe that that was done wrong...with that intent, but what they said was just inaccurate. First, they said that most pipeline is buried along the fence line. That is not true; pipeline can be buried anywhere. You can use a fence line as an area of demarcation for safety. Pipeline can go across fields. It can crisscross across fields. It can be anywhere. The second thing that you heard is that you can rely maybe perhaps on a sign that says that there's a natural gas pipeline facility, and it is true, we mark all of our pipelines with gas signs. But notoriously these signs are also victims and targets of vandalism, people shooting at them, people taking them. So the absence of a sign does not ensure your safety. As a matter of fact, the only way to ensure your safety is to make the One-Call locate request. The fact that someone was up here that does not own, does not operate a pipeline was telling you their presumptions about where they think pipelines are located underscores the reason why they should be making those One-Calls because they're making presumptions that are false. They are making presumptions that could put themselves in danger. Now Northern, in conjunction with other underground operators, has been negotiating with representatives of the soil sampling companies for a legislative solution that is commonsense. Whatever that commonsense solution may be, it is not to grant a blanket statutory exemption to an entire industry who has a wide variety of practices ranging from handheld digs to pneumatically-driven probes 36 inches or more into the ground. That is not a commonsense solution. We are willing to continue to work with the soil samplers to find one. Now LB484 makes no distinction between the 8-inch deep soil test that are hand-driven and the 36-inch probes that are systematically machine-probed into the ground. Ironically, all that we're asking these soil samplers to do is to make a free 3-digit phone call 48 hours in advance of going to the area that they know they're going to be going into. We think that that itself is a commonsense solution. Now it should be noted that despite our best practices and despite our emphasis on safety we do have hits on our pipeline each year. Most of these are caused by third-party damage. And fortunately, most of them do not result in injury or death, but we do have incidences of third-party damage where people do not make the One-Call and these people are severely burned, severely injured, and they risk their life. Northern

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

opposes LB484 in its existing form. We ask that the bill be held in committee while we continue to negotiate for a commonsense solution, but in the meantime we do ask you to make sure that people who are making bad presumptions about pipeline locations continue to work for their safety by making One-Call locates. I'm open for questions. [LB484]

SENATOR FISCHER: Thank you, Mr. Loeffler. Are there questions? Senator Campbell. [LB484]

SENATOR CAMPBELL: Thank you, Chairman Fischer. Sir, it's helpful because you're representing a broader area, what legislation or guidelines have other states done in this northern area that you serve? [LB484]

MIKE LOEFFLER: You know, we have done a survey of states in our area that we have our business footprint and they're all over the board. Some states exempt certain things; some states have depth limits; some states, like Nebraska, have wholesale exemptions for certain types of activity. I do have a chart; I'd be happy to send you one. But I don't think I could systematically summarize all of the states because the laws are all over the board. [LB484]

SENATOR CAMPBELL: That would be terrific if we could have that. [LB484]

MIKE LOEFFLER: I'd be happy to do that, Senator. [LB484]

SENATOR FISCHER: Are there other questions? Senator Louden. [LB484]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Do you have all of your pipelines mapped in Nebraska here that you have? [LB484]

MIKE LOEFFLER: Yes, sir. [LB484]

SENATOR LOUDEN: And do you have the depths that they're buried at? [LB484]

MIKE LOEFFLER: We have the depths that they were originally buried at. Unfortunately, in states like Nebraska, Iowa, Minnesota, where we do the majority of our business, they are agricultural areas in large part and the pipeline depth is subject to wind erosion, soil erosion, even when a farmer changes their tilling practices it can change the depth of the facilities. Now we do make a concerted effort to identify any pipeline that we have at shallow depth, we prioritize that and we try to...we make every effort to ensure the safety. But the fact is, is that there is wind erosion, there is soil erosion, and now are changes in farming practices that change the depth of the pipeline. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR LOUDEN: What I'm wondering about is if somebody calls up and says well they're going to soil sample to 8 inches or something like that and so, you know, call in and you have your pipeline through there, do you tell them, no, you're all right because we're buried at 36 inches or 24, or do you go out anyway and take a look? [LB484]

MIKE LOEFFLER: No, Senator, that's a good question, I appreciate that. Whenever there is a locate and we know that our facilities are there, we go and physically locate the facilities with flagging. We don't say, oh, how deep are you digging? Oh, you should be good at that depth. Further, as I testified, whenever we have excavation within 25 feet of our facilities, and you're right, we do have them mapped, if we know there's any excavation going on, we have one of our personnel stationed there to ensure the safety of the excavator and the integrity of our pipeline. [LB484]

SENATOR LOUDEN: Now can...I presume you're mostly located in eastern Nebraska? [LB484]

MIKE LOEFFLER: Yes, sir. [LB484]

SENATOR LOUDEN: And do you have offices or facilities every so often? Is there such a thing that you can...that someone can actually call that office and a guy would come out and locate that for you without going through the Digger's Hotline? [LB484]

MIKE LOEFFLER: Well first of all, there is a few questions, if you don't mind if I take them separately. Yes, we do have locations all throughout our 15,000-mile pipeline system. We don't just have locations here in Omaha. That's where we're headquartered, but we do have field locations and we do have people out in the field that can go and make these physical locates when they need to be located. I recall that I said that 90 percent or more of all of our requests for locates can be cleared over the phone because we can look at the mapping of our facilities and say, go ahead, you're free to go. And I think that's the testimony that you heard today is that even though you're bombarded with a large number of soil sampling, most of these can be cleared over the phone. People can say, I don't have facilities in that section; or I don't have facilities in that part of the county. But where we do have facilities, we do have field locations; we do have people going out there. And I forgot the last part of your question, I'm sorry. [LB484]

SENATOR LOUDEN: No, that's close enough. Then if you're within...you must have a guideline if they're going to be working within a half of a mile of your pipelines, then you will go and locate that pipeline or something? [LB484]

MIKE LOEFFLER: We will locate a pipeline...if someone is going to be digging near one of our pipelines, we go out and locate it. Now, I got to tell you, I don't know offhand whether that's half a mile or so... [LB484]



SENATOR LOUDEN: Well I'm wondering if they're in the same quarter section or the same section. [LB484]

MIKE LOEFFLER: ...but we...I can tell you...yeah, we would go out and mark the pipeline, most of those locations. Again, I can't tell you exactness on that. I can tell you that our procedures ask us to exercise an abundance of caution so we go out and we probably over physically locate and that's why we have people there even though the law nor One-Call requires it, we keep our people there during the excavation when they're close to our pipeline. And you know, I'm going to cheat a little, I want to respond to something else. Someone said, well we've never had any problems in damaging facilities. That may be true to their knowledge, but we do have damage to our facilities that does not result in pipeline rupture. We have people that go and they dig and they nick the coating of the pipeline. We know that that happens because when that coating is nicked, over time it will corrode at a rate faster and so you'll have corrosion. We have smart pigs, we have other mechanisms to go and identify these areas, but we know that hits are being made. They're just not going through the pipe itself. [LB484]

SENATOR LOUDEN: Okay, thank you. [LB484]

SENATOR FISCHER: Other questions? Mr. Loeffler, can your company handle calls that come in with these soil probes do you think after listening to the testimony? [LB484]

MIKE LOEFFLER: Absolutely. We'll put the resources there. We believe in a primacy of safety is one of our core company principles. [LB484]

SENATOR FISCHER: In working with the supporters of the bill, and this isn't fair because I didn't get to ask them, so I will be speaking to them, but in working with the supporters of the bill, is this an inconvenience for them or what do you see as their main push in this and your...I take it, your main push is safety, first of all, against that, but what is their main push? [LB484]

MIKE LOEFFLER: I don't want to presume to speak for them too much, but I know that the two... [LB484]

SENATOR FISCHER: And I hate to put you on the spot, but I'm getting...after two hours I'm going, okay guys. [LB484]

MIKE LOEFFLER: Why aren't people just calling? [LB484]

SENATOR FISCHER: Exactly. That's what I'm thinking. Why don't you just make the call? [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

MIKE LOEFFLER: Senator, I ask the question of the proponents of the bill in those exact words, and again, I'm not...they basically said it's a time thing. They said that they want to be able to go out when they want to go out. Now I'm not...I won't speak for their soil sampling practices, but I will speak to the fact that if they can do a little bit of time management they can ensure the safety of their employees and they can ensure the safety of the facilities. [LB484]

SENATOR FISCHER: If you...if this bill would release you of any concerns on people who don't call and they handle all their own liabilities, could you support it then if there was an amendment put on making them liable for any problems? [LB484]

MIKE LOEFFLER: Senator, our first preference, and maybe I'm not answering your question directly, our first preference is safety, not paying for damage. [LB484]

SENATOR FISCHER: Okay, thank you. Other questions? I see none. Thank you very much. [LB484]

MIKE LOEFFLER: Thank you. [LB484]

SENATOR FISCHER: Other opponents to the bill, any other opponents? Is this our last one? Anybody else? Good afternoon. [LB484]

SUSAN LYNCH: Good afternoon, Senator and members of the committee. My name is Susan Lynch, S-u-s-a-n L-y-n-c-h, I'm the director of Digger's Hotline and I promise to take just very, very short amount of your time. I just wanted to clear up a little of the open-ended questions that were left from some of the other people who had come up. First of all, Senator Fischer, I just wanted to explain the process of the One-Call. I know that was one of the questions that had happened. What happens is somebody excavates in the state of Nebraska. They contact Digger's Hotline. Digger's Hotline takes the information and will put that information on a map of where they plan to excavate and then they will notify the utilities that are registered under that...where these people will be digging within...they have 48 business hours to get out there and locate the facilities. Now in many instances, especially when you get into rural Nebraska, there will be large amounts of land where there will be no utilities present. So when an excavator calls us and says I'll be working in these quarter-sections, and we put it on our map and no utilities need to be notified on that, that's what we say is the all-clear which you've heard referenced many times. And when you get an all-clear, and I know that you had mentioned some of the most frustrating part of it is waiting the 48 business hours, Senator Loudon. If you receive an all-clear, and no utilities need to be notified on that, you may begin digging right away. You can bury your horse right away that same day if no utilities are notified on that locate request. So I think that's a very important thing to keep in mind with the fears that we have with the 48-business hour rule on that. And then, Senator Campbell, you had...and this is a...I'm glad you brought

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

this up, because this is excellent, you know, why are we at this point right now where we're just discovering they're soil boring and they didn't know about it, and we didn't know about it, I think what is important to remember is although this activity has been happening within the industry as they've stated 50 to 60 years, One-Call is only 15 years old. We are a very young industry. The process is a very young process and, you bet, we've been educating since day one, but we may not have educated to all the parties that need to hear that message. Now the compensation for One-Call is it's funded and I know, I think...I believe, Senator Price, you had asked this question, is funded by the member utilities. So if somebody calls and says they're going to be digging in this area, and I notified, for example, Northern Natural Gas; Northern Natural Gas will pay for that notification. It ranges a dollar to maybe \$1.30 depending on how we notify them. Now a certain percentage of that, obviously, will come back to the call center to pay for our employees, our computers, our lights, our overhead, but then a large percentage of it will go to actual public awareness and outreach activities across the state of Nebraska. And we have...every year we grow that effort and we grow that effort by combining forces not only with the utilities in the state of Nebraska, but combining forces with the excavators. And as a collaborative group, have really been expanding that message out. Now I know that this initially came about because we had a locator in the field speaking to somebody who is doing soil borings. Well, they've been instructed to give that message and to give that education. And that's where that came about and we will continue to push those efforts and try to educate the fields that need to be educated, but keep in mind it's a young industry and so we still have a lot of education that we need to get out there. With that that's all I have. Are there any questions? [LB484]

SENATOR FISCHER: Thank you, Ms. Lynch. Are there questions? Senator Price. [LB484]

SENATOR PRICE: Senator Fischer, thank you. Thank you for coming and testifying, Ms. Lynch. The question I have is on the all-clear. So a company calls up or an entity calls up or a personal property owner, and then if there's nothing on their land, you're encumbered to tell them there's nothing there, they can go...they're free to dig? [LB484]

SUSAN LYNCH: Absolutely. [LB484]

SENATOR PRICE: Okay, great. [LB484]

SENATOR FISCHER: Other questions? Senator Louden. [LB484]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. I guess we'll get back to burying this horse, but the question is... [LB484]

SENATOR FISCHER: Somehow I knew that was going to come up. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR LOUDEN: The question is in order to dig a hole of any kind in the state of Nebraska it's against the law to do it unless you call the hotline is that what you're saying? [LB484]

SUSAN LYNCH: Any time you excavate in the state of Nebraska. [LB484]

SENATOR LOUDEN: No matter where it is, if there aren't any lines or pipelines or anything within miles. Like I say... [LB484]

SUSAN LYNCH: Unless you're putting them in a public landfill that's been approved by the city ordinances or in a graveyard. [LB484]

SENATOR LOUDEN: No, I'm talking about digging a hole out on a ranch or something like that. And there aren't any lines within four or five miles, but I still got to...and by law I still got to call that hotline before I dig that soil. [LB484]

SUSAN LYNCH: Absolutely. And it's going to take you about three minutes and it's not going to cost you a thing and if there's nobody out there within 20 miles, you'll be able to bury that horse in ten minutes. [LB484]

SENATOR LOUDEN: It will take longer than that to describe to the person at the hotline where the hell it is because I've been down that road before. Anyway, and isn't that what this bill is all about is...the question is, is if...if it's, there's obviously nothing out there, why should we have to call the hotline? And the same way with digging a hole out there on the ranch or someplace where it's obvious there's nothing out there, why should we have to call a hotline and that's to me is what this bill is all about. [LB484]

SUSAN LYNCH: Well and I appreciate that. I think the first thing to mention is the first time you call it, you call it because you don't know if it's obvious that there's anything out there, correct? I mean... [LB484]

SENATOR LOUDEN: Well there's nothing there...nothing been out there since we took it away from the Indians. [LB484]

SUSAN LYNCH: Right. Right. Okay, so the day you took it away from the Indians, you knew there was nothing located out there, correct? But over the years, we have new technologies, we have new practices, we have emerging energy, we've got wind farms, we've got ethanol plants, where they are putting pipelines through the cornfields now. They are putting fiber through the cornfields now. The TransCanada Pipeline, you know you brought up that excellent example, they have just gone through that eastern half of the state, so when you took the land from the Indian, the following year I can't guarantee you that TransCanada didn't put a pipeline line through there. [LB484]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 07, 2011

---

SENATOR LOUDEN: Yeah, but in order to get that across, they had to get an easement to put it across. So that is recorded someplace if that pipeline has been put in there. [LB484]

SUSAN LYNCH: Right and so it's recorded someplace, but is it recorded by the third-party vendor that is coming in and doing the soil samples? Are they provided that information? That is where the concern is. By making the simple one free call we can allow that person to know, you bet, there is a pipeline somewhere in that area, let us locate it for you before you start probing into the ground. [LB484]

SENATOR LOUDEN: Okay, thank you. [LB484]

SENATOR FISCHER: Any other questions? Comments? Senator Campbell. [LB484]

SENATOR CAMPBELL: Thank you, Senator Fischer. Ms. Lynch, let's just say that the senator has called in and he has double-checked exactly all this territory. Do you keep a record of that so he doesn't have to call in every single year? [LB484]

SUSAN LYNCH: We take in over 275,000 on average, so we have a record for up to five years of every call that is there. But, you know, I can't say that if he doesn't call me the following year and he hits something, if he goes, well they have a record, I called in a year ago, you know, the utilities don't have to guarantee...can't guarantee the lines for a year because they don't know what's gone in throughout that year. So it is a simple notification of letting the property owner know, this is what is in that area or there is nothing in this area, either way, you've made the free call, you now know what is there, what isn't there and you can dig safely. [LB484]

SENATOR CAMPBELL: Thank you. [LB484]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB484]

SUSAN LYNCH: Thank you. [LB484]

SENATOR FISCHER: Any other opponents to the bill? Anyone wishing to testify in a neutral capacity? I see none. With that I will...oh, Senator Hadley, would you like to close? Senator Hadley has this figured out. He waives closing. (Laughter) And we will...we will adjourn the hearing on LB484 and adjourn the hearings for the day. Thank you. (See also Exhibits 6, 8, 9, and 18) [LB484]