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Transportation and Telecommunications Committee
February 14, 2017

[LB70 LB410 LB459 LB460 LB618 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 14, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on a confirmation to the Motor Vehicle Industry Licensing Board, LB70, LB410 LB459, LB460, and LB618. Senators present: Curt Friesen, Chairperson; Jim Smith, Vice Chairperson; Bruce Bostelman; Tom Briese; Suzanne Geist; Mike Hilgers; Dan Hughes; and John Murante. Senators absent: None.

SENATOR FRIESEN: (Recorder malfunction)...Telecommunications Committee. I'm Curt Friesen from Henderson, District 34, I'll be Chairman of the committee. I'll begin with a few procedural items that I expect. Please silence all cellphones and other electronic devices. And again, I would ask those in the audience to be quiet while everyone is testifying, no displays of opposition or emotion of any kind. We keep a fair hearing process. We'll be hearing bills listed in the order listed in the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We have an on-deck chair over there and they can be ready to go when your turn comes you'll be ready. If you'll be testifying, I ask that you legibly complete one of the green testifier sheets located on the table just inside the entrance. Hand the completed testifier sheet to the page when you sit down to testify. Handouts are not required, but if you do have a handout we need 10 copies. One of the pages will assist you if you need help. When you begin your testimony it's important you clearly state and spell your first and last names for the record. If you happen to forget to do this, I will stop you and ask you to do so. Please keep your testimony concise and try not to repeat what already has been covered. We will use the light system, you'll have five minutes: four minutes of the green light, one minute of the amber light, and then when the red light comes on I'll ask you to wrap up. Those not wishing to testify may sign-in on the pink sheet by the door to indicate their support or their opposition to a bill. And now I'll introduce members of the committee. To my far right is Senator Tom Briese from Albion, representing District 41. Next to him is Senator Bruce Bostelman from Brainard, representing District 23. Next to him will be Senator John Murante from Gretna, representing District 49. And he'll probably be joining us shortly. Next there we have Senator Jim Smith, the Vice Chair of the committee, from Papillion, representing District 14. And to my immediate right is committee counsel, Mike Hybl. On my left is committee clerk, Elice Hubbert. Senator Dan Hughes from Venango, representing District 44. Next to him is Senator Mike Hilgers from Lincoln, representing District 21. And next to him is Suzanne Geist from Lincoln, representing District 25. I have two pages assisting us this afternoon: Heather Bentley from Miller, Nebraska, freshman at UNL majoring in ag economics; and Jade Krivanic from Omaha, a junior at UNL majoring in economics. With that, we'll open the hearing on LB618. Oh no, we're going to have a confirmation hearing first, sorry. Confirmation of William Ashburn. We would have made you wait until last, but it would be really mean of us to do that. Welcome.

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BILL ASHBURN: Thank you. [CONFIRMATION]

SENATOR FRIESEN: So I guess I would ask if you just want to tell the committee a little bit about yourself and I guess what you think of the position or whatever else you want to add. [CONFIRMATION]

BILL ASHBURN: Okay. [CONFIRMATION]

SENATOR FRIESEN: And we'll probably have some questions. [CONFIRMATION]

BILL ASHBURN: (Exhibit 1) All right, thank you. Good afternoon. My name is Bill, B-i-l-l, Ashburn, A-s-h-b-u-r-n, and I'm here today for the confirmation of the Motor Vehicle Licensing Board. This would start my second term. There...my background, basically I was born and raised in Hastings and I graduated from Nebraska Wesleyan, and then I started working in the telecommunications business. I spent 35 years, over 35 years, in that business, involved...well, I worked for the Lincoln Telephone Company, Aliant, Alltel, and Verizon. Did a lot of different things in my career. The last 10, 11 years I was on the wireless side of the business: sales, marketing. Also did some regulatory work throughout my career. And I think with my background of operations and regulatory, it's a nice fit for the Motor Vehicle Licensing Board. And like I said, it's just the start of my second term and I've enjoyed it. We meet three or four times a year, and we actually have a meeting coming up Thursday so. [CONFIRMATION]

SENATOR FRIESEN: Thank you. Thank you, Mr. Ashburn. Any questions from the committee? Senator Bostelman. [CONFIRMATION]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Thank you, Mr. Ashburn, for being here today and for this. Could you tell me a little bit about what you've done already on the term that you've just come off of? Could you explain to me a little bit about what you're... [CONFIRMATION]

BILL ASHBURN: Well, like I said, we meet three or four times a year. And in those meetings we review various violations for the car dealers and rule on hearings...we'll have hearings on these violations before the board. And those violations range anywhere from advertising violations, sales violations, just a number of different things. It's a nice little board. It's actually...the makeup of the board is from car dealers, and so they kind of regulate themselves. And it's been very interesting as far as all the rules and regulations that go into the process. [CONFIRMATION]

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SENATOR BOSTELMAN: Thank you. [CONFIRMATION]

SENATOR FRIESEN: Thank you, Senator Bostelman. Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Mr. Chair. Mr. Ashburn, thank you for your willingness to serve on this board. I really appreciate the folks in the community that are willing to sacrifice their time to do this. And it looks like you're represented by a very good senator. I know your application hasn't been updated for a while, but it was Kathy Campbell, and now it's Senator Geist. [CONFIRMATION]

SENATOR GEIST: Not only, I'm also his neighbor. [CONFIRMATION]

BILL ASHBURN: My neighbor too. A fine addition to the Legislature I might add. [CONFIRMATION]

SENATOR SMITH: And you have some pretty impressive references as well. And there's one there I won't hold against you, but so congratulations on those references. And again, thank you for your willingness to serve. [CONFIRMATION]

BILL ASHBURN: Thank you. [CONFIRMATION]

SENATOR FRIESEN: Thank you, Senator Smith. Any other questions or comments from the committee? Yep, thank you for serving. We appreciate anybody that's always willing to step forward and fill these positions. And we'll look forward to seeing you down the road. [CONFIRMATION]

BILL ASHBURN: Thank you. It's a way of giving back to the great state of Nebraska. [CONFIRMATION]

SENATOR FRIESEN: Yep, thank you very much. [CONFIRMATION]

BILL ASHBURN: Thank you. [CONFIRMATION]

SENATOR FRIESEN: Are there any wishing to testify in favor of confirmation? Seeing none, are there any that wish to testify in opposition? Seeing none, anybody wishing to testify in a neutral capacity? Seeing none, we'll close the confirmation hearing for William Ashburn. We'll now open the hearing on LB618. Welcome, Senator Wayne. [LB618]

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SENATOR WAYNE: Welcome, Chairman Friesen. Good afternoon, Transportation and Telecommunications Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e. I represent the 13th Legislative District in north Omaha and northeast Douglas County. LB618 will allow the Public Service Commission to use money from the Transportation Network Company Regulation Fund to pay for actual oversight of the fund and management of the fund itself. As written, the language itself is restrictive and does not allow money in the fund to be used even for its own administration, even though the money would be sufficient to cover the cost of administration of the actual fund. This is not a request of additional funds to be appropriated, there is no fiscal impact. It's taking current funds and allowing them a little more flexibility to make sure they can operate more efficiently and effectively. The simple change in the language modifies how the money can be used in a department. A small change to the existing wording is needed, and that's what we did in this bill. And again, this allows the fund and the department to operate more efficiently and effectively. After I conclude my remarks there will be chairman of the Public Service Commission, Tim Schram, here; and also commissioner Crystal Rhoades will be testifying and can explain in more depth how they use the fund currently and how this will free up some efficiencies within their organization. And with that, I would answer any questions at this time. [LB618]

SENATOR FRIESEN: Thank you, Senator Wayne. Are there any questions from the committee? Seeing none, will you stick around for closing? [LB618]

SENATOR WAYNE: I will stay around for closing. [LB618]

SENATOR FRIESEN: Okay. Proponents who wish to testify in favor of LB618? Welcome, Commissioner Schram. [LB618]

TIM SCHRAM: (Exhibit 1) Good afternoon, Chairman Friesen, members of the Transportation and Telecommunications Committee. I am Commissioner Tim Schram, spelled T-i-m, last name S-c-h-r-a-m, chairman of the Nebraska Public Service Commission, representing the 3rd District. I'm here today to testify in support of LB618, the Transportation Network Company Regulation Cash Fund was created under LB629, which went into effect in May of 2015. The fund contains the fees remitted to the commission as required by 75-305, and is to be used for the regulation of transportation network companies, TNCs. LB618 broadens the use of the fund to allow for regulation of motor carriers under Section 75-301 and administration of the fund. The new language will allow for flexibility in funding enforcement and regulatory activities, which may have overlap between TNCs and other motor carriers. The current cash balance of the fund is sufficient to cover any additional expenses allowed under LB618, however, the cash fund appropriation in fund 54 is not enough to absorb any substantial increase in expenditures. Broadening the use of the fund without appropriating any additional cash fund spending

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authority effectively nullifies any impact that may result from this bill. The commission would therefore request that the cash fund appropriation be increased to \$20,000 with a corresponding PSL increase of \$15,000. Such an increase would allow the commission to utilize the existing cash balance without requiring any increases in fees. Thank you for your time, and I urge your support of LB618. And I would be happy to answer any questions you may have. [LB618]

SENATOR FRIESEN: Thank you, Commissioner Schram. Any questions from the committee? Senator Hughes. [LB618]

SENATOR HUGHES: Yes, thank you, Chairman Friesen. Thank you, Commissioner, for coming. Just for my background, give me what a transportation network company is. [LB618]

TIM SCHRAM: Transportation network company was under LB629 a number of years back. In Nebraska, the commission has authority over motor carriers for-hire, taxi cabs, open class. The TNCs came to the Nebraska market and asked to be...do business in Nebraska. And working with the Legislature, the commission's main concern at that time was is that they had the proper insurance. So a TNC is a platform-based technology--the Uber and Lyft--that uses smartphone applications to arrange rides instead of hailing rides. [LB618]

SENATOR HUGHES: So can you give me...is this an annual fee or how does this fund...how does the money come into this fund? [LB618]

TIM SCHRAM: Yes, each TNC has an annual fee they pay to the commission. Now in the commission's transportation department, we have a director and we have one support staff and two investigators. And so they, the transportation department, deals with taxis, open class, household goods movers, and the TNCs. So we're asking for the flexibility to use this cash fund to spread some of those costs out a little more for administrative cost of our transportation department. [LB618]

SENATOR HUGHES: Do you have a maximum that you can use for administrative? Usually in contracts in government there's a 5 percent or a 10 percent maximum of the fund that can be used for administrative. [LB618]

TIM SCHRAM: I need to get you that information, there is a cap. The TNC is allowed to do it per vehicle or a maximum cap, and I don't have that number on the top of my head at this time. [LB618]

SENATOR HUGHES: For administrative? [LB618]

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TIM SCHRAM: For operational, for being permitted in the state of Nebraska. [LB618]

SENATOR HUGHES: Okay, and just ballpark, how much is in this fund at any given time? [LB618]

TIM SCHRAM: I need to subject to check, I need to get that information to you as well. [LB618]

SENATOR HUGHES: I mean, is it \$10,000 or \$100,000 or \$1 million? Or just a ballpark. [LB618]

TIM SCHRAM: Twenty-five to fifty-thousand if I were to guess at this time. [LB618]

SENATOR HUGHES: Okay, thank you. [LB618]

SENATOR FRIESEN: Thank you, Senator Hughes. [LB618]

TIM SCHRAM: And I will subject to check if I'm wrong on that. [LB618]

SENATOR HUGHES: I just needed to have a ballpark of how much money we were dealing with. [LB618]

TIM SCHRAM: Thank you. [LB618]

SENATOR FRIESEN: Any other questions from the committee? Seeing none, thank you for your testimony. [LB618]

TIM SCHRAM: Thank you. [LB618]

SENATOR FRIESEN: Other proponents? Welcome. [LB618]

CRYSTAL RHOADES: Thanks. I'm Crystal Rhoades, C-r-y-s-t-a-l R-h-o-a-d-e-s, I'm commissioner in District 2 with the Nebraska Public Service Commission. The annual fee for each TNC is \$25,000, or they can do that on a per-vehicle basis. Because of the nature of what they do and the temporary status in independent contractor and high turnover, so far we have seen the TNCs elect to just pay the flat \$25,000 fee. What we're really trying to do here is to

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address some of the concerns of the Appropriations Committee. They have been very clear that it would be their preference that we move as much of departmental expenses to cash funds as possible and as is reasonable. Our transportation department is very small, and with the addition of the TNC companies it has produced some additional workload. But because of the way that the statute was written, we weren't necessarily given the flexibility to spend that money to add the staff that was necessary to address the concerns, make sure that all the proper auditing was being done and completed, the technology needs that might be needed to keep up with that. And so what we're really seeking here is permission to actually spend the money that they've already allocated, so that we can do our job just a little bit better. We are not seeking any increase in that fee, we believe that it's adequate and fair. We just need a little more flexibility so that we can better use it to fund our department. Typically speaking, across departments within the commission our administrative fees are somewhere between 1 and 2 percent. I can't give you the exact number of the transportation department because I didn't ask for that specifically, but I can tell you after having spent some time in the commission and reviewing our budgets and looking at our allocations we tend to be very conservative and very mindful of keeping those administrative costs as low as possible. Any other questions? [LB618]

SENATOR FRIESEN: Thank you, Ms. Rhoades. Senator Smith. [LB618]

SENATOR SMITH: Thank you, Mr. Chairman. Commissioner Rhoades, I know that normally when we hear from the departments and testifying in support of a particular bill or opposition to a particular bill we hear from one person representing that department. Is there anything that you have that differs with the commission that would warrant you to speak separately from the chairman of the commission? [LB618]

CRYSTAL RHOADES: No, other than that I was asked to speak by Senator Wayne. There is no other reason. [LB618]

SENATOR SMITH: Okay. All right, thank you. [LB618]

SENATOR FRIESEN: Thank you, Senator Smith. Senator Bostelman. [LB618]

SENATOR BOSTELMAN: Thank you, Chairman Friesen. Commissioner Rhoades, just for my understanding I wanted to move this one, how much money...is there a carryover every year, or are you spending down what you...you basically so it could be a spend down of funds that are on-hand, is there any carryover? Could you kind of address that a little? [LB618]

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CRYSTAL RHOADES: Yes. So the money will sit there, unless you give us permission to spend it. And that's really what we're here seeking, is permission to spend it. So yes, it would carry over. Without being given legislative permission to spend it, it sits there until you give us permission to spend it. [LB618]

SENATOR BOSTELMAN: Understand. Let me rephrase my question. [LB618]

CRYSTAL RHOADES: Okay. [LB618]

SENATOR BOSTELMAN: Will you then spend down that money where it's being carried over? I'm just trying to understand the need and what's there, what money is coming in, what money is going out. But, you know, that's... [LB618]

CRYSTAL RHOADES: Right. So what we're finding is that because we only have two investigators it's difficult to do any additional enforcement actions. We only have one administrative staff and one director. We have very limited technology resources in terms of what can we automate and make more efficient so that it's not so laborious for the companies, it's not so laborious for staff. What we're seeking to do is to use this money to do that. That's what we're asking for. [LB618]

SENATOR BOSTELMAN: Okay, thank you. Sure, thank you. [LB618]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? So what determines your total operating budget, how much revenue you take in on licensing? [LB618]

CRYSTAL RHOADES: That's set by statute. [LB618]

SENATOR FRIESEN: You're a cash-funded agency? [LB618]

CRYSTAL RHOADES: We are partially cash-funded and partially general-funded. But this TNC fund is set by statute, it's up to \$25,000 per TNC, or they can opt to do a per-car payment. [LB618]

SENATOR FRIESEN: Okay. I think that's all I have. Thank you for your testimony. [LB618]

CRYSTAL RHOADES: Thank you. [LB618]

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SENATOR FRIESEN: Any other proponents? Seeing none, are there any opponents to LB618? Seeing none, are there any that wish to testify in a neutral capacity on LB618? Seeing none, Senator Wayne, do you wish to close? [LB618]

SENATOR WAYNE: Again, thank you for your time, committee, Chairman Friesen. To answer Senator Smith's question, I contacted as many people as I could because this is only the second hearing that I get to do, so I'm going to over-err on proponents than opponents. So with that, I ask the committee to submit...or send this to General File. [LB618]

SENATOR FRIESEN: Are there any further questions from the committee? Seeing none, thank you, Senator Wayne. [LB618]

SENATOR WAYNE: Thank you. [LB618]

SENATOR FRIESEN: We will close the hearing on LB618 and we will open the hearing on LB70, Senator Pansing Brooks. Welcome. [LB70]

SENATOR PANSING BROOKS: Thank you. Good afternoon. [LB70]

SENATOR FRIESEN: I think this is the first occasion you've had to be here. [LB70]

SENATOR PANSING BROOKS: It is this year. So thank you...are you ready? Okay. Thank you, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent District 28 right here in the heart of Lincoln. I am here today to introduce LB70, a bill that would allow a court, when imposing a sentence for a person convicted of driving under a court order revoking his or her operator's license, the discretion to not revoke a person's operator license if the court places the person on probation. If the court does not place a person on probation, then the court would revoke the person's operator's license for an additional one year period of time for a first offense, and an additional two years for a subsequent offense. The practice for years in many courts across the state was that judges, in an effort to provide an incentive for an offender to get his or her driver's license back, would be to place such driver on probation for driving during revocation and not further revoke the operator's license. This was not done to "reward" a person for driving on a revoked license, rather it was done to address the reality that people need to drive to be productive members of society and that, unfortunately, some people take the risk to drive on a revoked license to be able to go to work or to transport their children somewhere, etcetera. While such defendants would be subject to additional consequences of punishment, such as fines or jail sentences, the hope was by placing these defendants on probation it would

encourage them to obtain their operator's licenses as soon as practicable so they could be productive members of our society. If the courts believe that certain defendants should have their licenses revoked for an additional period of time, the court would simply not place these defendants on probation and their licenses would be revoked automatically. Driving on a revoked license carries the possibility of jail time or a fine and the additional period of license revocation, which is then added on to the first period of revocation. This makes for a cycle of further revocation, which is counterproductive to efforts to help the individuals to be able to work and become self-sufficient. LB70 restores the practice of allowing a judge to not further revoke the person's license for driving during revocation, but only if the judge finds that the person is a suitable candidate for probation. As a matter of practice, this would mean that the revocation offense did not involve alcohol, an accident, or reckless or dangerous driving. If a person is placed on probation, he or she would be supervised by the court. And if he or she violates any term of the probation, then that person would appear before the judge again to be sentenced. At that time, if the court revokes the term of probation then the judge would automatically further revoke that person's operator's license. This was the practice for several years, until the Supreme Court of Nebraska in State v. Frederick determined that Section 60-4,108 of our state statutes required the courts to revoke an operator's license, even if the judge placed the person on probation. The 2015 ruling was a surprise to many. The Supreme Court made this ruling under a "plain error" analysis. In other words, the Supreme Court made this ruling without being asked to do so by either party. LB70 would clarify the intent of the Nebraska statute, given the interpretation by the Nebraska Supreme Court in State v. Frederick, and restore the courts with the important judicial discretion once again. This bill is identical to LB1077, a bill which I introduced last year which received no opposition testimony and was advanced by the Transportation Committee unanimously 8-0. Unfortunately, as often happens with the deserving legislation, we did not have time to discuss the bill on the floor, so people have come back to me to ask me to reintroduce. So with that, I will close on my introduction and take any questions you may have. [LB70]

SENATOR FRIESEN: Thank you, Senator Pansing Brooks. [LB70]

SENATOR PANSING BROOKS: But I think people behind me will be better to answer that. Yes? [LB70]

SENATOR FRIESEN: Senator Smith. [LB70]

SENATOR SMITH: Thank you, Mr. Chair. Senator Pansing Brooks, thanks for bringing this bill back this year. And again, we were just...I was trying to get the numbers here, but it did come out unanimous from this committee last time. [LB70]

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SENATOR PANSING BROOKS: Yes. [LB70]

SENATOR SMITH: And it would have made it across the floor, had it been able to get in I think the omnibus package, which was quite large last year. But I appreciate you bringing it back this year. [LB70]

SENATOR PANSING BROOKS: Yeah, thank you. [LB70]

SENATOR SMITH: And let's hope for success. [LB70]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Smith, I appreciate it. [LB70]

SENATOR FRIESEN: Thank you, Senator Smith. Any other...Senator Hilgers. [LB70]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Senator, for the testimony. I just wanted to clarify, did you say the case was State v. Frederick? Is that what you said? [LB70]

SENATOR PANSING BROOKS: Yes, it was State v. Frederick. And I can't remember if I have the... [LB70]

SENATOR HILGERS: The citation? [LB70]

SENATOR PANSING BROOKS: The citation that I spoke of dealt with the citation, but I think that the people behind me have it. So it was dealing with Section 60-4,108 of the state code, of the state statutes. [LB70]

SENATOR HILGERS: Okay, thank you. [LB70]

SENATOR PANSING BROOKS: But if they don't have it, I can easily get it for you. [LB70]

SENATOR HILGERS: Okay, thank you, Senator. [LB70]

SENATOR PANSING BROOKS: Thank you, Senator Hilgers. [LB70]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Seeing none... [LB70]

SENATOR PANSING BROOKS: Okay, thank you, Senator Friesen. [LB70]

SENATOR FRIESEN: Thank you. [LB70]

SENATOR PANSING BROOKS: Happy Valentine's Day. [LB70]

SENATOR FRIESEN: You too. Proponents wishing to testify in favor of LB70? [LB70]

BETHANY HEIRIGS: Hello. My name is Bethany Heirigs, B-e-t-h-a-n-y, Heirigs, H-e-i-r-i-g-s. I'm testifying on behalf of passing the LB70, and I want to thank Senator Pansing Brooks for reintroducing this bill this year. I am a public defender in Douglas County, and I have been practicing for the past five years. I've also been in that office itself for seven years. And this law would clear up a lot of problems that we have. And to answer your question right away, I actually do have that case cite: it is 291 Neb. 243. So everything that Senator Pansing Brooks said is absolutely true. As I said, I've been practicing for the last five years and that discretion in a judge's decision is in a dire necessity right now. That decision was taken away from our judges and it's caused a lot of problems. Everything that Senator Pansing Brooks has said I want to echo as absolutely true, as I've seen it in practice. Something I would like to point out that she did not discuss was also one of the reasons that our clients' licenses get revoked is because of a DUI. Whether it's your first offense or, unfortunately, your seventh defense, a lot of people will make the mistake of driving home. And I don't want to touch on those issues today, but one of the reasons why you may lose your license and have it revoked is because of a DUI. We are now stuck in a situation where my client will have inevitably picked up a driving under the influence on day 1. Day 15 they lose their license and day 16 they pick up a driving under revocation because my clients are transient or homeless and they don't get the information from the ALR or the DMV, probably through their own fault, but they don't get it. They don't see me until probably day 60, because I have a high caseload. And I do my best, but they don't understand. And they've turned their life around, they've gotten to treatment, they've done everything they need to do, and now they can't drive to work. Everybody needs to pay attention to the public transportation system in Omaha. It takes roughly an hour to get from north Omaha to the Douglas County Courthouse. I do currently have a client, unfortunately, who lost his license automatically because of this case law change. Two years ago I would have been able to easily...I can't predict the future or I can't go back and say, but I think I would have been able to convince the judge to allow him to keep his interlock. Because the driving under revocation no longer allows him to use his interlock as well, even though he's completely turned his life around, is passing all his PBTs, and is working great with his probation officer. Now he's also lost his job because he lives in north Omaha and works at 180th street. His wife could not take him back and forth every day, couldn't...they had the interlock actually installed and had to remove it because now he no longer could use it because of the driving under revocation. He inevitably only got a

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fine on that, and actually it was a \$2 fine. That being said, he lost his job. So because he works on 180th street he couldn't even use the bus to get there. My clients are indigent. Public transportation in Omaha is not the best, and passing this law will clarify a lot of issues that we have. Now, that's not to say that my clients that come in and they have multiple driving under revocations and they've been drinking on those multiple revocations, clearly the judge has the discretion not to allow that person to have their license and will take their license. What this law will do is give that discretion back to the judges, it will go back to what the judges originally across the board in Douglas County thought was that discretion was theirs. This law will give that discretion back to them. It's not saying it will automatically allow them to drive, it's simply saying that the discretion is going back to the judges. [LB70]

SENATOR FRIESEN: Okay, thank you. [LB70]

BETHANY HEIRIGS: Any questions? [LB70]

SENATOR FRIESEN: Any questions from the committee? Senator Bostelman. [LB70]

SENATOR BOSTELMAN: Thank you, Chairman Friesen. Good afternoon. [LB70]

BETHANY HEIRIGS: Afternoon. [LB70]

SENATOR BOSTELMAN: Thanks for coming in and testifying today. Question, your 60 days...and I'm curious, I'm sure there is a program in there that if there is an offender, and say in the case of a DUI, is there a program...I'm sure there's something that they can be voluntarily or otherwise placed into. They show progress so by the time they get before to you, you know, you're able to represent them before they go to the courts and the judge will have, you know, some type of program or process they've gone through to show of their improvements? Is there anything like that or is it just basically off their word? See where I'm getting at? [LB70]

BETHANY HEIRIGS: Well, let me explain that 60 days. So day 1 they pick up the driving under the influence charge. They have 15 days that they're legally allowed to drive, and then through ALR practices they lose...typically on average lose their license, or occasionally they win that argument. At that 15-day mark they need to get their interlock permit, but it's not until day 30 that I'm appointed to their case, because that's when we're appointed. Now, if my client had the money, they could go and talk to an attorney and see that, oh no, I can't drive anymore. And while ignorance of the law isn't a defense, a lot of my clients don't understand what's going on and I have first-time offenders with absolutely nothing on their record now with the inability to drive because they didn't realize, oh no, I lost my license and let me make up for that. I'll get the

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interlock and now I'm going to also lose the interlock. And this Congress did a lot of work two years ago to open the doors to more accessibility to the interlock system. And I've seen a lot of thankful clients because of that and I think that's been a good system. But this is kind of a hole that we're left with, with this interpretation of Frederick that I don't think anybody intended. [LB70]

SENATOR BOSTELMAN: Sure. Could you explain interlock? [LB70]

BETHANY HEIRIGS: So the interlock system is the system where you install into your vehicle that you have to breathe into. In order for your car to start you have to have absolutely zeros, no alcohol in your system. [LB70]

SENATOR BOSTELMAN: Thank you, that helps a lot. [LB70]

BETHANY HEIRIGS: Yes. [LB70]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Thank you for your testimony. Welcome. [LB70]

JOE NIGRO: Good afternoon. I'm Joe Nigro, and that's spelled J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender and I appear today on behalf of the Nebraska State Bar Association. The bar takes positions on legislation which further the administration of justice. The bar endorsed LB70 last year when it was LB1077, and this year again endorsed it without opposition. We've seen it as a noncontroversial issue. The need for this legislation arose because of the Nebraska Supreme Court's decision in State v. Frederick in 2015, which primarily dealt with a different issue. But in that case, the defendant had been placed on probation and allowed to keep his license and the court said, oh, by the way, we interpret the law to mean that you have to revoke the license regardless of whether you receive probation or not. Before that, if somebody had been charged with driving on a revoked license and was ineligible for reinstatement on the date of the offense, after the defendant plead to the charge the court could delay sentencing and then place the defendant on probation if the defendant got their license reinstated. And I think where we saw this happen in lots of cases would be some sort of court-ordered suspension, like maybe a prior driving on a revoked license. Normally, it would be somebody who was getting close to being eligible for reinstatement, but they weren't eligible for reinstatement. And so the judge would delay the sentencing a couple of months and if the person got reinstated prior to sentencing they would place them on probation. And they sort of held out this promise that you can keep your license as an incentive for people to get reinstated. I think that we wouldn't see it normally, my experience in Lancaster County, like if somebody had just been revoked by the court the court is usually not going to delay it. And the practice in Lancaster

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County was that they wouldn't impose sentence until the person had gotten reinstated. So they would delay it as an incentive for the person to get reinstated. Now, if the person received...the defendant received a straight court sentence instead of probation, the court had to revoke the license for another year. And I think we had judges who realized that many people drive, whether their license is valid or not, because they live in places with very limited mass transit like Lincoln, which, you know, you can't get buses in the evening, it doesn't work very well; or in greater Nebraska, where there is no mass transit. I mean, people have to get to jobs, they have to get their kids to school, and so they wind up driving. And I think the judges realized we're better off if these people all get reinstated because they're going to drive no matter what. And if they aren't licensed, they probably also don't have insurance. And so this is a way of making sure that we have drivers who are licensed and insured. And the chance to keep their license was a powerful incentive for people to get reinstated and be placed on probation. Otherwise, some people keep getting revoked, then they get picked up again and they can never get their license back. Now, obviously in the Frederick case the Nebraska Supreme Court said further revocation was mandatory, whether the defendant received a straight court sentence or probation. Now, the Bar Association supports LB70 because it would increase judicial discretion by allowing the courts to decide whether to revoke the defendant's license if they place them on probation. This bill leaves the decision up to the court, they don't have to place the person on probation. And even if they place them on probation they don't have to allow them to keep their license. It allows the court to make that decision based on the circumstances. The court can decide whether...and last year, as Senator Pansing Brooks stated, this committee unanimously voted to advance the bill. And I hope that you will advance the bill again this year, and I hope that you will...someone will prioritize it or find a way to attach it to another bill which is prioritized because I realize that when it gets late in the session if things aren't prioritized they don't have much chance of advancing. But this fix would impact hundreds, if not thousands, of people statewide. And it really does make us all better off because it's going to increase the number of licensed drivers on the roads. And again, the Bar Association supports this because they believe the increasing judicial discretion would further the administration of justice. I can tell you from the experience of the attorneys in my office that this is a common sense approach to letting the court recognize that some people are better off if...we're all better off if the courts allowed some people to get their license back instead of just getting them caught in a never-ending cycle of further revocations. And thank you, I would be happy to take any questions. [LB70]

SENATOR FRIESEN: Thank you, Mr. Nigro. Any questions from the committee? Senator Hilgers. [LB70]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you for your testimony. It certainly seems like a common sense piece of legislation. But the question is it sounds like you have some familiarity with the Frederick decision. I'm just curious, was that decision based on an

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ambiguous statutory grant, was it the lack of statutory authority? What was the basis for what the court did? [LB70]

JOE NIGRO: Well, I think there was some ambiguity in the statute and so we had judges who interpreted the statute to mean that the court had discretion if the person was placed on probation, but if they did not receive probation the court had to revoke the license for one year on a first offense and two years on a subsequent offense. The Nebraska Supreme Court interpreted the statute to mean that it doesn't matter whether you receive probation or not, the license must be revoked for another year. And I know there was talk earlier about people who...there are interlock violations that get filed under a different section, and that section actually allows people to...the court then extends the time on interlock. And so people in those situations are better if it gets charged under that statute because here it has to be revoked. And there's no provision for a work permit under this section either, so if somebody loses their license for a year under this statute they lose it for a year. And again, I want to emphasize, this doesn't mean...it doesn't mandate anything, it just gives the court the discretion. And we see that as a good thing because we have seen lots of people who really do make some effort to try and get reinstated because they want to be a legal driver. But they're going to find themselves driving regardless, and as I said, we're all better off if they're licensed. [LB70]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Is there any time during this process that people make sure that they also have insurance? I mean, if we're going to give them back their license or let them keep their license is there any check that makes sure that they're an insured driver? Because there's a lot of problems with that. [LB70]

JOE NIGRO: I mean, the short answer would be no, some of these people may not even own a car. So there would be that question. But, you know, as I indicated, if they're not licensed then they probably aren't going to have insurance on their car, because I don't know who is going to insure them. But there isn't a guarantee, and you know, I don't know what would need to be done because that's a different section of the statute. But I think that what this decision has caused is probably to have fewer insured drivers because the people are unlicensed and they're probably not insured. So I think the rate of people being insured will go up, common sense tells me that. [LB70]

SENATOR FRIESEN: Okay. All right, thank you for your testimony. [LB70]

JOE NIGRO: Thank you. [LB70]

SENATOR FRIESEN: Seeing no other questions, thank you. Any other proponents for LB70? [LB70]

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SENATOR MURANTE: We're getting a phone call. [LB70]

SENATOR FRIESEN: Seeing no other proponents, are there any that wish to testify in opposition to LB70? Seeing none, is there anyone wishing to testify in a neutral capacity on LB70? Seeing none, Senator Pansing Brooks, do you wish to close? [LB70]

SENATOR PANSING BROOKS: Thank you. I was going to waive until Senator Hilgers asked his question. And I just direct you to Section 60-4,108, which is what the court was interpreting in the case from my understanding. And what had happened is the courts had used their own discretion previously, then the Supreme Court came in in Frederick and said: no, if you read it literally the interpretation says that the courts must revoke, whereas previously they had been using their discretion. And so in reality then, what came back is that the courts...that the Legislature needs to amend the laws and clarify that the courts could use their discretion. So that's what happened, is that they came back and literally read the section of state statute and said: nope, it hasn't been appropriately utilized. So that's what we're coming back in to say. The way that they've always done it, allowing discretion and allowing the courts to put people on probation rather than immediately revoking, is better. So we're just trying to get it into statute to coincide with what had been done in the past. [LB70]

SENATOR HILGERS: Thank you. [LB70]

SENATOR PANSING BROOKS: Thank you. [LB70]

SENATOR FRIESEN: Are there any questions from the committee? [LB70]

SENATOR PANSING BROOKS: Thank you for your time. [LB70]

SENATOR FRIESEN: Seeing none, thank you, Senator Pansing Brooks. And that will close the hearing on LB70. We will now open the hearing on LB460. Welcome, Vice Chairman Smith. [LB460]

SENATOR SMITH: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, I am Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. And I am here today to introduce LB460. I am introducing this bill on behalf of the Department of Health and Human Services, and I will be very brief in my opening remarks. Mr. Calder Lynch, the director of the Division of Medicaid and Long-Term Care at HHS, will be testifying following me, and he can give you more specifics regarding the need for this bill. LB460 makes changes with respect to nonemergency

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medical transportation services for Medicaid recipients. This service is the responsibility of the Division of Medicaid and is subject to federal regulation under the Centers for Medicare and Medicaid Services. However, as you know, the regulation of passenger carriers, in general, falls under the jurisdiction of the Nebraska Public Service Commission, the PSC. At times, however, having multiple regulatory agencies involved leads to duplication, inefficiencies, and poor service to our state's Medicaid recipients; and that is the sphere in which we're bringing this bill, to try to minimize that. LB460 will give HHS more authority, managing carriers under contract to provide nonemergency medical transportation services, including more flexibility in overseeing routes and determining the need for services in particular areas of the state. Carriers providing these services would still have to meet all certification requirements and remain permitted under the Public Service Commission. That is the purpose of LB460, and I will...I am happy to attempt to answer any questions you may have. But as I mentioned, Mr. Lynch will be available to answer your questions in more detail. Thank you. [LB460]

SENATOR FRIESEN: Thank you, Senator Smith. Are there any questions from the committee? Seeing none, proponents? Welcome. [LB460]

CALDER LYNCH: (Exhibit 1) Thank you. Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee. My name is Calder Lynch, C-a-l-d-e-r L-y-n-c-h, and I am the director of the Division of Medicaid and Long-Term Care in the Department of Health and Human Services. I am here to testify in support of LB460. I want to thank Senator Smith for introducing this bill and working with the department to bring forth this legislation, which was drafted in consultation with staff from the Public Service Commission, to create a better regulatory framework for Medicaid nonemergency transportation services in Nebraska. Specifically, LB460 would clarify and maintain the Public Service Commission's oversight responsibilities by requiring that NET providers be permitted by the PSC as contract carriers while allowing additional flexibility to improve access to NET services and better integrate them into our overall Medicaid delivery system. As a Medicaid benefit, NET services are subject to federal regulation, state oversight, and additional state regulation under the PSC. While this is intended to provide greater consumer protections to our state's residents, it has led to a sometimes confusing patchwork of regulatory requirements that are not always in alignment. LB460 will improve the delivery of NET services that are provided to the state's most vulnerable populations by giving the department the ability to require that NET providers maintain an active contract carrier permit. The providers would still have to meet the requirements and certification and maintain that permit with the PSC. However, the contract carrier permit will allow the division additional flexibility to manage reimbursement and the routes of these carriers, and determine the need for services across the state. This bill would also make it clear that the state is allowed to incorporate NET services into our integrated Medicaid Managed Care Program, Heritage Health. Our health plans are contractually obligated and financially incentivized to ensure that Medicaid members can access needed services, particularly preventive and primary

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care services. This means they have a vested interest in ensuring that members can make it to their appointments or pick up their medications from the pharmacy. Including these transportation benefits as part of Heritage Health will help complete the continuum of care for our members and improve our ability to provide whole-person care management. I'd like to thank members of the Public Service Commission and their staff for their assistance in drafting this legislation and working with us in this interim period. We remain committed to working with the commission on the implementation of this bill through regulatory changes, as well as contractual changes, as we work to improve our joint oversight of these services. Thank you for the opportunity to testify before you today. We believe LB460 will help DHHS continue our mission of helping people live better lives. I ask the committee members to advance LB460, and I am happy to answer any questions you may have. [LB460]

SENATOR FRIESEN: Thank you, Mr. Lynch. Any questions from the committee? Seeing none...I know there's a lot of the elderly, in the rural communities especially, have trouble getting to appointments and stuff like that. Scheduling is difficult. So I take it this would help in that respect also. It'd open up some avenues for them to get some transportation services? [LB460]

CALDER LYNCH: Thank you, Mr. Chairman. Yes, we believe it will, because it will allow the department to work with our health plans, or through the broker, to recruit additional providers to serve underserved areas, whether it be through flexibility in terms of reimbursement or adding additional routes. We'll also be able to contractually set access standards that we'd like our health plans to be able to meet, in terms of making sure the clients are served. In 2015 there were almost 4,000 trips during that calendar year in which our broker was unable to make a referral to a driver because of a lack of availability. And that's a number we'd like to see shrink so we can improve access for services for our members. [LB460]

SENATOR FRIESEN: So down the road, if there's a complaint from one of the customers or something, who do they...who do they talk to? Do they file a complaint with you guys to look at it, or who do they talk to? [LB460]

CALDER LYNCH: So currently today they could file a complaint through our current broker, who is Intelliride, and that complaint would be investigated and, if validated, could be referred for further investigation. We're restricted in what we can share in some cases, in terms of personal health information. But members are always welcome to file complaints directly with the Public Service Commission, as well, if they've got issues with particular drivers or vehicles; and those can be investigated in that way. And one of the things we've committed to working with the commission on is, as we develop contractual language for potential inclusion of these services in our managed care plans, is what type of requirements would we like to see, in terms of intake of complaints and referrals to the commission, when appropriate. [LB460]

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SENATOR FRIESEN: And so you, you also make sure that the drivers have proper insurance, those types of things. [LB460]

CALDER LYNCH: Well, we do conduct certain background checks to make sure the drivers meet those standards, the sexual registry background, the...some of the other registries that we are maintaining. And then the Public Service Commission, because they are currently permitting or certificating this providers, also have their responsibilities ensuring that, you know, vehicles, you know, meet their specifications and requirements, and their drivers are properly trained. [LB460]

SENATOR FRIESEN: Okay. Thank you, Mr. Lynch. Senator Hilgers. [LB460]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Director Lynch, for your testimony. I want to just ask a couple questions about part of your testimony, discussing what some of the incentive...the financial incentives for the managed health care plans, the reference there in your testimony. So currently, right now, the payments...the managed care does not also...they're not paying for managing the transportation piece, correct? [LB460]

CALDER LYNCH: Correct. [LB460]

SENATOR HILGERS: This would allow that to be incorporated with the managed care through Heritage Health, correct? [LB460]

CALDER LYNCH: That's correct. [LB460]

SENATOR HILGERS: And they have...can you speak a little bit to the financial incentives that they have? They have the incentives to get people to their appointments to make sure they're healthy... [LB460]

CALDER LYNCH: Um-hum. [LB460]

SENATOR HILGERS: ...down the road or there's additional incentives that they have to make sure that transportation system runs smoothly? [LB460]

CALDER LYNCH: Well, Senator, that's a...that's a great question because it really could be both. The health plans are capitated, meaning they're paid a fixed monthly payment and then are responsible for paying claims and administering benefits for their members. So to the extent that

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they can reduce costly services like emergency room visits, hospitalizations, rehospitalizations, they can lower their own costs. Additionally, we have a certain percentage of their payments that we withhold that they have to earn back by meeting performance metrics that we set on an annual basis. So we could look at setting additional performance metrics that have financial incentives tied around different services, access to primary care, making sure that individuals, you know, access transportation services, for example, or other different quality-outcome metrics that we choose on an annual basis. [LB460]

SENATOR HILGERS: Thank you. [LB460]

CALDER LYNCH: Thank you. [LB460]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? Senator Bostelman. [LB460]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Director Lynch, could you explain a little bit of how, I guess, you would...the oversight or the management of those specific activities that would be out there? Is that something new that you would do, your...the department would do, or is that something existing? And how does that work? [LB460]

CALDER LYNCH: Thank you, Senator. Oversight is something that we take very seriously and, as our role as a division is changing, we are reforming the way we do that, in terms of contract management and oversight. And currently, through the transportation broker that we utilize, you know, we have a contract manager and we have work that we do with them, in terms of oversight, corrective action when necessary, corrective action plans, ensuring that, you know, claims are being submitted on a timely basis; there are performance standards in those contracts that they have to meet. As we shift services over to our health plans, there are additional contractual obligations they have to meet in terms of performance standards. And we're developing...building out our contract oversight team that exists within our plan management section, to include for each of our health plans an administrator, a program manager, a program specialist, and a program coordinator, dedicated to overseeing that contract. And as any new services transition over to Heritage Health, we would add that scope of responsibility to that team of individuals to ensure those plans are meeting those requirements. We require that we review and approve all of their subcontracts. They have to submit to us encounter data for all claims that they're paying so that we can measure and ensure that they're paying those accurately and timely and that their members have access to services, and so there's...and then we also do some auditing financially with...and looking at their financial statements to make sure that they're reporting things accurately. [LB460]

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SENATOR BOSTELMAN: Thank you; excuse me. [LB460]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Thank you for your testimony. [LB460]

CALDER LYNCH: Thank you, Mr. Chairman and Senators. [LB460]

SENATOR FRIESEN: Other proponents who wish to testify for LB460. Seeing none, are there any who wish to testify in opposition to LB460? Welcome. [LB460]

ALISSA KERN: Good afternoon. My name is Alissa Kern, with Camelot Transportation, A-l-i-s-s-a K-e-r-n. I am here today in opposition of LB460. I just wanted to lay some foundation first. Currently the law allows two options: Option A would be for a Medicaid broker to have a contractor provide service to anybody that's eligible for Medicaid services; and Option B would be for an eligible provider that's appointed through the Public Service Commission. For example, Camelot Transportation is a provider that holds a certificate that's statewide; we can provide services to Medicaid clients, to the public--statewide services to and from any location in the state of Nebraska. Option Bay...Option A would be for the neighbor couldn't find anybody in their area, and the neighbor wanted somebody else to drive them; Camelot wasn't available or another provider wasn't available. As long as there wasn't another carrier in the area, that neighbor could provide assistance, transportation assistance, to that client. The state would reimburse that neighbor and they would have to drive their own vehicle. So we currently have Option A and Option B. Basically, this bill effectively places another option. Anybody in the state can now provide services to these eligible clients. That concerns me because currently, right now, Camelot has about 40 employees that are operating throughout the state of Nebraska. At any time you can call us and see if we can provide services. There are some service areas that we can't support, but we're not the only transportation company in the state of Nebraska. We are insured, we train our drivers; we do everything that we can to make sure that we're safe and secure. And ultimately, we want to provide the assurance to our clients that we're going to be there when we say that we're going to be there. We don't just provide services for Medicaid and Long-Term Care. We also provide services for Child and Family Services, which is also another department of Health and Human Service. We were contacted; I was actually contacted by one of the representatives of Child and Family Services, explaining that they needed some assistance out in the western side of the state. At that time we were able to negotiate between the both of us where we could get other drivers. We could provide services out there. Just through that good communication back and forth, we were able to employ three almost-full-time drivers in the western service area, and we took care of their need in one quick phone call. Probably three to four weeks later, we were able to have that problem solved; we didn't have to come to this. The difference with this is, is that I have not been contacted by Medicaid and Long-Term Care. I have

been the managing director for Camelot for the last five years, and I've had very little communication with MMIS, Medicaid Long-Term Care, Intelliride; so it's very concerning that we're going to full effects here and we haven't even just picked up the phone to call and see if we could help serve some of these rural areas. The drivers that we have are not just in Omaha or Lincoln. We have them all over the state, up to Scottsbluff, all the way up to Chadron; we have a couple in Norfolk. So we are in the rural areas. I'm willing to relocate drivers. We have done that, relocated drivers from Broken Bow to Norfolk, just because that's where we saw the need. I've asked, numerous times, for Intelliride. I've asked them: What can I do to get more trips? How can I keep my drivers busy? You know, I don't want to let anybody go; we're always trying to find trips for these drivers. And they told me that I needed to get a tablet; I had to purchase a tablet. The tablet cost me...I purchased two; these cost me \$320.00 a month that I have to pay Intelliride directly in order to get this tablet. On the tablet, they provide trips and, basically, we would give our drivers these tablets. The drivers follow what's on the tablet, and then those claims are supposed to be directly submitted to the state for payment. This is what's the directing--they direct this towards us. Basically they say: if you want more trips, if you want to provide more service to the public, buy these tablets; so we did. And my driver had three trips and sat for the rest of the day. Three months later I had to pull the tablets out of the vehicle and just go back to how we used to do it. Basically I couldn't afford these drivers to sit there for 10 hours and not do anything. So for us to be told that there's a public need and that we needed to have these tablets, and we bought the tablets and then we still didn't get used, it just starts to make me question if there really is a need or if they just wanted to sell me a tablet. I just...I keep asking the question why didn't anybody call me? Why doesn't anybody...why don't we have a conference how we can get through this together with the carriers that are already here? There's many carriers that the PSC is already regulating. There's a lot of regulations that we have to abide by, and there's not enough support staff that the PSC has just to make sure that we...our rules are enforced. So I'm just very concerned that if we open this up, we're just going to throw more carriers into the mix, and none of these regulations or rules are going to be followed. That's all I have. [LB460]

SENATOR FRIESEN: Thank you, Ms. Kern. [LB460]

ALISSA KERN: Thank you. [LB460]

SENATOR FRIESEN: Any questions from the committee? So how many, how many communities do you...you said you serve about 40 communities, roughly? [LB460]

ALISSA KERN: We're actually statewide, so we have about 40 drivers logistically kind of scattered around the state. At any time we'll go anywhere. We'll pull...the drivers have the

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vehicles at their house with them, so if you call and ask us to go to Point A, to Point B, we'll send the closest driver to go perform that trip. [LB460]

SENATOR FRIESEN: Do you know roughly how many calls you cannot answer because you don't have a driver available, or they're busy? Is there still a need somewhere for duplication? Or... [LB460]

ALISSA KERN: I think that's a two-part question. There's always going to be a need when the amount of the compensation...I mean we are, we're not a nonprofit. We have to make money at the end of the day or at least break even. When we're being asked to do a trip that's only paying, not even paying minimum wage, but we're being asked to go perform a trip that's an hour long and we're not going to get minimum wage out of that, we have to turn that down. Our drivers are making \$10 an hour or more, but we're only going to get paid \$8 for that trip. So it's a two-way street. We would say yes, but just, you know, I mean, the revenue side...we have to say no, because we're paying the driver more, the fuel, the...all of the expense that goes into the vehicle. If we can negotiate a way to make sure that it's...we're actually making something or coming, at least, out, you know, we're not losing money, I think we would send a driver anywhere... [LB460]

SENATOR FRIESEN: Right. [LB460]

ALISSA KERN: ...because that's what we're in the practice for. [LB460]

SENATOR FRIESEN: You don't want to lose money on it. I get that. [LB460]

ALISSA KERN: Not at all; nobody does. [LB460]

SENATOR FRIESEN: I understand that. Any other questions from the committee? Thank you for your testimony, Ms. Kern. [LB460]

ALISSA KERN: Thank you. [LB460]

SENATOR FRIESEN: Any others who wish to testify in opposition? Welcome. [LB460]

JOHN DAVIS: Welcome. Good afternoon, Senator Friesen and members of the committee. My name is John Davis; that's J-o-h-n D-a-v-i-s. I am speaking on behalf of the Happy Cab Companies today. I am currently the director of operations and have been in that capacity with

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the Happy Cab Companies for approximately 11 years, speaking in opposition to LB460 for a number of reasons. One, as a transportation provider here in the state, I've got a concern about the folks that may come under purview of HHS under this, whether we would actually lose the proof of public need and necessity that is currently in place. That's something that has been in place for years for transportation providers, to make sure that, you know, companies like cab companies that are essentially a safety net service out there, is that we don't have the luxury of kind of being a boutique service to service just folks that are frequenting the entertainment districts or, you know, things of that nature, is that we have to pick up everyone. That means we pick up folks with disabilities. We work very closely with organizations like Outlook Nebraska, with VODEC, to make sure that the clients that they serve, that we can assist them with getting folks to and from their destinations, whether they're going to a sheltered workshop or what have you. So again with the stress that's been put on the system here in the last few years with party buses and TNCs and that sort of thing, we're extremely concerned about the market being oversaturated, at least in our metro areas. Obviously our authorities really primarily serve the metro areas of Omaha and Lincoln, so I can't speak as maybe a provider that serves Chadron or some other rural district maybe, what they see. But what we see in our marketplace is that, you know, within the last couple years our business has been hit dramatically. In 2016 we had a negative comp each week of about 20 drivers. What did that equate to, business-wise? Our business was down in 2016 by over \$400,000. So we very much have felt the effect of, again, an oversaturation of the markets in the Omaha and Lincoln markets. As I said, taxis are really charged with being that safety net service in providing that transportation. I certainly think that we can work along with the Department of Health and Human Services to maybe fill the gaps, if there are things that need to be identified. We've never had that opportunity, at least here in the last couple years, to sit down with them and for them to identify a need. We certainly would be willing to step up and do that. Currently we do serve the nonemergency medical contract through the broker, Intelliride. We do have the tablets. We currently have about 19 percent of our drivers that are using the tablets. We could certainly ramp that up at a moment's notice, but we just have to have the volume. Right now the volume only supports about 19 or 20 percent of our drivers to actually serve those contracts. So I know, speaking for the five taxi authorities that we operate, that we certainly would be...we stand poised to serve more folks through this contract if that's a need be. So it really, I...just shocked to hear that number that there were 4,000 folks that they couldn't provide transportation for in 2016. And I would wonder where those folks were located at, because we would certainly, within Omaha and Douglas, Sarpy County, Lancaster County, we would certainly love to assist the state in providing transportation for those folks. Essentially that is the end of my testimony. I'm certainly open for any questions, if any of the senators have any. [LB460]

SENATOR FRIESEN: Thank you, Mr. Davis. Any questions from the committee? Seeing none, thank you for your testimony. [LB460]

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JOHN DAVIS: Okay. Thank you. [LB460]

SENATOR FRIESEN: Welcome. [LB460]

TARA PAULSON: Good afternoon, Senators. I am Tara Paulson. I am an attorney at Rembolt Ludtke, and I regularly practice before the Nebraska Public Service Commission on these transportation-type matters. I appear today in opposition to LB460. Two of our clients just...you just heard... [LB460]

SENATOR FRIESEN: Please spell your name. [LB460]

TARA PAULSON: Oh. I'd be happy to. Tara Paulson...it's spelled T-a-r-a. Last name is Paulson, P-a-u-l-s-o-n. [LB460]

SENATOR FRIESEN: Thank you. [LB460]

TARA PAULSON: Thank you very much. You heard from two of our firm's clients just recently. Those two clients are two of the largest transportation providers in this state. Unfortunately our clients were not notified by DHHS, or anyone I guess, prior to LB460 being introduced. Upon review of LB460, I want to urge you to be mindful of a couple of matters that are of concern when I read the bill. First, as you may know, the Legislature, years ago, determined that there should be public transportation in Nebraska and that private companies should provide that transportation. The Nebraska Public Service Commission has regulated those private companies that have tried to enter the market. By statute, the Nebraska Public Service Commission determines whether to allow new carriers into the market when what is called there is a public convenience and necessity that dictates that another carrier should be allowed in. It was the Nebraska Supreme Court that held that in determining public convenience and necessity, one of the factors that should be looked at is whether an applicant or new entrant can serve that need without endangering or impairing the operations of existing carriers. As the bill is drafted, new entrants can enter that playing field and are not required to meet the public convenience and necessity standard that has governed this industry for years. That standard has worked for a long time. It was just a few years ago, if you remember, the Public Service Commission allowed a second cab company here in...to operate here in Lincoln when it was established there was an unmet need. You just heard from Happy Cab. As a cab company it must, under state law, make itself available 24 hours a day, 7 days a week, to pick up and transport passengers in all areas of the city in which it serves; it can't turn down a ride. Happy Cab has already suffered immensely from the entrance of party buses, Uber and Lyft, and other...those companies that are able to essentially cherry pick certain individuals, that only transport passengers in high-traffic times or high-traffic areas. When more providers are allowed to take business during these high-demand

times and in these high-demand areas, it makes it less and less likely that a company like Happy Cab will be able to transport passengers during those less-desirable times and to provide service throughout its service territory to all people who request a ride. Second, upon review of LB460 as drafted, this bill actually adds a third layer of regulation on companies such as Camelot Transportation and Happy Cab. These companies have already undertaken the task of providing transportation to Medicaid recipients and so, currently, those companies are regulated already by the Nebraska Public Service Commission. They're also under contract with DHHS's broker, Intelliride, so they're governed by the contract that exists. And this would add a third layer of oversight, in this instance, by DHHS. This bill makes the playing field less equal for those types of companies that have already been in this business, because new entrants wouldn't be subject to the same levels of regulation that exist currently. LB460, as drafted, creates what I believe to be overregulations of carriers that are already struggling to provide public transportation services. One of the things that I want to make sure came through is that both Camelot Transportation and Happy Cab companies are able, willing, and wanting to serve whatever unmet need may exist. Unfortunately they were never contacted by DHHS or the broker that has utilized Intelliride to provide those rides. So you've got companies that have the resources, have the drivers, have the vehicles to do this service, but were never called upon. It's for those reasons that I oppose LB460. However, I am willing to work to try to improve the bill and make it more workable. I think that there are ways that the market can address these issues without the enacting of this legislative bill. [LB460]

SENATOR FRIESEN: Okay. [LB460]

TARA PAULSON: I'd be happy to take any questions. [LB460]

SENATOR FRIESEN: Thank you, Ms. Paulson. Any questions from the committee? Senator Briese. [LB460]

SENATOR BRIESE: Thank you, Senator. And thank you for being here. So your testimony is that your clients could meet those unmet needs to the extent there are unmet needs. [LB460]

TARA PAULSON: I think they could. I guess my testimony is they were never contacted. So to the extent there is an unmet need, I think the first place we should look is at least let's look first at the existing carriers who have provided this transportation in the past. I know at least a couple of years ago, Camelot Transportation was providing 1,200 Medicaid rides a month; now that number is down to 10 per week. It's not because of a bad track record. I'm not sure why but they're there, they are able to provide those rides, they have the people and vehicles to provide those rides, but they weren't being called upon. So I think we should first look at the existing

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carriers that do provide that transportation service already, prior to allowing a new category of entrants that could also provide this type of service. [LB460]

SENATOR BRIESE: Thank you. [LB460]

TARA PAULSON: Certainly. [LB460]

SENATOR FRIESEN: Thank you, Senator Briese. Senator Bostelman. [LB460]

SENATOR BOSTELMAN: Thank you, Mr. Chairman. Ms. Paulson, thank you for being here. Could you explain a little bit more about how Telluride (sic: Intelliride)...how that works? I guess I'm trying to understand if we went from a large number down to very few, if you will, is that on the input side of it or is it on the user side? In other words, if I have...if I am a client, a person in need of a ride, do I get into the system and the system automatically flags that out to a driver, that a driver could pick up? Or is it I have an appointment and I contact a certain office, agency, if it's Telluride (sic), whoever it is, and they put that request out on-line and then that's what comes out on the tablet? And if you get... [LB460]

TARA PAULSON: I think the second would be more...a more accurate description of how it works. Currently the broker, Intelliride...if I am a client and I need transportation to a medical appointment, I contact Intelliride. And then Intelliride distributes that ride out amongst the providers that are currently able to service that area. [LB460]

SENATOR BOSTELMAN: And if I may, does that...do they give it to...say there's five companies of this person, you know, just for discussion, there's five companies that could service that area. Do all five companies get that notification or just certain companies of those five would get that notification? [LB460]

TARA PAULSON: My understanding would be just certain companies within that five. My understanding is they've got a pretty robust computer system that determines the preferential treatment of providers. One thing you heard is that if you are a company that has a tablet, you are a more-preferred provider than someone who does not have a tablet. So if you are a "tableted" provider, you would maybe get that ride sooner than someone who did not have a tablet. But it's also dictated in terms of where each vehicle is when... [LB460]

SENATOR BOSTELMAN: Sure. [LB460]

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TARA PAULSON: ...or where that appointment or where the home is. So that computer system tracks all of that to dictate who would be the best person or who would be the driver to send. [LB460]

SENATOR BOSTELMAN: Okay; thank you. [LB460]

TARA PAULSON: Um-hum. [LB460]

SENATOR FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you, Ms. Paulson, for your testimony. [LB460]

TARA PAULSON: Thank you; thank you for your time. [LB460]

SENATOR FRIESEN: (Exhibit 3) Any others who wish to testify in opposition to LB460? Seeing none, anybody wish to testify in a neutral capacity? We have one letter of opposition from the Public Service Commission. Welcome. [LB460]

TIM SCHRAM: (Exhibit 2) Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. I am Commissioner Tim Schram, spelled T-i-m S-c-h-r-a-m, chairman of the Nebraska Public Service Commission, representing the 3rd District. I am here today to testify, to offer neutral testimony regarding LB460. The commission has authority to certificate common and contract carriers to provide transportation services to passengers across the state of Nebraska. Many of our certificated carriers have agreements with the Nebraska Department of Health and Human Services to provide nonemergency transportation for those who receive Medicaid to get to and from medical appointments. Carriers that provide this essential transportation must comply with the statutes and rules of both the commission and HHS. The current statutes and regulations do not clearly define the responsibilities of each agency with regards to the transportation service which has created difficulties for both the public and carriers. The commission has received several complaints from the public related to service quality, such as being picked up or dropped off late or being dropped off at the wrong location. Carriers also...carriers have also complained to the commission about billing and scheduling issues. The commission has been working with HHS Division of Medicaid and Long-Term Care in order to find solutions to these issues. LB460 seeks to clarify the responsibilities of each agency, which will lead to efficiencies of administration and provisions of services. As written, the bill will require that all carriers who wish to provide nonemergency medical transportation through HHS to approve...to HHS be approved by the commission as a contract carrier. The commission will determine fitness standards such as finances, insurance, and background checks, as well as ensure that the application is in the public interest. Approved carriers would then provide nonemergency

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medical transportation under the rules and regulations of HHS. The commission and HHS will work together, address and remedy any complaints. The commission appreciates the opportunity to speak about this bill. Although we are testifying neutrally, the commission is supportive of any efforts that ensure safe, reliable transportation for the public. I am available to answer any questions you may have. [LB460]

SENATOR FRIESEN: Thank you, Commissioner Schram. Senator Hilgers. [LB460]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Commissioner; good to see you again. [LB460]

TIM SCHRAM: Um-hum. [LB460]

SENATOR HILGERS: I was wondering if you'd just clear up the commission's position. I have heard your testimony, as chairman of the commission, in the neutral capacity. We have a letter from Commissioner Rhoades appearing to be in opposition to LB46 (sic: LB460). Can you clarify? [LB460]

TIM SCHRAM: Last Tuesday at our regular meeting, the commission went through all the legislative bills, and the majority voted to be neutral on this testimony. I would guess that the letter you have from Commissioner Rhoades is Commissioner Rhoades's opposition. [LB460]

SENATOR HILGERS: Okay. Thank you. [LB460]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? [LB460]

SENATOR GEIST: I do have one. [LB460]

SENATOR FRIESEN: Senator Geist. [LB460]

SENATOR GEIST: I just have been looking through the list of complaints. And I'm curious if this is a...I don't know anything about what you specifically do, as far as dealing with complaints, but is this an inordinate amount of complaints or is that average for the type of service that they fulfill? [LB460]

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TIM SCHRAM: I asked that question in one of our PSC hearings of Intelliride and HHS. And the information I received to put this in aggregate... [LB460]

SENATOR GEIST: Um-hum. [LB460]

TIM SCHRAM: ...in a six-month period between January 1, 2016, and May 31, 2016, they completed 149,684 trips. So if you approximate, you're... [LB460]

SENATOR GEIST: Okay. [LB460]

TIM SCHRAM: ...you're looking at 300,000 trips a year. [LB460]

SENATOR GEIST: Okay. [LB460]

TIM SCHRAM: And so HHS has the huge task of providing and coordinating that amount of trips. [LB460]

SENATOR GEIST: Okay. Thank you; that helps. [LB460]

TIM SCHRAM: Yeah. And I'd like to say, for the record, that it's...that I appreciate the cooperation from Calder Lynch and his team at HHS. [LB460]

SENATOR FRIESEN: Thank you, Senator Geist. Any other questions from the committee? Seeing none, thank you for your testimony. Any others who wish to testify in a neutral capacity? Seeing none, Senator Smith, do you wish to close? [LB460]

SENATOR SMITH: Thank you, Mr. Chairman and members of the committee. I just want to be brief with this. I just want to be on the record that Mr. Lynch and his department are very willing to sit down and talk with some of these carriers that were present today, that have provided testimony, to try to address any concerns that they have. The communication is a two-way street. His department certainly needs to reach out to them, but they need to reach out to him. And if there is anything that Mr. Lynch brings back to me, I'm more than happy to work with them and making any amendments to this bill to move it forward. But I do applaud Mr. Lynch and his department for working to improve efficiencies and to improve the services that are provided to the public and also to clarify those responsibilities with these departments. So I think that's a very good effort that they're making, and I wish them success. And I'm going to help however I can. [LB460]

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SENATOR FRIESEN: Thank you, Senator Smith. Any questions from the committee? Seeing none, thank you, Senator Smith. And we'll close the hearing on LB460. And we will open the hearing on LB459. [LB459]

SENATOR SMITH: Thank you, Mr. Chairman and members of the Transportation and Telecommunications Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. And I'm here today to introduce LB459. LB459 deals with the One-Call Notification System Act and attempts to provide the board and the State Fire Marshal's Office with more flexibility in carrying out their duties under the act. Just wanted to make an aside here. And I spent a number of years on the One-Call Board in my role with the Omaha Public Power District, and I know there's at least four members of the One-Call Board that are in the audience behind me. I just wanted to acknowledge them and thank them. Their faces are quite familiar to me, I think they've been on the board a long time. And that serves Nebraska very well when we have that level of experience. Some of these folks represent their own company and some of these folks represent a corporation, but nonetheless they put in time above and beyond what they their normal duties in their companies are to serve the interests of Nebraska on the One-Call Board. So for that I do appreciate their work, and it's always good to see those familiar faces. As you know, the One-Call Board was established in 1994 to establish a method for the location of underground facilities prior to excavation, in order to protect those facilities, excavators, and the public in general. The board oversees the operation of the Nebraska 811 notification system "call before you dig," and is made up of 20 professionals representing utilities, contractors, power districts, county government, and the State Fire Marshal's Office. LB459 would give the board the authority to determine best practices for the marking, location, and notification of proposed excavations which shall govern the center, the excavators, and operators of underground facilities. These best practices may be put in place through rules and regulations adopted and promulgated by the State Fire Marshal. The bill also allows the State Fire Marshal, through rules and regulations, to provide for the operating procedures and the technology needed for the One-Call Notification Center, and to provide for the qualifications, appointment, retention, and composition of the One-Call Board. Because I served on the One-Call Board for a number of years, I have certain perspectives as to what works well with the One-Call Board and what does not. And I know for six years I've been working with them on various small adjustments to the One-Call System Act. As I mentioned, these 20 members of the One-Call Board they work for their member utilities, they work for their own companies, and then above and beyond they serve on this One-Call Board. And from time to time, there are changes, there are adjustments that need to be made on this One-Call Board. And I have found just in my own experience that sometimes it's complicated and it's difficult to make the adjustments necessary to for them to perform properly and to conduct business well. Nebraska is changing and Nebraska is growing, and as Nebraska grows and there's more development and construction the challenges for the One-Call System changes. Sometimes it's not real easy, it's not real seamless to be able to make those changes in the act. So I would have

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preferred to have provided an executive director to help manage the operation of the One-Call System. I think that, as many states have, there is an executive director if you would of the One-Call System, so that this board reports to the executive director and this executive director can work with a smaller group of the board members to identify changes in the law that are needed and to bring it forward to the Legislature to make those changes. However, we don't have that. And so this bill is, the changes I'm proposing here, help to try to establish a tighter framework for how this can work. But given our budgetary constraints, I have abandoned my intent to add an executive director, that would be costly to the state. I hope sometime in the future we can do that. I think that that One-Call Board serves a very vital interest in our state to protect the public safety, to protect our utilities, and to help to grow our state. So I think at some point we do need to have that executive director, but right now I just don't think the money is there to do that. LB459 is the next logical solution, by giving the board and the Fire Marshal's Office the authority to determine how best to provide for the day-to-day operation of the One-Call System. The rules and regulations process will ensure the opportunity for stakeholder input, without the tedious and uncertainty of having to go through the Legislature each time an adjustment must be made. And any of you that have sat down with both sides of an issue related to excavating, sometimes ag land excavating, you understand how difficult that can be. So I do anticipate some technical changes that might be needed to the green copy, and I have briefly discussed those with the legal counsel. We can have further discussions in executive session, otherwise the purpose of LB459 is pretty straightforward and I ask you to help me to advance this bill and to make our One-Call System Act better in Nebraska. Thank you. [LB459]

SENATOR FRIESEN: Thank you, Senator Smith. Any questions from the committee? Seeing none, any proponents wish to testify on LB459? Welcome. [LB459]

REGINA SHIELDS: (Exhibit 1) Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. I am Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s. I am the legal counsel and legislative liaison for the State Fire Marshal Agency. The Fire Marshal apologizes for not being able to be here to testify for you today, but he's out of the country. I am here to testify today in support of LB459, and want to thank Senator Smith for introducing the bill. The One-Call Notification System Act was passed in 1994 with the purpose of aiding the public by preventing injury to persons and damage to property and the interruption of utility services resulting from accidents caused by damage to underground facilities. With a few minor exceptions, these statutes have not been updated since their inception. The technology and procedures available to both facility owners and excavators has dramatically changed over the years and these changes need to be reflected in the laws or rules governing the One-Call System. LB459 will start this updating process. LB459 creates a framework wherein the agency will promulgate a variety of new regulations, ranging from the composition of the One-Call Board to best practices within the industry for One-Call activities. During numerous discussions with One-Call Board of director members, as well as other stakeholder groups, it has been

decided that in order for the agency to write the best practices regulations there will need to be changes to other statutes within the One-Call Notification System Act. Since the specific language for these best practices are still being developed, there will need to be either future amendments to LB459 or a new bill introduced at a later time. The agency understands these issues and is very willing to work on them going forward. However, the agency would request a few changes to the current language of LB459. The agency requests that the language in Lines 21 and 22 be stricken, as the agency does not have the technical expertise to determine the technology needed to run the center. The agency does not conduct routine excavation activities, nor does it have underground utilities. As such, the specific technology needed by both industries and the call center is outside the purview of the agency. Given the lack of expertise the agency would have, we would have to consult outside experts, which could result in significant costs to the agency. The agency could determine the operating procedures, but these would need to be in very general terms so as to not limit the flexibility of the board of directors when they negotiate the vendor contract every three years. Further, the agency requests that the "shall" language be changed to "may" for promulgating rules and regulations. This is especially important in the section which states the agency shall write rules and regulations for best practices as given by the board of directors. The agency plans to work collaboratively and productively with the board of directors, but does need to maintain discretion as to what the agency will put forward for an agency regulation. Additionally, the agency requests to insert language that would allow the agency to have the authority to write a rule or regulation necessary to maintain compliance with all federal program requirements, as well as items the agency deems needed for the effectiveness and efficiency of the program. The current language limits the agency to only being able to write rules and regulations for Sections 2(a) and 2(b). The current language states that all other rules must originate within the board of directors. The agency wants to thank Senator Smith for introducing LB459 and recognizing the need for updates within the One-Call System. This continuing process will benefit all of our citizens as we find ways to improve the functionality of the system and continue forward on the purpose of preventing injuries to persons and damage to property. I will be happy to answer any questions you may have. [LB459]

SENATOR FRIESEN: Thank you, Ms. Shields. Any questions from the committee? Seeing none, thank you for your testimony. Any other proponents wish to testify? [LB459]

NATHAN STEWART: My name is Nathan Stewart, N-a-t-h-a-n S-t-e-w-a-r-t, I am here representing the Nebraska One-Call board of directors; and also I work for Black Hills Energy, so I'm representing them as well. Thank you, Senator Friesen, Transportation Committee, and Senator Smith, who like you said, I served on the One-Call board with the senator. So we just wanted to say thank you for introducing the bill. We do feel like that it is important for improving public safety. That was the original intent in '94 and I think that's the intent behind the changes now. Basically, if you look at it, the excavation activity was going on in '94, it's going on now but it's a lot heavier than it was. And there are ongoing changes all the time. You would tend

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to think that digging is digging, but even in the last two years we've seen significant changes in the way projects are conducted. Some of you may be familiar with fiberoptic projects that are going on, not only in Lincoln, but also in Omaha. These projects are very large in scale. I don't like to use the term "unprecedented," but it is unprecedented. We've probably seen, just speaking for Black Hills in general, a 70 percent increase in our ticket volume in a little over a year. Sorry, I've got a little bit of a cold, my voice is not what it typically is. Not only that, but our projections for 2017 are that it will be by far a record year, as far as excavation volume. What that comes back to is there are just best practices that have been developed around the country. Statutes have been changed even in neighboring states that we have not kept up with, since the law hasn't been updated since '94. There's probably a number of ways of doing that, like Senator Smith mentioned, but you know, if you had the experts in the field that were able to make those adjustments in real time I think it would be a big benefit to public safety. I'm going to keep my comments brief, if there's any questions that anyone has. I think we are fully in support of the bill. I think there are some things that could use cleanup and some technical changes, but the overall framework is good. [LB459]

SENATOR FRIESEN: Thank you, Mr. Stewart. Any questions from the committee? Seeing none, thank you for your testimony. [LB459]

NATHAN STEWART: Thank you. I appreciate it. [LB459]

SENATOR FRIESEN: Any other proponents of LB459? Welcome. [LB459]

MICHAEL LOEFFLER: Good afternoon, Chairman Friesen and members of the committee. My name is Michael Loeffler, last name spelled L-o-e-f-f-l-e-r, and I'm representing Northern Natural Gas Company headquartered in Omaha. Northern operates in an interstate natural gas pipeline system consisting of 14,700 miles of pipeline in 11 states. We operate more than 1,660 miles of pipeline, almost all of it underground, and four compressor stations in the state of Nebraska. Northern goes on record in support of LB459. We appreciate the commitment of Senator Smith to strengthening the state's One-Call statutes and the enforcement of those statutes. Third-party damage to our facilities represents the single largest threat to our facilities. Third-party damage almost always occurs when an excavator fails to make a One-Call utility locate. Accordingly, strong One-Call statutes and the strict enforcement of those statutes is critical to maintaining a safe and reliable pipeline system. Senator Smith's legislation continues the path to better safeguards for utilities, and we support his bill and applaud his efforts. With that, I'm open for any questions. [LB459]

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SENATOR FRIESEN: Thank you, Mr. Loeffler. Any questions from the committee? Seeing none, thank you for your testimony. Any other proponents that wish to testify? Welcome. [LB459]

BRADLEY WOehler: (Exhibit 2) Nice to see you again. My name is Bradley J., BJ, Woehler, that's B-r-a-d-l-e-y W-o-e-h-l-e-r. Dear Senator Friesen and fellow members of the Nebraska Legislature Transportation and Telecommunications Committee, good afternoon. My name is Bradley J. Woehler with Robert Woehler and Sons Construction, located in Wayne, Nebraska. I am testifying on behalf of the National Utility Contractors Association of Nebraska, NUCA of Nebraska. NUCA is a leading trade association and voice of the underground utility construction and excavation industry in Nebraska; and a driving force for improving conditions in the underground utility construction industry, both open cut and trenchless contractors. We are professional excavators and installers of underground utilities who are dedicated to the safety of our employees and the general public. We want to thank Senator Smith for his time and efforts related to LB459. Over the past year, our contractor members from all over Nebraska has been discussing and researching the Nebraska and other states' One-Call laws, prioritizing our concerns and developing suggestions based on best practices that will improve operations and reduce risk to all parties involved. I have been attending One-Call committee...One-Call board of directors meetings, and we met this past summer with Senator Smith to express our concerns and ideas. We are encouraged by the spirit and cooperation surrounding the efforts to improve the system, and we look forward to continuing communications and collaborations. We all want the same thing: a safer and more efficient system to all stakeholders involved. The purpose of LB459 is to allow the One-Call board of directors to determine best practices for marking, location, and notification of proposed excavations, and govern the center, excavators, and operators of underground facilities. NUCA of Nebraska supports this because it would allow the One-Call board more agility and ability to review, update, and address the industry needs and issues as they develop. NUCA of Nebraska also supports allowing the State Fire Marshal to adopt and promulgate any proposed changes in the rule and regulations that the One-Call board would recommend. NUCA Nebraska, the Associated General Contractors Heavy Highway Chapter, and the new Nebraska Land Improvement Contractors Association met with the One-Call board representatives. It's our understanding that the One-Call board and the State Fire Marshal are willing to work with our organizations to add the excavator voting positions to the One-Call board. This will help ensure that public and employee safety continues to be the focus and that the issues that our members face on the front lines with utilizing the One-Call System are being addressed. Thank you for your time. We encourage you to contact NUCA Nebraska if you need additional insight regarding One-Call law, you can contact me or our office. [LB459]

SENATOR FRIESEN: Thank you, Mr. Woehler. Any questions from the committee? Seeing none, thank you for your testimony. [LB459]

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BRADLEY WOEHLE: Thank you. [LB459]

SENATOR FRIESEN: (Exhibits 3, 4, 5, 6) Any other proponents? Seeing none, we have some letters from Nebraska Building Chapter, the Nebraska Chapter Associated General Contractors, Metropolitan Utilities District of Omaha, Nebraska Public Service Commission. Does anybody wish to testify in opposition to LB459? Seeing none, anybody wish to testify in a neutral capacity on LB459? Seeing none, Senator Smith, you're welcome to close. [LB459]

SENATOR SMITH: Thank you, Chairman Friesen and members of the Transportation and Telecommunications Committee. Thanks for listening to the testimony. Thank you to the utility members that are present here and also the others that represent the One-Call Board and that through their funding helps to provide services that keep our state safe and our citizens safe and our businesses safe through the One-Call System. Thanks also to the excavators as you saw represented here. They have a real important role in our state to help us grow and help us build things, and we want to keep them safe as well. And so that's part of this bill. Finally, I appreciate the Fire Marshal's Office being here to testify in support. And I do encourage the Fire Marshal's Office to absorb these responsibilities within their existing budget and also with inside the budget that is provided to the One-Call board. I believe it can be done if the right implementation is carried out, and I will do everything that I can with this bill to make certain that we do not add to the cost of Nebraskans. But I think this is the right direction to go. I appreciate your time today, and of course always remember "call before you dig." [LB459]

SENATOR FRIESEN: Thank you, Senator Smith. Any questions from the committee. I sometimes forget that portion. We'll now close the hearing on LB459. We will now open the hearing on LB410. [LB410]

SENATOR SMITH: (Exhibit 1) Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. I bet you're getting tired of hearing that today. I am here today to introduce LB410. Just as a little background, I've spent the majority of my professional career working with public service commissions and they provide a very important purpose in each of our states to regulate those industries in which there is no competition. So I wanted to just start out by saying I have a great deal of respect for public service commissions in our states across the country. They're all structured differently, they operate differently: some are appointed by governors, some are elected, varying terms. But we're here to talk about LB410, and there are two major components to this bill. But first, I want to give you a brief history of the Public Service Commission of Nebraska. The commission was first established by the Legislature in the late 1800s to regulate railroads, and was later enshrined in Nebraska's Constitution as the three-member Railway Commission in 1906. However, as the

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commission evolved, two additional commissioners were added in 1964 and the name was eventually changed to the Public Service Commission in 1972. Article IV, Section 20 of the Nebraska Constitution gives the Unicameral Legislature the explicit authority to prescribe the number of commissioners, which is not less than three, nor more than seven; and the establishment of the districts represented by those commissioners. First, LB410 seeks to increase the number of commissioners from five to seven, the top of that range that we are allowed to do. Under the bill, the current commissioners from District 1 through District 5 would continue representing their newly-drawn districts. Two new commissioners would be appointed by the governor until such time as two individuals are officially elected at the 2020 general election. Having two additional commissioners would put the PSC more in line with the Unicameral, local governmental subdivisions, and the various public power boards by providing for more citizen representation. Currently, the five commissioners each represent roughly 370,000 Nebraskans. And as you can see from the map I've passed out to you, the rural districts are quite large and quite sprawling. LB410 would not only increase rural representation, and again I would like to focus on that point for a moment. Not only would LB410 increase rural representation, it would decrease the size of the districts by roughly 100,000 people each, bringing representation closer to the people. As I mentioned earlier, the current PSC has evolved from initially regulating the railroads to now statutorily regulating common carriers, grain warehouses and dealers, manufactured and modular homes, recreational vehicles, major oil pipelines, railroad carrier safety, telecommunications carriers, transmission lines, and private water companies. But as it has, since its inception, the PSC and its duties have continued to change. The PSC was created to regulate industry prone to monopolies, but now the railroads, the freight carriers, and the grain industry have largely been deregulated by the federal government. With the merger of Black Hills and SourceGas there has been less regulatory need with respect to the natural gas industry. In fact, it is my understanding that there hasn't been a rate case in several years. Twenty-five years ago, 100 percent of the phones in the state were regulated; now with the prevalence of wireless, nearly 65 percent of Nebraskans are getting their phone service from an unregulated source. Consumers have choice and the free market has made the need for government regulation less necessary. Another example is with cab companies. Three to four years ago, consumers didn't have a choice. But now, in addition to multiple cab companies, we have Uber and Lyft. The trend is towards more competition and less need for regulation; there just isn't the need for a full-time regulatory agency anymore, in my opinion. And I think the facts prove this out. In fact, if you look at the internal workings of the commission, you can see this trend in its staffing patterns. In 1988 there were 12 staff members in the PSC's motor transportation department, now there are 5. The number of employees in the grain warehouse division is at 7 now, down from 27 in 1988. With less regulatory duties and more representation a full-time Public Service Commission is simply unnecessary, and LB410 attempts to make this government body more like that of the Unicameral Legislature and other citizen boards. As such, there is no justification for a \$75,000 annual salary. In addition, the bill would eliminate the retirement and health benefits, but would remove the current prohibition for a member of the Public Service

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Commission to hold another job. Today, there is a prohibition; we would remove that prohibition, just like what we have in the Legislature. LB410 would move PSC reimbursement to a per diem basis, it would allow for reimbursement of \$150 per day while conducting business of the commission, not to exceed \$22,500 annually. It should be noted that this reimbursement is still quite a bit more than other public commissions and boards. Last year, the commission as a whole met for a total of 35.84 hours--35.84 hours for the entire year, and each commissioner earned \$75,000 annually. Comparatively, members of the Nebraska Public Power District Board met for official business for a total of 102 hours last year, with the chairperson being reimbursed \$15,120, and all other members earning \$13,440. The Omaha Public Power District Board met for a total of 90 hours, with reimbursements nearly the same as NPPD. Then there's the Legislature, and I don't have to remind you the amount of time dedicated to official business and how much we are compensated. By changing the commission to a more citizen-oriented body, taxpayers would save over \$216,000 a year. Now, I'm not going to say the PSC doesn't have a purpose, it absolutely does, and I mentioned that at the very beginning of my testimony. Last year, the Public Service Commission had a total of 38 hearings and processed 677 orders. However, much like the Legislature, our Unicameral, much of the background work at the commission is conducted by support staff and not the commissioners themselves. That is why in LB410 we also clarify the duties of the executive director. As competition and consumers become the regulators, we need...the need for a full-time regulatory commission becomes less and less. I believe this will be the national trend. Currently, at least three states and the U.S. Virgin Islands have part-time commissions. And it should be noted that other states' commissions also regulate their public power industry. Ours does not, we have local boards that regulate our public power companies. And by the way, regulation of electric utilities is a major component of public service commissions in other states. It appears that this year Iowa may be moving in the same direction, as a bill has been introduced in Iowa that increases the number of members on its utilities board from three to five and spreads the current salary across the board. And I've got to tell you, Iowa copied us. I think we made the move first here with the bill that I introduced, so we're not copying Iowa. I don't want anyone to get the wrong impression there. But the Public Service Commission of Nebraska has changed since its beginnings in 1885, and it's time its structure more closely reflects its function in our state. LB410 will provide for greater representation across the state and will more closely reflect the elected positions of the state's other citizen public service bodies. I appreciate the time that you've allowed me to give you an overview of the bill and I'll take any questions you may have. [LB410]

SENATOR FRIESEN: Thank you, Senator Smith. Any questions from the committee? Senator Murante. [LB410]

SENATOR MURANTE: Thank you, Senator Smith. Let me start by saying with respect to the way you districted the map, not bad, pretty good rookie effort. That's pretty good. [LB410]

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SENATOR SMITH: For a novice. For a novice. [LB410]

SENATOR MURANTE: So why this and why now? What inspired you to do this? [LB410]

SENATOR SMITH: You may be surprised that it's nothing that came about quickly for me. I've been here for six years and I think probably a couple years in I was eyeing this. And again, I am sincere in that I do see a shift in our country, a move away from regulated industries. I do believe in competition and I believe that it's important to have the right type of regulatory framework in our state to where we encourage growth and investment, and while doing so make certain that we meet the requirements of public safety and protection. And I think we can do it more efficiently without the expenditures we currently have. I do believe in government closer to the people. And the map that you have before you, if we go beyond seven it requires a change in our Constitution, and that's not where I want to go with this. I don't believe that that is...that's certainly not my intent. And neither is my intent to move to an appointed board. I do believe an elected board...I've worked with both types of utilities, public service commissions. I do believe a publicly-elected board is more responsive to the population, to the people; but I also believe that if we can get government closer to the people, which has more representatives spread over the state, I think that's a good thing for our state and for the companies and for the citizens. [LB410]

SENATOR MURANTE: So there are...forgive me, I don't have a copy of the Constitution in front of me. What are the constitutional parameters for... [LB410]

SENATOR SMITH: Three to seven. [LB410]

SENATOR MURANTE: It has to be somewhere between three and seven? [LB410]

SENATOR SMITH: Yes. [LB410]

SENATOR MURANTE: Okay, thank you. And so why seven? Why not six, why not three? [LB410]

SENATOR SMITH: Well, I think rather than nibbling around the edges, if we're going to make a change and if the intent is to get government closest to the people I think we need to extend it to the maximum allowed through the Legislature. [LB410]

SENATOR MURANTE: Okay, thank you. [LB410]

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SENATOR FRIESEN: Thank you, Senator Murante. Any other questions? Senator Hilgers. [LB410]

SENATOR HILGERS: Thank you, Mr. Chairman. Thank you, Senator Smith, for the presentation and the history of the committee. By the way, Senator Murante, it's Article IV, Section 20. [LB410]

SENATOR MURANTE: See, that's why we have a lawyer on the committee right there. [LB410]

SENATOR HILGERS: And it's squarely within the authority and prerogative of the Legislature to do both aspects of LB410. My question relates to the size of the board. I've looked through, and maybe you know the answer to this, but I...when we were looking at statewide elected bodies, so within that group, or bodies that represent a statewide: the Legislature, State Board of Education, the Board of Regents, NPPD Board. None of those have fewer than eight members. Are you aware, Senator Smith, of any other elected body, statewide body, other than the Public Service Commission, that has so few members? [LB410]

SENATOR SMITH: I am not, but I bet you that Senator Murante would know if there were any. Give me a nod, Senator Murante. [LB410]

SENATOR MURANTE: I don't know if I would constitute it as a commission; but in terms of constitutional officers we of course have the Secretary of State, State Treasurer, State Audit. Those offices and agencies are run with single-member statewide officers. So I would put them on...I would put the State Board of Education, the Board of Regents, Public Service Commission, Secretary of State, Attorney General, I would put all of those on the same plane because they're all our constitutional officers. [LB410]

SENATOR HILGERS: Thank you, Senator Murante. [LB410]

SENATOR FRIESEN: Thank you, Senator Hilgers. Any other questions from the committee? I mean, when you looked at the makeup of the PSC, obviously the staff carries most of the load and the board has more of the oversight duties. And so meeting just 35 hours per year? [LB410]

SENATOR SMITH: That's the statistics I have for this last year, yes. [LB410]

SENATOR FRIESEN: Okay. I think that's all. [LB410]

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SENATOR SMITH: Now, that's not to say that we don't have commissioners that put in more time at the office. [LB410]

SENATOR FRIESEN: Sure. [LB410]

SENATOR SMITH: But those are the requirements. [LB410]

SENATOR FRIESEN: It goes with every other job I guess. As much as you want to put into it you can. [LB410]

SENATOR SMITH: Just as we do. [LB410]

SENATOR FRIESEN: (Exhibit 2) Thank you, Senator Smith. Proponents who wish to testify in favor of LB410? I think we have one letter from the Nebraska Public Service Commission. Any that wish to testify in favor of LB410? Any of those wishing to testify in opposition to LB410? Welcome. [LB410]

ANNE BOYLE: Thank you. My name is Anne Boyle, A-n-n-e B-o-y-l-e. And yesterday I was here before this entire committee, so I think you know I was elected to the Nebraska Public Service Commission in 1996 and started serving in 1997. So left 18 years later. I have a real problem though with what's being said here. And it seems to be said that the commissioners hardly do anything. The fact of the matter is the commissioners do a lot. And I am disappointed in what was being said. I don't have an objection if you want to have seven commissioners, but I do have an objection to say to expecting that the commissioners who go in every day, every week; they go to hearings; they have a meeting for everybody every Tuesday, except if there were holidays or things like that; when that is done we go back to our offices. It is called the Nebraska Public Service Commission because we have to help the public when they have no place else to go. And we get tons of complaints, especially now in this new era, just because we have a lot of more competition in telecommunications it does not mean that we cannot get in with the companies that have...I'm sorry to, I have something else on my mind, but we know the world has changed. And actually, it changed in around the 1990...no, 1996. And that's when we had all of these little phone companies coming up from Washington, D.C., and sending people phones over the post office and telling people here's the new way we're doing things. Today that has transformed hugely, that a lot of people I don't have a cell...phone, a landline phone anymore, I have a cellphone. Thousands, hundreds of thousands of people in this country have cellphones, and they're fine. But the bottom line is they also have a lot of problems, and I was one who went to the...excuse me for this, I don't want to make so many noise. I was one who went to the National Association of Regulatory Utility Commissioners and I was on the telecommunications committee, and there were a lot of problems there and there still are. So we don't just sit idly by

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for 35 hours and just go home and say, okay, we're done. It is a big job and we are the lowest paid, right now in the country, commissioners. Iowa, their commissioners are paid \$100,000. When I was first looking at those things, which was a long time ago, Pennsylvania was paid \$120,000 shortly after I went to the commission. So now we're saying that what we're supposed to be doing is kind of sitting back for 35 hours and letting the staff do all the work. The staff does the work of their individual...what they do individually, so if it is the...I can remember that we one time, grain elevators, we went out to western Nebraska and we listened to what was going to be taking place out there. And the person who was cheating the farmers went to jail. I don't know if that would come about if we change what we're trying to do right now. It's a long time. When we go to the mid conference, which is Minnesota down to about Texas, we do the same thing. We get together and we talk about what it is, because these are national problems, they aren't something that's just unique to Nebraska. They're everywhere. And there are many, many committees in all of those places--so National Association of Regulatory Commissioners. We...a lot of the things that were just mentioned, that's what we do. Water, one of them. Nobody thinks about it, because it's just water, right? Wrong. We have to keep it clean. Gas, anything. The biggest one now in Nebraska though is the cellphone companies. I think that if you decide to do that, you are going to destroy our need to help the public especially, because they don't know what's going on. They called me, they called everybody, they say I don't know, something's wrong and my company won't help me. I don't care if it's a cellphone company or anybody else, they need to be helped. And that is what the commission does. And I just think this is a terrible thing to try to do. And like I said, I don't care if you want to increase it to seven; I do care that you take the system that we have in this country, not this state, this whole country, where everybody has to have somebody who is going to stand up for them. I went to the FCC because when we had problems, and they did things that they knew had to be done, and helped them. We all helped, the entire commission...commissions across the country would be there and go to their individual places. Mine was, I told you, Telecom, somebody else was grain elevator, somebody else was something else. So it's a big industry, it is a big service, and it is something that if we say to the public that you can't get to a smaller place, which would be in the state of Nebraska for our people. But across the country there are problems. And if you say that we think that we're just going to sit there for 35 hours, which we never did, I think it is a disaster. And all you're doing is trying to take about at this point \$75,000 a year and save it. And you are destroying the things that we are supposed to be doing for the public, who don't have anybody to help them except the government, who sits into their place to help them when they need it. So with that, I apologize for being so straightforward and frank, but I think it's necessary to let you know that some of what Senator Smith has said is not accurate. And as somebody who was there for 18 years and worked hard...and when I first started, our fee was \$42,000 a year. When I left, it was \$75,000, and you know how that happened? Governor Johanns, when he was the governor, at first he put it up to \$50,000 and then when he was still governor I think the Legislature had some information and they decided that the people who were on state committees that they should be raised again, Governor Johanns increased our salary to \$75,000. It is now still the

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lowest paid commission in the country because it doesn't ever move up. And I think we work hard to do what we've done...or we did, I did, people who are there now do. And I think this would be a terrible, terrible problem for our government. [LB410]

SENATOR FRIESEN: Thank you, Ms. Boyle. Are there any questions from the committee? Senator Murante. [LB410]

SENATOR MURANTE: Thank you. Good to see you again, Commissioner Boyle. So I'll start by saying I don't think, and I think actually Senator Smith explicitly stated that he's not suggesting that Public Service Commissioners work 35 hours a year. In fact, I think he said that they work well beyond that, but that was the... [LB410]

ANNE BOYLE: He didn't really say that. [LB410]

SENATOR MURANTE: I think he said that pretty explicitly, but we'll have him clarify that on closing. But my question to you is this bill doesn't change the governance of the Public Service Commission, it doesn't change its jurisdiction, it doesn't change its responsibilities or duties, it changes its salary and the number of members it has. So how would this impact the Public Service Commission's ability to do its job, in light of the fact that it's not changing any of its duties or responsibilities? [LB410]

ANNE BOYLE: You're not changing the duties or the responsibilities, but you are taking something that is difficult. I mean, this would be the only place in...every other, for example, Lieutenant Governor, how much money does he make? [LB410]

SENATOR MURANTE: I think \$65,000. [LB410]

ANNE BOYLE: Really? Sixty-five? [LB410]

SENATOR MURANTE: I believe so. I could be wrong about that. [LB410]

FROM THE AUDIENCE: It's \$75,000. [LB410]

SENATOR MURANTE: Seventy-five. Okay. [LB410]

ANNE BOYLE: Okay. What about all the other people who are the heads of an agency, the Attorney General? [LB410]

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SENATOR MURANTE: The Board of Regents and the State Board of Education get nothing. And they're constitutional boards. [LB410]

ANNE BOYLE: They don't meet every day. [LB410]

SENATOR MURANTE: Does the Public Service Commission meet every day? [LB410]

ANNE BOYLE: Yes. Well, five days a week. So that is a difference. [LB410]

SENATOR MURANTE: So... [LB410]

ANNE BOYLE: And they only have one thing to do, we have multiple things to do. And so that is why we have...I know you said we, because of cutbacks, we lost some people who did other things. But when you go out there and you find that...I told you yesterday, when I went up to Valentine, Nebraska, the people up there were screaming for help. And at the time, Qwest didn't do a thing. We had to go up there and listen to them. And I told you yesterday, the chair of their industry in Omaha sat there like this. And then when we...and then Commissioner Landis said we are not going to fine you, but you have a time frame in order you need to get this done and get it done right. And frankly, that is a company that is operating in Denver, Colorado. They are a big company, they could have been fined. But in Nebraska, with that commission, the highest fine we can give is \$10,000. You go to look and see what other states are doing? They're \$100,000. And if you go to the FCC, they'll go right after them and give them \$1 million. [LB410]

SENATOR MURANTE: And I take no exception to the fact that the Public Service Commission has a very important job to do. I don't take exception to any of that. What I'm having a tough time crossing is how their ability to do their job changes depending on their salary. [LB410]

ANNE BOYLE: I don't know that we're going to have enough... [LB410]

SENATOR MURANTE: Whether it's worth it or not, that's a different discussion. Because you... [LB410]

ANNE BOYLE: Well, but it I can respond. I can just say how many people do you think have the time to be on a commission that comes every day and works hard and deals...they're not sitting there and letting the staff do all the work. We go in and talk to them and say these are the things we have to think about. So we need to not just say...I think you are just taking the commission and saying it's worthless. And it's not. And it irritates me to know that I think I'm sitting here and

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listening to somebody that says that's what we did. I did it for 18 years and it was hard work. And I went to Washington and I went to all the other places and I worked hard to get the telephone companies, especially the little ones that we all have now, to do their job right. And one time I was there and somebody said to me I had a list of 25 things that they needed to fix. And this one said to me you can't do that because you don't control us. And I said, well, let me tell you something: I'm elected and I can do that and I'm going to do that because it needs to be known that you're not doing the job that you should be doing for the public. You're taking advantage of them and you're moving your prices up and they have nothing that they can do. So yes, I'm doing it. And that passed in a big place where we had all these other commissioners throughout the country, and they passed it. So that's what I'm saying. So if you want to do that, how many people like me...I'm not a millionaire, actually I don't have any money now because I'm not working. But I don't think it is right to say, well, if you're going to sit around and do this and do this and say you're not going to get paid. We need to have a lot of people who are all different who can come together and say this is the right thing to do. And it should not just be for somebody that may be retired, like me, or somebody who doesn't have jobs and they don't need them, whatever. It should be allowed to be an elected officials who can do whatever they do to get elected, but you should not be taking the funding away. Especially when this commission is the lowest paid commission in the country. [LB410]

SENATOR MURANTE: Okay. [LB410]

SENATOR FRIESEN: Thank you, Senator Murante. Any other questions? Senator Hilgers. [LB410]

SENATOR HILGERS: Thank you, Mr. Chair. And thank you for your testimony. And personal perspective, Commissioner Boyle, one of the parts of Senator Smith's bill that I've seen that I take your point on the salary, but one of the...the other side of that coin is that, at least up to now, commissioners have not been able to hold outside employment, is that right? [LB410]

ANNE BOYLE: Exactly. And that's the way it was written and I would agree with that. Because if you have people who are from Telecom or gas could come in and do it, don't you think that they will look like they're kind of doing something for their gas company or their Telecom company, as opposed to the public. [LB410]

SENATOR HILGERS: Well, I was just wondering what the current law is. But the change that he's proposing is not just to lower the salary, but it's also to allow commissioners to have outside employment. And so like the Legislature, like the Board of Education, like the Board of Regents, you can make that choice and get paid a little bit less, but you can have outside employment.

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And so I take your point. If we weren't going to allow commissioners to have outside employment and were to cut... [LB410]

ANNE BOYLE: If you put in there... [LB410]

SENATOR HILGERS: Excuse me, Commissioner. Commissioner, let me finish my comment please, and then you can answer. I take your point that if we're going to have...cut salaries and not allow commissioners to work outside of the commission, I take that point. But we're not, or at least the proposed LB410 allows them to do both. And it seems to me that's a decision that Nebraska has made for many of its statewide elected officials, including the Legislature, elected officials that have statewide authority. And so I just want...I guess I'm just wondering why is that not the appropriate balance when we do it in other places. [LB410]

ANNE BOYLE: Well, one of the things you haven't talked about is what if somebody from a gas company runs for election and they get elected to the Public Service Commission? That has to be...you have to be neutral, you cannot just be, well, you know. And I frankly think the public would see that. They would know that, well, they're just doing that because they work for the gas company. Secondly, and I said it earlier, if you want to work outside, that's fine. But how are you going to have a full-time job five days a week and then have an outside job and still make anything? So what you're doing is you're trying to make the...if I started again, I would make like...what was the fee, nothing? Nothing, correct, for salaries? [LB410]

SENATOR HILGERS: For the Board of Regents get paid nothing? [LB410]

SENATOR MURANTE: The Board of Regents and the State Board of Education just get a per diem. [LB410]

ANNE BOYLE: And they don't meet that often, right? [LB410]

SENATOR MURANTE: Well, I don't know what you mean by "that often." I can look up like how often they meet. [LB410]

ANNE BOYLE: Well, we do it every day for five days a week. So that is a huge difference, and it means that it will be very difficult to have an outside job and then go there for nothing. [LB410]

SENATOR HILGERS: I take that point, Commissioner Boyle. However, as you know, the legislators only make \$12,000 a year. I have three little girls: 5, 2, and 5 months. I know Senator

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Murante has got a little girl. We have responsibilities. According to the state of Nebraska paycheck that I receive, I make about \$5 an hour for the time that I do. I have to work outside. That's our prerogative to make that choice, to have citizen-elected officials who also work in the public and then also help serve the public. And isn't that an appropriate choice here? [LB410]

ANNE BOYLE: Well, let me answer this. Every time the State Legislature tries to get an increase in pay, the state people who vote for it say no, and I think that's terrible because I've always voted yes for it. So you are being underpaid, and I don't know how you get done anything else, except perhaps...you do have an outside job, you're a lawyer, and so you may make income from that. But the bottom line is I think it's terrible what the people in this state have done to this legislative body. So I can't really say too much about it because what they do is what they do. But I don't know why they don't know...they should be required to come to this body for one week and see everything that all of you do to try to make things good in this state. So that's my answer, I'm sorry it doesn't...I'm sorry with what you do. But I'm sorry that I can't change it. [LB410]

SENATOR HILGERS: Thank you. [LB410]

SENATOR FRIESEN: Thank you, Senator Hilgers. Senator Briese. [LB410]

SENATOR BRIESE: Thank you, Senator. And thank you for being here. When you served as a Public Service Commissioner, how many hours a week did you dedicate to that position, if you had to guess on average? [LB410]

ANNE BOYLE: Senator, it's what I said, I was there five days. And I was working with the staff, I didn't let...the staff wasn't just working by itself. They had to have the commissioners come to them and say here's what we need to do. So and then we would work and we would sit down with them and we would have meetings with them. So it isn't just a play job for 35 hours a week or even 40 or 50 hours a week, it's every day. And yes, there were some commissioners, because they live far away, they may not come in as frequently as I did. I lived in Omaha and I would go down there because I wanted to be in the action. I did not want to have to (inaudible) hear people talk to me and tell me what they thought, and I could ask questions, and we would come to a resolution. [LB410]

SENATOR BRIESE: So you dedicated at least 40 hours a week to the position? [LB410]

ANNE BOYLE: Yeah. Unless we were out and, you know, when we went to conferences and we went to the FCC and we went to a variety of other places. So it was not just a play job, it was

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hard work. And frankly, that is one of the reasons that I decided to retire, because I think I was honest with you yesterday and told you I'm 74 years old, but I retired when I was 72. [LB410]

SENATOR BRIESE: Okay. Other commissioners, did they dedicate less time than you did? [LB410]

ANNE BOYLE: Well, Commissioner Landis, he lives in Lincoln, so he's usually there most of the time I think. Not knowing since two years ago. But I'm not sure if he's going to run again, he's older than I am. So...but bottom line is I did that. I recruited Crystal Rhoades and I know that she has had a reputation that some people don't like. I think she works so hard, she works harder than any of the other commissioners I know. And so that is why I recruited her, because I wanted somebody, and I wanted another woman, because I was the first and only woman to ever serve the commission. And we need more women, and I'm glad you're there, and I'm glad nobody else is there, right? So it's a whole lot of things. And I told you yesterday, I grew up in politics, so I love it. I think it's the greatest thing that we have in this country. But we need to do the right thing, and we should not just do things because we don't know all the information and we don't know how hard it is for it to work. And I frankly admire all of you, because you do have the hardest job with a low payment. And if you have to go do what you have to do and you have to do and all of the rest of you, I'm glad for you that you can do it. But it makes me sick that you are not paid adequately. [LB410]

SENATOR BRIESE: Okay, thank you. [LB410]

SENATOR FRIESEN: Thank you, Senator Briese. Any other questions? Seeing none, thank you for your testimony. Any others wishing to testify in opposition to LB410? Seeing none, anyone wishing to testify in a neutral capacity on LB410? Seeing none, Senator Smith, do you wish to close LB410? [LB410]

SENATOR SMITH: Just wanted to clarify a couple of things. I believe some of my comments were misrepresented. I have friends that work at the Public Service Commission and I do know the hours that some put in. I understand that. Let me read exactly what I said in my testimony. I was relating to the whole. "Last year the commission as a whole met for a total of 35.84 hours," and I was relating that to what other public boards meet--Nebraska Public Power District, Omaha Public Power District. The Public Service Commission does not meet every day. I do believe that many, probably some of the commissioners go in every day. It's not necessary. I believe Tuesday is the official meeting that they have; some hearings go longer, some meetings last 10 to 15 minutes, some an hour, some hearings go longer. So that's how I came back at that as a whole. Using a part-time commission with an expanded number in no way destroys the commission. I'm not challenging that more hours are not put in by the commissioners, I simply

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

Transportation and Telecommunications Committee
February 14, 2017

do not believe that a full-time commitment is necessary. I appreciate the testimony, but this isn't about five individuals and their workload. If it was, we would be talking, as we were here a bit earlier, about 49 individuals and their workload. For \$1,000 a month, we in the Legislature spend countless hours reading hundreds of bills and amendments, we spend hours upon hours in committee hearings and on the floor debating public policy. Every single day we receive emails and phone calls from constituents, and oftentimes angry constituents, that we have to deal with. We receive invitations to appear at meetings, functions, events, dinners, and community celebrations, sacrificing time away from our jobs, homes, and families. We don't do this for a meager compensation, we do it for our desire to perform public service. We do it to make a difference in our districts, we do it to make difference in our state, we do it to make Nebraska a better place. But again, sacrificing the price of public service is not what LB410 is about. It is about how the regulatory landscape has changed and is changing and where it's going. Former monopoly enterprises have become competitive and market competition has replaced the role of the regulator. Like it or not, that's the trend, and Nebraska needs to adapt. And we can do it, and we can do it in a fiscally responsible way, and we can do it by continuing to provide great service to our citizens. The trends are pointing to less regulation, not more. Competition and innovation will likely further reduce the role and scope of the regulator, and our laws should evolve as the regulatory landscape evolves. LB410 is about looking ahead and how we best adapt the Nebraska Public Service Commission to the changes taking place, just like we have since the PSC's inception. LB410 is about increasing representation to ensure all voices are heard and represented; LB410 is about the proper level of compensation to reflect other public bodies that perform important oversight roles in our state; LB410 is about the appropriate structure and organization of an institution that exists to regulate and to protect the interests of Nebraskans, and how we as the Legislature can best position that institution to continue to serve the people of this state into the future. And finally, I have to put this proposal in context with the hearing that we had in this very committee yesterday. The potential for bias and abuse was on full display yesterday, not to mention the creation of an appearance of impropriety. This, if nothing else, is cause to move the PSC to be more accountable to the citizens of the state of Nebraska. Thank you. [LB410]

SENATOR FRIESEN: Thank you, Chairman Smith. Any other questions from the committee? Seeing none, thank you Senator Smith. And we'll close the hearing on LB410 and we'll close the hearings for today. And we will be going into Executive Session. [LB410]