

**Transportation and Telecommunications Committee September 09, 2018 Room
1524**

Rough Draft

FRIESEN: [00:00:00] The hearing on LR426. I'll just talk about a few procedure. I hope everybody turns their cell phones to quiet or turn them off. Other than that, we'll, you know, if you wish to testify we're going to have Tip O'Neill is going to start things out and then we'll just work from there. We' not going to use the lights or anything like that. We'll try and keep the testimony to under five minutes. If you run too long I'll just shut you off. Pretty simple. We won't be very formal for this today. With that, I'll let the committee members introduce themselves. First, we have Sally Schultz over here and Elice has joined us as the committee clerk. And then Tip O'Neill is my legal counsel for the committee and I'll let you start the introduction [INAUDIBLE].

HILGERS: [00:00:57] Thank you, Senator Friesen. Mike Hilgers, represent northwest Lincoln in District 21.

GEIST: [00:01:01] Senator Geist, I represent the east side of Lancaster County, Lincoln, Walton, Waverly, and I am District 25.

BRIESE: [00:01:08] Tom Briese, I represent District 41. District 41 is a nine-county area stretching from central into northeast Nebraska.

BOSTELMAN: [00:01:21] Bruce Bostelman, District 23, Saunders, Butler, and Colfax Counties.

HUGHES: [00:01:33] Senator Hughes, District 44, ten counties in southwest Nebraska.

FRIESEN: [00:01:38] I'm Curt Friesen, District 34, Hamilton, Merrick, Nance, and part of Hall County. With that, Tip, you can kind of start us off.

TIP O'NEILL: [00:01:46] Thanks, Senator. Chairman Friesen, members of the committee, my name is Tip O'Neill, that's spelled T-i-p O-N-e-i-l-l, I'm the legal counsel for the committee. LR426 was introduced by Senator Friesen and the purpose of the resolution is to examine whether the One-Call Notification System Act should be updated. LB1031 was heard by the committee during the last session and would have made several changes to the act, particularly as the act related to regulation of large projects. The committee took no action on that bill. My memo to committee members dated August 30, I provided a brief history of the One-Call Act and changes that have been made to the act in prior years. The committee had hearings on the One-Call Act pursuant to interim study resolutions introduced in 2013 and 2016. I also provided attachments to the memo, which included a copy of the resolution, the two most recent adequacy evaluations relating to Pipeline Safety Administration in Nebraska from the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, or PHMSA; and two draft bill proposals. These draft proposals have not been endorsed by Senator Friesen but were included in the memo and circulated to interested parties for the purposes of stimulating comments at this hearing. Request 0032 would transfer the administration of the One-Call Act from Fire Marshal to the Public Service Commission. It would also create a position of director to assist the one-call board. It was the position of previous commentators that the PSC with its authority to open dockets might be better equipped to enforce violations of the One-Call Act and more aggressively pursue civil sanctions. Criminal violation enforcement would remain with the Attorney General and the county attorney where the violations occurred. Previous commentators have also cited a lack of permanent full-time staff as a reason for dispute resolution coming to the Legislature instead of being handled in-house through the board. Req. 0067 will make substantive changes to the current One-Call Act. Those changes are proposed based on testimony and comments of excavators and facility operators during

previous interim study and bill hearings and recommendation from the PHMSA adequacy evaluations. I provided a listing of the specific proposed changes in my memo. The request would do the following: Define the term "locator" and require the one-call board to adopt the minimum trading guidelines and practices for locators; provide that any plastic or nonmetallic underground facilities installed after January 1, 2020, would be required to be installed in a manner as to be locatable by the operator; require the one-call board of directors to assess the effectiveness of its enforcement program, program actions, damage prevention, and public awareness program; and provide a report to the Legislature by December 1, 2021, and every two years thereafter; would amend Section 76-2321 to first provide that no excavation shall commence until all known operators have either marked their facilities or notified the excavator that no underground facilities are located in the excavation area; and second, to require operators who don't have facilities in the excavation area to notify the center in addition to the excavator. The draft would also amend Section 76-2324 to first provide excavators with the right to receive reasonable compensation from facilities' operators for reasonable costs incurred by the excavator if the operator fails to timely locate its underground facility. And second, would provide liability to the excavator for the necessity of remarking locates by utility operators if remarking is due to the excavator's undue delay in commencing excavation. The proposal would also amend Section 76-2326 to require the excavator to immediately call 911 and immediately notify the facility's operator and center if a gas or hazardous liquid underground pipeline is damaged and a release or spill occurs. And finally, would amend Section 76-2329 to add a one-call center notification to the current requirement that an operator provide location information as soon as possible for an excavator in the event of an emergency condition exists. I'd be happy to answer any questions you might have.

FRIESEN: [00:06:08] Thank you, Mr. O'Neill. Are there any questions from the committee?
Senator Hilgers.

HILGERS: [00:06:18] Thank you, Senator Friesen. Thank you, Mr. O'Neill. I appreciate the explanation. Can you-- I wrote down, you said one of the changes would be the liability to excavators if there is an undue delay. It was one of the maybe the second to the last that you mentioned.

TIP O'NEILL: [00:06:32] Right.

HILGERS: [00:06:34] Is that-- when you say liability are you meaning legal liability or is that for-

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TIP O'NEILL: [00:06:39] For the cost of additional marking by the utilities if there was undue delay, unreasonable delay by the excavator in beginning an excavation project.

HILGERS: [00:06:47] Okay, thank you.

FRIESEN: [00:06:50] Thank you, Senator Hilgers. Senator Bostelman.

BOSTELMAN: [00:06:52] Thank You, Mr. Chairman. Three questions for you. I'm just curious and maybe someone will testify, come talk after you could speak to them, so I'll ask the questions now and then I'll hear how other people will talk to it. But have you looked at part of the thing that seems to be a problem is lack of access to material so has anyone talked about on utilities, whatever it is that's buried that there is an electronic file built somewhere that the county or someone has so that a person has one spot to go look at an intersection or a street to see what's exactly buried there, because one is identification. But if we have schematics that kind of is required to file with an entity, whether it be one-call or the county, that seems to be a starting point to at least know that there is-- what should be there when they mark it.

TIP O'NEILL: [00:07:44] I think the one-call notification center people who are probably going to testify would have better information than I would on that [INAUDIBLE] Senator.

BOSTELMAN: [00:07:51] That's fine. I'm just kind of putting it out so others can comment. The other question I have is, in part five of your request where we're talking about the liabilities and Hilgers talked about who defines-- who do you think defines what reasonable and what those costs-- - who should-- what those costs might be?

TIP O'NEILL: [00:08:09] Well, I think that would probably would be a determination that could be made by the one-call board.

BOSTELMAN: [00:08:18] And my final question would be, when a person like myself is put out of service because of a cut line, and again, other testifiers may answer this as they come through. Two points with that one was, one, I had at my home we were going to plant some trees. So I called the one-call network and I had two lines that I knew come onto my property and I knew pretty much where they're at. And that's why I needed to make sure they're out there so I had the power company was one and the other one was telephone, and I knew pretty much all were there at. Power company come out the next day. The telephone company never did, never contacted me, never tried to contact me. I finally called 811. They said, oh, they say there's nothing there. Well, I've got a landline in my house and there's only one way it can come, that's right where it's through. The other part of that question is, is if someone were to cut one of those lines and now I'm out of service, say my telephone service for a week, two weeks at a time, has there been a thought of some type of, you know, adjustment for that in this case, homeowner for a loss of service for that, for that whatever it is, say it's a telephone?

TIP O'NEILL: [00:09:35] My understanding is that current authority is for civil damages to be assessed by the Attorney General against a utility or an excavator for violations of a law. I still think that there probably would be a potential civil remedy in that situation depending on the circumstances, again whether or not it was-- that there would be a reasonableness standard. If a utility failed to come out and locate something and the excavator cut it, generally there's no liability to the excavator for the utility's expenses in repairing that issue if the excavation was done in a reasonable manner. Once again, there are certain civil standards. Right now I'm not aware of any situations where a homeowner has taken civil action, but that's not to say it hasn't happened in the past.

BOSTELMAN: [00:10:38] I agree. I mean, I just-- others may comment to this because to me it seems like if you cut my phone line and I'm out of service for X amount of time and I'm still charged for that service it just doesn't seem right. There should be some way that that, whatever that service is that you get compensated or credited for that time that you're out because that company did not come out and reconnect in a timely manner. So I would just comment, not that you need to--

FRIESEN: [00:11:08] Thank you, Senator Bostelman. Senator Hilgers.

HILGERS: [00:11:09] Thank you, Senator Friesen. Couple of follow up questions on something that was sort of touched on by Senator Bostelman. One is, is excavation area defined anywhere in statute, do you know?

TIP O'NEILL: [00:11:21] I'd have to look. I don't believe excavation area is defined.

HILGERS: [00:11:25] So the reason I'm looking at the fourth potential provision or amendment and that deals with the idea that no excavation shall commence until all known operators have either

marked or facilities notified the excavator that there's facilities in the excavation area. So I could see generally the policy rationale for saying we don't want anyone to excavate until we know where all the lines are. Right? And I can understand that conceptually. At the same time, we've been doing this for a long time. So what is-- what are the facts on the ground that are driving this change? I mean, are some of the accidents maybe that you hear about caused because people are just sort of rushing in and not waiting? And then my second question is, you know, my concern is around the definition of excavation area if you have a really large area. Right? If you define excavation area, the entire area, it's clearly in a place where it is far away for whatever reason. If you just were there you would know, there's no way we're getting any lines because we're excavating over here and you have to be worried about lines on the other side of the property. I mean, that's a little bit of my concern is saying, okay, no one can ever excavate until we've cleared like the entire area, even if that maybe is going a little bit further than what would be reasonable [INAUDIBLE]. Can you speak about those points, please?

TIP O'NEILL: [00:12:39] The first point is generally when they call or do a ticket, as most excavators do now, it's my understanding that a particular area of excavation is designated. So that that would-- it may be part of a larger project, but I think that the particular area that that ticket was set for is for a smaller area. But, again, I'm not an expert on that. So there may be someone from an excavator or locator or somebody who might be able to answer that question better.

HILGERS: [00:13:13] Okay. Okay, thank you.

FRIESEN: [00:13:14] Thank you, Senator Hilgers. Any other questions from the committee? Thanks to Senator Murante for joining us this morning. I think that's-- if there are no more questions from the committee, then thank you for kind of giving us a nice opening and direction. And I'll ask those who wish to testify to just come to the front in an orderly manner. You can sit In

the front row and be ready and I welcome up the first testifier. The reason-- I'll just kind of give a little overview of where I'm at here is as in the past bill we had we went in depth on a lot of issues and we had the hearings last year and so this is kind of the culmination of that. And it had to do probably a little bit with Allo, a project here in Lincoln where you had numerous markings all over the city. I know there were some utility operators that had some excessive dollars spent on markings and it was-- it caused a pretty good disruption here. And that's why we talk about large projects . And even though they're not mentioned here, I do think it's something that probably should be addressed yet in some manner down the road. But this kind of-- I think the purpose of this was to make some changes that makes the one-call system a better system. Currently, whenever any changes need to be made they have to be brought in front of the Legislature. And the process here I think is sometimes not as conducive to getting things done as if they could be done in the rules and regs and through a different process. And so that's kind of the direction that we would, you know, that I would like to head and I just want your kind of opinions on if we're headed in the right direction. And we have a couple of draft copies and those kinds of comments would be welcome today. So any suggestions you can make that would improve the one-call system. And I think there's a lot of questions been raised already and I think there'll be more as people testify. So if anyone wishes to come forward and offer their testimony. Yes. And would you please state and spell your name. Yes. Hand your green sheets that you filled out, hand them to the committed clerk. Welcome.

MILISSA JOHNSON-WILES: [00:15:47] Good morning. Milissa Johnson-Wiles, Assistant Attorney General, appearing on behalf of the Attorney General Office this morning. Thank you, Chairman Friesen and members of the committee for having this interim study hearing today. I wanted to talk a little bit about two things. I wanted to introduce myself and describe a little bit about the--

FRIESEN: [00:16:14] Could you spell your name?

MILISSA JOHNSON-WILES: [00:16:14] Yes. It's Milissa, M-i-l-i-s-s-a, last name is Johnson-Wiles, W-i-l-e-s. I wanted to introduce myself and describe a little bit about what the Attorney General's Office does for one-call enforcement as well as give you some background information on the PHMSA audit that gave rise to the two determinations that have been presented to you as a talking point for this interim study hearing. I am going to pass around-- I am passing around a PowerPoint presentation that I gave to the State Fire Marshal's Office earlier this year in May of 2018 that gave an overview to the attendees at that seminar. We do this every year regarding our enforcement over the year so that you have that as a point of reference. The Attorney General's Office started enforcement of one-call in 2004 in earnest, based on a determination by Senator-- I'm sorry, Attorney General Bruning, at the time, that additional enforcement needed to be-- was necessary and I was the Assistant Attorney General who was assigned that job. So I've been doing one-call enforcement since January 2004. And as you can see from this PowerPoint presentation, in 2004 we received six complaints. We had a record number in 2016 of 60 complaints. In 2017, we had 42, down just a bit. And then the next page talks about the amount of civil penalties that were assessed over the years. In our first year of assessing civil penalties, we assessed \$3,500. We had a record year in 2016 of \$54,500 and then assessed \$37,500 in 2017. That just gives you a little bit of an overview of the type of the complaints that we receive and the amount of civil penalties that we assessed-- assess. And that includes not only gas pipelines but also nongas pipelines, electrical, telecommunications. And those-- some of you may know this, but before 2017 the civil penalty assessment for nongas lines was \$500 per violation. So that actually-- that increased as of August 24, 2017, to \$5,000 and fiber optic has moved to \$10,000 to be in line with gas line facilities and other hazardous facilities. So our office began the dedicated enforcement in 2004. There's currently one Assistant Attorney General, that's me, and a legal assistant assigned to one-call enforcement in our office. The types of complaints that we receive are: failure to call for excavation; failure to wait

two business days before excavating; failure to wait for a standby by the gas transmission line operators before excavation; failure of an underground utility to locate; failure of an underground utility to timely locate; failure of an underground utility to properly locate. We've also received complaints for failing to be members of the center. We've received complaints against homeowners as well as excavators. We've received complaints from homeowners against other homeowners, but we have had the gamut. Our office will investigate the complaint and determine after investigation whether a violation occurred. That includes having to interview the various witnesses in cases. Where gas lines have been hit and the State Fire Marshal has been called by the gas line operator, they will often do an investigation and I'll work closely with the State Fire Marshal in those cases. So the three things that we may do after investigation is we may find that there was no violation and decline prosecution. We may send a warning letter to the offending party or seek the civil penalty action. And we do seek civil penalties in every case where damage has occurred or in the event that there is a repeat violator. And then we analyze the elements of the civil penalties to be assessed according to statute in determining what type of civil penalty we may be pursuing. There are a lot of times that I reach agreements with the offending party for payment of civil penalties; participation in the Damage Prevention Safety Education Class put on by the State Fire Marshal. And in addition to that there have been times when I will have to proceed with filing in court and litigate an action, which I have done. So I would like to turn then to-- that's kind of an overview about how our office does and how we enforce it. I did want to point out that the Attorney General does not-- it's civil penalties only and we do not do criminal prosecution. There is a portion of the statute 76-2326, I think, which talks about unlawful and intentional interference with facilities. And that has a criminal element, but the rest of this is all civil. So we do handle the civil enforcement aspects. I'd like to turn now to the PHMSA audit results that give rise to the two determinations that Nebraska received in 2016 and 2017, which found that Nebraska's enforcement is inadequate. As the committee I'm sure is aware, the latest letter was dated May 18, 2018, with the determination that Nebraska was found inadequate in certain areas. And what I'd like to do is, if I may, I don't have

extra copies but I can certainly provide this. May I approach? May I approach and hand this to Mr. O'Neill? Is that okay or--

FRIESEN: [00:23:36] Tip or the page can bring it up.

MILISSA JOHNSON-WILES: [00:23:37] What I'm handing the assistant here to provide to Mr. O'Neill is the actual results from 2016. So it has the matrix that was involved in the PHMSA determination. And I'd be happy to provide extra copies for the rest of the committee. I'm sorry I didn't have that today.

FRIESEN: [00:24:04] We'll have them made.

MILISSA JOHNSON-WILES: [00:24:04] Okay. We're trying to track down a copy of the 2017 kind of backstory results and can provide those to you as well. But my reason for bringing that is to show you that there are a number of things that were a number of factors that were considered. It's also to tell-- to show you that there are a lot of things that Nebraska is doing very well. And so that the determination that PHMSA has presented in its latest letter highlights the main areas of concern, but it's just a reminder that Nebraska is doing very well in enforcement. And I also brought that because it-- with the matrix you get to see what the numbers are and what the importance is to PHMSA. And those five areas that they highlight in the letter, they have numbers attached to them. And in 2016, with respect to your first two concerns raised by PHMSA, I would call these the data analysis concerns, checking to see whether the enforcement organization assesses the effectiveness of its enforcement over time and sees the results of that program. Nebraska actually got 10 out of 20 points in each of those categories. It's a work in progress. We've communicated with PHMSA to let them know that-- can you give us some examples so that we can adequately show you what we believe to be the appropriate effects of the program? And we have maintained as well that from our

office's standpoint when we do not see repeat violators, when we see-- we think that the enforcement that we are doing has made a difference, but that is a work in progress. And then I'd like to point out, under 5.g., which talks about how the enforcement organization demonstrates fair and consistent enforcement, in their mind it has to do with-- not just their mind, but they are looking at are we treating excavators the same as we're treating operators. And the enforcement results really were based on the fact that we did not have any complaints against operators when this first audit came forward. We had two complaints in 2015. And so we had let PHMSA know that we didn't have the complaints so there wasn't a way for them to adequately assess whether that was being fairly and consistently enforced. And I will tell you that our prosecution philosophy is, absolutely everyone is treated equally. And anyone who violates the One-Call Act will be assessed a civil penalty, if that's appropriate, as long as the evidence is substantiated and we can prove it. So that was very important for me to express to PHMSA at the time and I'm expressing to you now that that is certainly not the case that that they are not-- that excavators and operators are not treated the same. Okay? So fast forward to 2017. We did start to get more complaints against operators and Allo was one of the reasons. Okay? And we actually got quite a few in 2017. At the time that the audit had occurred, those were still under investigation, so we were not able to show a resolution in the form of some sort of warning letter or civil penalty. So just wanted-- I wanted the community to know that that's kind of where that-- where we were at that process. And that's going to work itself out because the word has gotten out. We're certainly getting complaints from both excavators and operators for violations, so that will resolve itself. But, in any event, that was 10 out of 20 points, so it wasn't a complete zero. Now, of course, the committee may know. And the last two areas of concern raised by PHMSA were purely statutory. And PHMSA gave us 0 points out of 20 on the two areas of the law where they want an area of the-- they want the law to say that an excavator needs to respect the marks. We don't have that right now. And then a change in the law that would require 911 notification in the event of gas damage, and that's very important to them. But that's 40 points out of the total assessment. So that's kind of what I wanted to tell you today. I'm certainly

open for any questions from the committee.

FRIESEN: [00:29:07] Thank you, Ms. Johnson-Wiles. Any questions from the committee? Senator Hilgers.

HILGERS: [00:29:11] Thank you, Senator Friesen. Just a quick question. I'm curious on the interplay between your process and a normal civil court process. So does the statute require certain threshold or under a certain threshold or a certain boundary of damage or complaint to go to the Attorney General's Office? Are our parties able to go to court if they need to? Is it sort of discretionary? How does that work?

MILISSA JOHNSON-WILES: [00:29:33] Well, our office only has the authority to assess a civil penalty and send a warning letter which is a step below that, so anyone can bring a civil case if they have the appropriate cause of action against-- yeah.

HILGERS: [00:29:50] For damages.

MILISSA JOHNSON-WILES: [00:29:51] For damages.

HILGERS: [00:29:51] Sure. And they could do those in parallel, I assume.

MILISSA JOHNSON-WILES: [00:29:53] Yes, because-- yes. And we would not have to get permission for that at all. It would be just be normal civil action.

HILGERS: [00:29:55] That makes sense. Thank you.

FRIESEN: [00:30:06] Thank you, Senator Hilgers. Any other questions from the committee? One question I had, when you look at the reimbursement rates, currently Nebraska is like the third lowest in reimbursement from the feds. What's the reason for that? Is that strictly because of our score?

MILISSA JOHNSON-WILES: [00:30:23] It's not. Are you talking about reimbursement for our one-call grant from the feds?

FRIESEN: [00:30:29] Yes. The PHMSA grant.

MILISSA JOHNSON-WILES: [00:30:33] Okay. So we have a PHMSA one-call grant and I think there's PHMSA damage prevention grant. So which one are you asking about?

FRIESEN: [00:30:48] The PHMSA-- the damage prevention one.

MILISSA JOHNSON-WILES: [00:30:51] I would have to refer that question to the State Fire Marshal's Office, because I don't know anything about that.

FRIESEN: [00:30:57] Okay.

MILISSA JOHNSON-WILES: [00:30:57] Our office does receive a grant from this-- through a Memorandum of Understanding from the State Fire Marshal's Office from PHMSA of \$30,000, \$35,000 a year. It changes.

FRIESEN: [00:31:10] Okay.

MILISSA JOHNSON-WILES: [00:31:14] That's based on what we ask for, not anything else.

FRIESEN: [00:31:19] We'll ask that question again later then. Any other questions from the committee? Seeing none, thank you for coming.

MILISSA JOHNSON-WILES: [00:31:24] Okay, thank you.

FRIESEN: [00:31:26] Welcome.

REGINA SHIELDS: [00:32:00] Thank you. Good Morning, Chairman Friesen and members of the Telecommunication and Transportation Committee. My name is Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s and I am the legislative liaison and legal counsel for the State Fire Marshal agency. I am here to provide information regarding the agency's role in the one-call system, as well in the ongoing processes resulting from the passage of LB263 during the last legislative session. The SFM Pipeline Safety Division operates the state pipeline safety program which is regulated by the Pipeline and Hazardous Material Safety Administration of the federal Department of Transportation. This program encompasses a number of very required activities such as: monitoring regulated pipelines; conducting a variety of regular inspections on jurisdictional pipeline operators; investigating incidents of damage to regulated facilities; and conducting yearly seminars and other outreach activities. The damage prevention portion of the program includes the one-call system. The SFM is responsible for promulgating the rules and regulations that govern the one-call board of directors. The state pipeline safety program undergoes regular federal audits for all aspects of the programs including the damage prevention portion. The result of those audits can affect the amount of federal dollars granted for the administration of the state program. You have been provided materials regarding the results of recent federal audits on the damage prevention portion of the program. The agency is working to improve the score on this audit by making regulatory changes in

areas such as reporting and analyzing information contained within those reports to direct more specific education activities. To implement additional changes, the agency has also drafted regulations that will include a state requirement for contacting 911 centers when damage to a regulated pipeline occurs. The agency has also a draft regulatory language that will address the issue of mandatory positive electronic response that will assure the one-call center is provided information regarding the affected facilities' location activities on and tickets. LB263 required the SFM agency to draft regulations regarding the quote qualifications, appointment, retention, and composition of the board of directors and best practices for marking location and notification of proposed excavations. The bill also required that any regulation regarding best practice must originate within the board of directors. In order to accomplish this task, the agency has partnered with the board of directors and the call center education and outreach coordinator to hold 16 stakeholder meetings across the state. At those meetings a variety of ideas for regulation changes were discussed so that input could be received from as many stakeholders as possible. The meetings revealed a great many differing opinions and little consensus on most topics for change. The board did narrow the field of possible changes and provided areas for recommended changes to the agency. The agency has now drafted regulation changes to include the definition and applications of things such as: hand digging; mandatory positive electronic response; marking standards; offsets; tickets; ticket life; and trenchless excavation. Language regarding a start time for excavation notices was also added. During the stakeholder meetings as well as at presentations made at various group-specific meetings, the agency sought input regarding board composition and qualifications. Based on the information gained during those exchanges, the agency has drafted new regulations and presented them, as a courtesy, to the current one-call board members. The agency's new regulations has reduced the overall size of the board from 22 voting and nonvoting members to 17 voting members with the State Fire Marshal designee as a nonvoting technical adviser. The agency updated the category types to encompass broader areas of service to match current industry standards. The agency combines some categories due to the similarity of excavation activities

provided by those people. Some categories were eliminated in their entirety due to their not using the system. The agency has also expanded the excavator category as a reflection of the need to more fully involve all stakeholders in the one-call system. Thank you for the opportunity to testify on LR426 and I'm happy to answer any questions you may have.

FRIESEN: [00:36:02] Thank you Ms. Shields. Any questions from the committee? Senator Bostelman.

BOSTELMAN: [00:36:05] Thank you, Mr. Chairman. Thank you, Ms. Shields for being here. My question goes back, I asked it earlier and I just don't know. Is there a map somewhere that shows all of our hazardous waste and our pipelines that your office has access or someone has access to? Those are a requirement.

REGINA SHIELDS: [00:36:24] There are-- as part of the overall pipeline safety program there are-- the regulated pipelines provide our office with certain information. I think, however, what you're asking about is more of the all utilities that provide that system. All member utilities are required to provide their mapping data to the one-call center. So the one-call center is the place where you're supposed to call in. You, as the excavator, determine what your excavation area is going to be. You put in locations for what you want. Then the center facilitates that by knowing everybody's provided their maps to show this utility has something there, this utility has something there, this utility has something there. So then that utility is then notified that there's an excavation planned in that area that will affect their facilities. They then are required to respond to that ticket. So the one-call center is the place designed for all of that location information to be housed.

BOSTELMAN: [00:37:12] And do you feel it's adequately reported as far as you have that-- the one-call center has that information?

REGINA SHIELDS: [00:37:20] All member utilities provide that information to the one-call center. There are certain cases in which when they have very, very old facilities that may not have been put into their current mapping systems at the facility themselves that they may still be using what are called the as-built maps. However, that information is still provided to the center. It may just not have as much electronic data information about it but they can still go out and hand locate them, basically, off the maps, the ones-- as-builts.

BOSTELMAN: [00:37:51] Sure. It just kind of, I guess, goes back to schematics. You know the electronic schematics if someone is going to excavate in the area say, yeah, there is a natural gas line goes in here, here's the schematics on it, so at least they have a better idea where it's at. I know the call center may have, but if that could be provided to the excavator. And maybe that's a proprietary thing with the utilities need to answer that. But if we could eliminate that opportunity, which we've had those happen.

REGINA SHIELDS: [00:38:17] I think it's very important to understand that the location of the facilities is the information owned by the utility itself. Once they provide that information to the one-call center, which just houses that information, it is incumbent upon the utility to go out and respond to that. The excavator themselves cannot locate the facility's lines, that's outside of their realm. It has to be the facility, so they're going to keep their information.

BOSTELMAN: [00:38:42] I understand. It's more just awareness on their part. Yet it is here. You know, if they're not here, they mark where it is-- where it is supposed to be, type of thing. Thank you.

FRIESEN: [00:38:49] Thank you, Senator Bostelman. Any other questions from the committee?

Just a couple of questions that I have. How often do you have to refresh the markings? What is their current length under current law?

REGINA SHIELDS: [00:39:05] Under the current statutory law and regulatory law that's an open question. Under the current, there is no ticket life, which is one of the regulatory changes we have made to put in an actual ticket life. The only portion of the statutes that require that markings on permanent surfaces must remain ten days. So oftentimes we have had education outreach activities that have talked about, make sure you get it refreshed within that ten days. But under the statutory requirements there is actually no ticket life that says how long the marks are valid.

FRIESEN: [00:39:36] If the markings are still valid and you can see them, do you have to call for a refresh in order to meet requirements?

REGINA SHIELDS: [00:39:43] There is no statutory requirement for that. The question that has been raised in the past in a number of cases is, does that then open you to certain kinds of liability?

FRIESEN: [00:39:53] Okay. Do you see that there have to be any statutory changes or do you think these changes can all be done through the regulatory?

REGINA SHIELDS: [00:39:58] So the agency has drafted all the regulatory changes that have been mentioned to include all of that information. The regulations currently are being reviewed at a variety of sources to make sure that everything is still within the statutory structure that the agency is allowed. But there's been no major opposition voiced to those regulatory changes.

FRIESEN: [00:40:18] So I'll ask you the question. You know the reimbursement rate from the-- down-- we're like the third lowest in the country. Any reason there for that or--

REGINA SHIELDS: [00:40:30] I believe what you're asking about is the actual pipeline safety program grant. You made mention earlier the damage prevention grant. Within the overall structure of the pipeline safety program we have a one-call grant. We have a damage prevention grant. And then we have what's called the baseline program grant. I think what you're referring to is the baseline program grant. The baseline program grant is determined primarily on the size of your program. In Nebraska we have a very small-sized program compared to many other states who just have many more staff, many more people in it. So our reimbursement rate from the government is based on, for example, we have three pipeline inspectors, a damage prevention officer, and program director. So there's basically five.

FRIESEN: [00:41:11] So we're just more efficient.

REGINA SHIELDS: [00:41:12] Yeah. And we just have a smaller state and some aspects of that and fewer pipelines that have to be regulated by us. So your reimbursement rate is not necessarily a reflection of the program, it's how much you're allowed to ask for based on what they can actually reimburse. Since we only have X amount of staff we can only ask for X amount of money to be reimbursed.

FRIESEN: [00:41:35] How much staff is required that you have now dealing with the one-call, three full-time?

REGINA SHIELDS: [00:41:38] Like I said, we have the three full-time inspectors, the damage prevention officer who is also now doing some inspection activities, the program director, and then I don't technically come under the program but then I work on all of the regulations and these activities. And then we have some-- a support staff as well for office administration. I believe one

full-time and sometimes another part-time, depending on how we have to bill some things out.

FRIESEN: [00:42:03] Okay. Any other questions from the committee? Senator Briese.

BRIESE: [00:42:07] Thank you, Chairman Friesen. Thank you for being here. Oftentimes locations have to be marked multiple times because of delay in excavation. Is that true?

REGINA SHIELDS: [00:42:18] It is.

BRIESE: [00:42:19] It can be true and can be tricky, I'm sure.

REGINA SHIELDS: [00:42:20] Yes.

BRIESE: [00:42:20] Proposed language here speaks to a shifting of the financial burden for doing that because of quote unquote undue delay. Do you foresee-- would you foresee any problems in defining what constitutes undue delay?

REGINA SHIELDS: [00:42:40] Yes.

BRIESE: [00:42:42] If someone asked you to define it, how would you define it?

REGINA SHIELDS: [00:42:43] I think part of that goes back to what they discussed earlier when they talk about the large project ticket that's trying to be developed. Technically, the statutes currently talk about you should call excavation activities that can be performed within a certain amount of time. However, due to weather, due to other construction needs for your company, some of those get delayed. If you also are calling in a very large project, currently that may encompass,

let's just say-- use an example of eight miles of putting in new sewer systems. It may not be possible for the person upfront to know that when they called in this section, well now there was an outside accident, there was a utility something that occurred that they can't work in that area. So now they're going to go work over here on this area of that project, but this ticket was already called in. And so now it may have to be refreshed due to other activities that are going on. There are a vast number of factors that can affect excavation activities. I do think there has been abuse in that system. We don't deny that in any way, shape, or form. I think there are issues in the system that have been worked out on both sides. But the language in the currently proposed bill draft lacks some specificity.

BRIESE: [00:43:55] Lacks specificity. How would you correct it?

REGINA SHIELDS: [00:43:58] That is probably outside the realm of our agency considering we don't conduct any excavation activity and we're not a facility owner, how they want to handle that. Like I said, the only way we'll be drawn into that is if it was damage to a regulated pipeline, we may have to do the damage investigation that occurred. And so then our reporting may be used as part of the civil litigation, but I think it basically, the language currently is designed to just enable certain civil litigation.

BRIESE: [00:44:27] Okay, thank you.

FRIESEN: [00:44:27] Thank you, Senator Briese. Any other questions from the committee?

Seeing none, thank you, Ms. Shields. Any others wishing to testify? Welcome. Welcome.

BRAD WEGNER: [00:44:59] Senator Friesen, members of the Telecommunications Transportation Committee, my name is Brad Wegner, B-r-a-d W-e-g-n-e-r. I'm the vice president of Midland Contracting in Kearney, Nebraska. Today I come to you as a representative of two

construction trade organizations. The first is the National Utility Contractors Association, Nebraska Chapter. You'll commonly hear us referred to as NUCA. I am the past president of that organization and am currently on the board of directors. I also represent the Nebraska Associated General Contractors, Heavy Highway Division, obviously called AGC, many of them, I'm sure. I am on the underground utility committee for that group. Our organization represents contractors who are the excavators, as defined in the one-call law. We dig every day, we build the highways, sewers, water mains, putting in the conduits, do all the underground work that you see, all the delays that you have to get to work for. We build the interstates and the bridges, so we appreciate both associations, want to say thank you to Senator Friesen, all of you, for taking a look at the issues we have with the one-call system. They are many. In fact, I would honestly tell you, and I can't say this enough, that the system is broken. And it's broken in ways that I don't think you guys quite yet understand. There seems to be a focus on this big project issue. That's a drop in the bucket to what's happening every single day. Our companies every day are dealing with mismarks, with lack of marks. There's utilities being hit constantly. A lot of them you're not hearing about the mismarks and the no marks because contractors are taking care of it themselves. There is also minimal enforcement. The problem is, right now contractors don't feel like there's a system that is easy to get the complaint in. Yes, there does-- it does exist on the 811 Web site. You fill out some paperwork, you provide pictures, you go through the due diligence process on your side and then, in my case, 15 months later I get a letter back that says, we're just not going to make a determination. That's my experience. I've got two, I believe, two complaints right now. One of the things that's happening is that contractors are becoming aware of how to file the complaints. It's not that there weren't any back in 2015, it's that nobody understood how to do it. That's a problem with the system also. The big insidious thing that's happening out there is that right now the cost to locate utilities is being transferred to your constituents, to the taxpayers in Nebraska. And here's how it works. Ten years ago I didn't own a vacuum excavator. I didn't own utility locating equipment; didn't need to. I own three vacuum excavators now and I own two sets of utility locating equipment. When I do an urban

residential project I have to put in my bid time to locate utilities on our own, to do the potholing, to make sure that mark that's here is actually not a utility that's over here. There's an 18-inch window that they have to be within. So that means that the taxpayers in Kearney, in O'Neill and Henderson, whatever town I might be working in, they're paying for it in my bid. That didn't used to have to happen. That equipment is being paid for through my hourly rate. I think we all understand, it's being paid for in my bid. That's the thing that's going on all the time and I'm not a big contractor. There's guys that own a lot of equipment that's trying to work around this broken system. Now the bill that's come out is a great start. And Regina has talked about how they've already worked on changing a number of the regulations. One thing she didn't say was that we worked with them. We were part of a task force that came out of Senator Smith's bill I think in 2017, saying let's make some changes through the Fire Marshal's Office and through the current one-call board. So we worked with them and came up with a lot of those best practices. The big thing we wanted was representation on the board, not just a nonvoting member which is what currently happens, but voting membership and we asked for I believe five spots. I think at this point their current idea is to give us four. We want a voice at the table to try to help make the system better. So what we like about the current bill is, number one, we want to see clear jurisdiction of the law underneath the regulatory agency. We want that agency to have both the resources and the power to change the rules and regulations and to enforce them. We don't want to have to keep coming back to the Legislature and have you arbitrate our disputes. We want this to happen within our industry, both the facility utility owners and the excavators. We can work this out. We can make a system that works best for everybody. The other part is, we do want to see an executive director of the one-call system. And that goes back to the PHMSA letter saying this needs to be tracked. We've had conversations with the people at PHMSA. That's their one big issue. They want to see there be accountability. Is it working? Changes can be made. And that administrator, that executive director can help do that. Right now that position doesn't exist and nobody really has that responsibility. One of the things that we're struggling with in the current bill is the lack of representation by excavators.

As this bill right now is written, and I know this is a first draft, is there's just a nonvoting member. It's very similar to the current structure of the one-call board. So, obviously, we want that changed to have our five representatives from the excavation community. And we also would like to see the board get smaller, because there are a number of current positions that don't really pertain to a one-call system now. Another thing that we're dealing with is the idea that the executive-- as the law is currently written is that this executive director is the gatekeeper for complaints. So the way it's written is we file a complaint, it goes to him, then he decides whether he kicks it up to the regulatory agency. That seems like that's out of context with what we see in other regulatory agencies right now. We'd like to be able to file the complaint directly to the regulatory agency and then go and get a hearing and go in front and give our case as to why we've been damaged. So those are some of the major things that-- there's a number of things in my testimony that I'm not going to go over that we also agree with. We do like the idea that everything is locatable after 2020. That makes sense and that's a fairly common thing across the country. I want to talk a little bit about the large project idea. I've sat around with many of my friends, we've had quite a few beers trying to figure out how to make that work. And we cannot come up with a scenario that we can cover large projects. Large projects should be dealt with by the right-of-way owners, not by the one-call system. So let me give you an example. Allo is the big one that we're all talking about. The city of Lincoln should have been responsible for not allowing construction to happen everywhere at once. It's no different than Lincoln's paving program. They don't let every street in town get paved in their paving program at the same time, because traffic would be disrupted. It's that same premise. Omaha right now is doing large projects. They learned from those mistakes in the past and they're all working together to make that work, not to overload the system. There's no way to make the system control project scheduling. That's not what the one-call system is for and that's kind of what you'd be asking it to do to deal with large project scenario. Georgia tried it. They're now back to the drawing board, from what I understand, with their law because it does not work. There's no way to put teeth in it. Nobody's going to do it if there's not teeth in it. It's that whole push and pull with it

with a typical law like that. So the big issue is we're not getting people held accountable, both on the contractor side when we talked about refreshes. And let's be careful with refreshes. For a scenario that happens often my company goes in and puts in a sewer system. We spend, let's say, we spend a week, week and a half putting the sewer system in. We then have to drop back and put the water main in that same block. We're doing one block at a time, let's say. So I have to call in again to refresh my tickets for the water main install, because I've dug the whole site up, dirt everywhere, I've covered up the marks, so I refresh. I then let the paving guy come in and do his dirt work. He might refresh two or three times while he's setting up his pins getting his grade built. I mean, this all takes time, because you have to refresh right now once a week. It's not in the statutes but there's been determinations by the AG using this idea that the marks have to last five days. They're saying, well, that means that the marks are only good for five days. Okay? That's been-- that ship has sailed as far as a regulatory thing. It's not in the law, but that's what they've used as precedent, so we have to stay with that. So what contractors do is every Thursday, in my case, I refresh whatever projects I'm currently on. My guys go in, they open the book, they look at their project and say, yeah, I need to do this one again. We're done with that one, we'll skip it. Not every contractor is doing that. Some of them are just blanket refreshing a lot. We understand that and we're trying as trade organizations to go back and talk to those people and say, stop. You need to manage this, not just blanket refresh. So we're not saying we're not doing things wrong. We also say the system is forcing us to refresh when actually a lot of times we could refresh every two weeks. And that's what the new regulation that Regina was talking about is, is looking at doing is telling us we have to do it-- a ticket life is every 12 days. Ends up being two weeks when you add the two days of time they have to locate a utility. So we're making improvements under the current requirements of Senator Smith's bill, but we think that this goes even farther and that we've got to clean up this regulatory or this enforcement issue and not have to legislate the changes. Make this more flexible, because what you've got to understand is technology is advancing fast in the realm of one-call centers. If you hear about artificial intelligence and all that, well, they're applying a lot of

that to how we map where we're doing our locates. And to answer your question, on the locate excavation area, we have to specifically go in on-line, if we're using the on-line system, and we whitenline a Google map exactly where we're doing it. We also write a description: Locate an area of 500 feet west of First and Main, 200 foot south, 300 foot back to the east, and we box it in both with the map and with a text message. So that area is defined. If we dig outside of it we're in violation. If they don't locate everything inside that box they're in violation. That's how it works. That's the give and take. So, but the technology is coming to make this even more fluid, simpler, smoother, but the concern of all of us is that, if we got to come back and relegislate who is responsible for what, you know-- I just want to-- I know you guys kind of want to get this off the idea that we have to have a law every time we want to make one change and that's why we like the current law. And got to make sure that the language is clear that this regulatory agency can promulgate rules and regulations. That's the key to the whole thing going forward. So with that, I would take any questions.

FRIESEN: [00:56:20] Thank you, Mr. Wegner. And I do appreciate you coming in and visiting with me numerous times and I think you have a lot of good ideas, so I appreciate you coming. Any questions from the committee? Senator Geist.

GEIST: [00:56:31] Mine is not really a question and thank you for coming and your expertise. It's just a point of clarification. Are you saying that if an original locate is made and if you are working in that area and that locate only lasts five days?

BRAD WEGNER: [00:56:48] Yes.

GEIST: [00:56:48] Okay. And what this is looking at is extending that to 12.

BRAD WEGNER: [00:56:53] Right. Yes.

GEIST: [00:56:55] Okay. And you are in favor of that?

BRAD WEGNER: [00:56:56] Yes.

GEIST: [00:57:16] Okay.

BRAD WEGNER: [00:57:16] Yeah. There's many times that the paint and everything is there. We just have to refresh anyway because of the regs or the, I guess, not technically the regulation.

GEIST: [00:57:17] Right.

BRAD WEGNER: [00:57:17] And, again, that's-- we need to clean this stuff up. I think you guys are getting a sense of that.

GEIST: [00:57:17] Okay.

FRIESEN: [00:57:17] Thank you, Senator Geist. Senator Hilgers.

HILGERS: [00:57:17] Thank you, Senator Friesen. Thanks for coming down today. Question. I was wondering if you could expand a little bit on the act. You touched on at the end kind of the technology side of this and what maybe other states are doing and what might be available to help us address and track some of these issues going forward. It seems to me that if we could do a good-- I mean it may be kind of a heavy lift, that's why I'm kind of wondering what the technology is. But if we're tracking-- starting to track where these-- where the locates are occurring, where we're

mapping things that Senator Bostelman talked about, it about seems to me there might be some technological solutions to make the whole process work more nimbly, faster, and more fair. What do you see in the next five years?

BRAD WEGNER: [00:57:50] Well, I know that there are some I think, I believe, Iowa and I believe the one-call people could be able to talk to this more than me but to give it a little bit of what I know. Iowa is working on a system that just has a more robust mapping. One of the things that happens when you map is if I'm out in rural Nebraska it's pretty hard to come up with an address when I'm laying in a water main across a cornfield. So what I do is I do the quarter section, so that means I may only be working in the south part but the only way to delineate it is using the quarter section. Now, some guys have technology with GPS. But, again, contractors aren't that sophisticated many times, so they just map the entire quarter section. These maps, now you can actually go in and get very specific that I'm working in this side of the road ditch and that would be all that they're responsible to locate. And so that saves the locators time, because right now the locators out there are overwhelmed. There's not enough of them, they can't find enough people, and there's a lot of construction going on. So we need to have-- we need to make sure that contractors are only locating areas that they're working in. But what happens for us is we're worried that we're not going to catch everything we need. So we tend to oversize our locates. There's also a scenario where I'm digging a sewer main over here to replace it on this side of the street and I pull this water service out of the water main that's on the other side of the street. Okay? I don't want to locate just the sewer, I want to look at the whole street in case something goes wrong in the area. Now, I don't need to locate the whole block, I just need to go right-of-way to right-of-way. So this technology, from what I understand, is getting much more effective at being specific and contractors are going to try to use that as much as they can. That's one of the big things that I understand, and then just the tracking. Right now the one-call center does a great job with their system of tracking locates, who did them, the time, and that's what they have to do by law and just for liability purposes. But

there's also you know some systems in there that where there-- we need to give the contractors to come back in and put in the system when there's a mislocate or when the locate was done not at all. And that's something we're educating on our side. So the system that exists is great, but I just-- from want to understand the mapping is the big thing that's coming down the pipe.

HILGERS: [01:00:08] Thank you.

BRAD WEGNER: [01:00:08] Yeah.

FRIESEN: [01:00:09] Thank you, Senator Hilgers. Any other questions from the committee? Couple questions, I guess. Why do you, I guess, why do the excavators think they need a voting membership on the board when you're not paying any of the bill? I mean, you're given ex officio.

BRAD WEGNER: [01:00:29] Right.

FRIESEN: [01:00:29] But you thought you should have more representation.

BRAD WEGNER: [01:00:32] Well, I guess the whole thing is that it's affecting us all the time. I mean, it's affecting our operations, it's being, you know, it's costing us money, too. We may not be paying the locate ticket itself, but we are getting hurt by the system and we want to be at the table and have-- if we don't have a vote and we go on to say we would like to see this, this, and this, nobody's going to listen to us. Only if it interests the parties on the other side that have the vote. And for us to really want to come in and try to get to work in and dig into this, we need a seat at the table, not a seat in the back row.

FRIESEN: [01:01:11] Okay. Talk a little more in detail about what happens when you call for a

marking and they're given like 48 hours to come mark it. But if they don't do it in that time frame, how do you work with that? And then the other thing is, you talked about having to do locates yourself because they mismarked them.

BRAD WEGNER: [01:01:30] Right.

FRIESEN: [01:01:30] Or what's your liability when they mismark a line?

BRAD WEGNER: [01:01:34] Well, again, we always wait to the 48 hours. If they're not marked by 48 hours we call in a mislocate ticket. And at that point, the locate center goes out and contacts whoever it is that has not marked yet and tells them they currently are beyond the time frame. Typically, what happens is the local guy will call then call our office and say, hey, I can be there tomorrow or where are you working at? And we talk to them say, hey, we're on this side of the street. He looks at his maps and says, look, we're over on the other side of the street. Are you going to go over there? And we work it out and we try to get going, because after 48 hours, and this is vague and the law is, we can start digging as long as we have an idea where utilities are. What happens, too, is we can see a pedestal for a telephone here and a pedestal over here. We know it's in between. So my guys will go in with the vacuum excavator and they'll dig a slot trench in between where they're going to work and try to find it. The worst case is we don't find it. Now what do we do? But technically, after 48 hours we could start digging and say it's not our fault. That would be probably a battle in court to some degree, but the locator is not there. So that's what you're not hearing is a lot of times contractors are working around the breakdown in the system. So when that happens is, the one thing that shows up at the one-call center is maybe I call in a fail to locate. But then what happens after that is never documented again. If I hit it, now we're going to an enforcement action. One is, I would say, you failed to mark in time, that's why I hit it. In the meantime, the utility sends me a bill and says, give this to your insurance company, we'll fight it

out. That's the reality on the ground and it happens all the time.

FRIESEN: [01:03:17] Senator Hilgers.

HILGERS: [01:03:18] Thank you, Senator Friesen. I asked legal counsel this question. I want to follow up about some of the practical reality on the ground and how it would be impacted by the proposed changes to this bill to where you can't-- you actually could not move forward if they didn't locate versus what's going on today. So can you just give me your thoughts on that proposed change?

BRAD WEGNER: [01:03:37] I don't think that's a proposed change that we cannot dig after the 48 hours of time is up. I don't believe that, but if that was true that would be something we would not like. I mean, that just lets them do whatever they want as far as the locating companies.

HILGERS: [01:03:52] I think the amendment we just-- we're on the same page: to provide that no excavation shall commence until all known operators have either marked their facilities or notified that no underground facilities are located in the excavation area.

BRAD WEGNER: [01:04:04] Right. Yeah. So--

HILGERS: [01:04:07] So the way that I read that would be, until they get back and, say, either locate or say we don't have anything you couldn't-- no excavation shall commence.

BRAD WEGNER: [01:04:12] Yeah, and we're going to flesh that out because it does sound very solid. But yeah, we would say you have 48 hours or else we're going to go. That's the only way it's fair. Otherwise, we're standing there forever.

HILGERS: [01:04:24] Right. Right. Thank you.

FRIESEN: [01:04:28] Thank you, Senator Hilgers. So If they failed to locate though and it kept you from digging, should there be damages assessed to them for not locating?

BRAD WEGNER: [01:04:36] Yes.

FRIESEN: [01:04:37] I mean, right now, like you said, you're-- in the end, if you dig after 48 hours and you do hit something, you probably end up in court if it's a big fiber optic line or something like that.

BRAD WEGNER: [01:04:48] Right.

FRIESEN: [01:04:49] So, I mean, if we clarify it and they do not mark in that time frame though and if they're negligent in doing that, they're holding you up. Some penalties should probably be assessed.

BRAD WEGNER: [01:05:01] Right. And I read that and it goes back to some questions about what's vague in the law as far as how you assess how much that is. That, again, is I think where the regulatory committee-- regulatory agency and maybe the one-call board or however the enforcement is done is, we would come with the a claim saying, we sat here for five hours. It's \$5,000. And that would be something that then that regulatory agency would say, yes, you're owed that money. That's the end-- that's their assessment to the utility company. And that would go the other way, too, if we do something that causes damage to the utility company. So that to me, I know that's a gray area but, yes, we feel that we deserve to be paid downtime when people don't follow

the law.

FRIESEN: [01:05:45] What's your liability when you hit something that's mismarked? You know, they bring in a third-party marker and I've heard something about this that they don't do a good job of marking so they miss it by two feet.

BRAD WEGNER: [01:05:58] Right.

FRIESEN: [01:05:59] And you hit it. What's your liability then?

BRAD WEGNER: [01:06:01] Well, technically, my liability is nothing as long as I hit it because it was mismarked or-- and I've got a scenario, I can tell you tons of war stories. The recent one was in Grand Island we directional drilled under a street and we took out a fairly substantial fiber optic cable that was never marked by a third-party locator. We directional drilled that night. The next morning we show up and there's more CenturyLink trucks there than I think they had in the state and they're suddenly tearing up the middle of city-- a city street in Grand Island. That's an eye opener, to say the least. And we had bored through it and didn't even know. We simply took videos, took pictures, filed a complaint about it. And the contractors and the CenturyLink guys saw us do it, knowing that we weren't just going to take it in case they sent us a bill, because we're not liable for that. There were no marks there. We potholed every mark that was in that intersection. We went in and back excavated and made sure we knew exactly where it was at as we were directional drilling. So in that case we took no responsibility. And at this point, they said that we are not going to be held responsible for that. But there's other cases where two months later I'll get a bill for something like that because they just go fishing for us to pay. And that's very frustrating, not something within the one-call system that can be dealt with. But if we can get good enforcement and we can get the complaint filed against them for not marking correctly, my insurance company at least at that point

says, you were already ruled that you did this wrong. Leave us alone.

FRIESEN: [01:07:38] Well, I mean, it sounds to me like you're already doing two locates. So you have the company come locate. You've got the equipment, you relocated it to make sure they're right.

BRAD WEGNER: [01:07:49] Yeah.

FRIESEN: [01:07:50] We do have a system that's not working quite the way it should.

BRAD WEGNER: [01:07:53] Yeah. And don't get me wrong. Contractors have a responsibility to go find some stuff. I mean, again, you've got to understand, directional drilling is done sideways drilling and we have a head that we can control where it's at. So that accuracy is only within a tenth of a foot. So we have to go find certain things that are very dangerous. If it's a high pressure gas line we want to know where that's at, so we're going to do some of that. But no, there are some things where they can locate it and we should be fine. But we know not to trust certain scenarios and even certain companies, that when it's a critical type thing we have to spend the time and that's built into our system, into our bids.

FRIESEN: [01:08:36] Okay. Any other questions from the committee? Seeing none, thank you very much.

BRAD WEGNER: [01:08:41] Thank you.

FRIESEN: [01:08:41] Welcome.

JOHN LINDSAY: [01:08:41] Members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of Black Hills Energy. We want to thank the committee for continuing to improve our damage prevention laws in our state. It's very important to those who have underground infrastructure. The comments are going to be directed towards Req. 67. We support the language that requires calls to 911 for damages to natural gas utilities. And we know from reading the newspaper what can happen when natural gas utilities are hit. And so the first thing that should be done is that 911 call. We appreciate having that in the proposal. We believe Section 6 is problematic simply because the board of directors does not have an enforcement program. So requiring an assessment of that program would be difficult. We also opposed one-call board setting standards-- training standards for locators. If locating standards need to be established those standards should be established by a government agency and not by a volunteer board whose responsibility primarily is the oversight of the call center. We also oppose the board serving in an auto-review function to check on compliance with training requirements. We support Section 7 that requires operators to either mark facilities or notify the excavator that no facilities exist in the excavation location. Black Hills Energy is actively involved in the one-call board and appreciates the opportunity to be involved with both the regulatory and the legislative process for our damage prevention laws. We'd also encourage the committee and the one-call board to have discussions with PHMSA, with the Pipeline and Hazardous Materials Safety Administration about specific statutory changes that could be enacted that would improve our state's One-Call System Notification Act in light of their assessments. I'd be happy to answer any questions.

FRIESEN: [01:11:23] Thank you. Are there any questions from the committee? Senator Bostelman.

BOSTELMAN: [01:11:27] Thank you, Mr. Chairman. I'd just follow up on one of your oppositions to the training. What is the solution to that? What's your recommendation for-- it

sounds like you have an issue with maybe not-- maybe Black Hills, if they do their own locating, if there's third-parties that do locating, what's your answer to who-- how that training should be done or who should be overseeing that?

JOHN LINDSAY: [01:11:47] It should be overseen by a government agency. We don't take a position on whether that's the State Fire Marshal, whether that's a Public Service Commission, but it should be done. We don't believe the one-call board is equipped to have that function.

BOSTELMAN: [01:12:05] Is there a specific training institution or type that needs to be done to adequately ensure that those who are out there, third parties or whoever they are, that they are map-- are locating the way they need to be?

JOHN LINDSAY: [01:12:19] I don't know that, but we have no objection-- believe that locating standards are appropriate. It's the question of who should be doing that. We believe it's better placed within a government-- a regulatory body.

BOSTELMAN: [01:12:32] Thank you.

FRIESEN: [01:12:32] Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you for your testimony.

JOHN LINDSAY: [01:12:50] Thank you.

FRIESEN: [01:12:50] Welcome.

KRISTEN GOTTSCHALK: [01:12:50] Senator Friesen, members of the Transportation and

Telecommunications Committee, my name is Kristen Gottschalk, I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association, and I'm testifying today on their behalf. I do appreciate this opportunity to discuss issues with the One-Call Notification Act. I really appreciate the interest of the committee in looking at the administration and implementation of the act. The program has proven to be successful in preventing damage to underground utilities, as well as preventing injuries and death. But as we've heard there are problems. And while our industry may have been a reluctant partner when the act was first created, through the implementation of the act we're probably now one of the strongest proponents of this program and feel very strongly about it and our representation on the one-call board. I'll make a few comments to address the draft legislation, but also concerns with some of the current Fire Marshal administration. In the first draft the proposal to establish an executive director for the One-Call Notification Act certainly has merit. Rather than just be an agency and subject to where it's prioritized within that agency, having one strong coordination aspect does make sense. The addition of the staff personnel will, of course, increase the cost of implementing the program. And that cost is going to be borne primarily by the underground operators that pay for those ticket costs. I would express some concern for moving the administration of the act into the Public Service Commission. While it's apparent that more attention to the administration of this act by the Fire Marshal's Office needs to be done as indicated in the PHEMSA letters, moving the program to a political agency does not necessarily improve the safety and administration concerns that are currently there. The greater commitment from the responsible agency-- and we do know that we will be having a new Fire Marshal very shortly. And making this a greater priority of the organization maybe is something that needs to be done. One of the things that we heard regarding fair and consistent enforcement by underground operators as well as the contractors. We do agree that the underground operators need to be held just as accountable. This is a partnership program and it is only successful if there is adequate support from both sides of the industry. But as was mentioned before since the one-call program is provided free to the excavators and is paid for by the underground operators,

adding a significant number now of voting members to that board, some might liken to say it's the fox guarding henhouse. I would address, too, that while some of the board positions that are currently in place need to be revised, because some industries have changed and that needs to be reflective and that needs to be represented. The recent proposal from the Fire Marshal's Office would remove a member of public power from that board. There are currently four positions on the board. Two of those positions represent electric utilities that serve or have more than \$40 million in revenues every year. Those would be the large utilities. And two of those positions are meant to represent small utilities under \$40 million. And that was done in its originality to ensure that both large and small electric utilities have adequate representation on that board. And I should emphasize that those four positions represent more than 160 electric utilities in the state. So we do feel very, very strongly about that. And small utilities obviously operate differently. Rural utilities operate differently than urban utilities. And the Fire Marshal proposes to remove those designations and that is a concern. I would address just a little bit the training requirement that Mr. Lindsay brought up earlier. And no one can argue that the training for locators is critically important. As a consumer of a utility I had a recent issue where training for the locators would have been very important to prevent one, my electric line from being cut and, two, my phone line from being cut in a particular instance. But our concern is, depending on what those training requirements are in a location, an opportunity to participate in the training, it may become burdensome for some small utilities, especially some away from the population centers of Nebraska. Most of NREA's members do their own locates. They do in-house training and they have a staff that are familiar with the location of the utilities in addition to using the technology to provide more precise locations. We just want to be sure that the proposal don't put utilities in a position where they have to use a third-party locator because they haven't had the opportunity to take and participate in a training. The reporting requirements in the draft, again, we share some of the same concerns that were brought up by Mr. Lindsay, but they should be a shared responsibility. And I do believe that there is expertise on the board that needs to be reflected and they should be part of that. But clarification as to what that

information is needs to be taken care of. When allowing for compensation for underground operators for cost that when an operator or, excuse me, a contractor when an operator fails to mark their facilities is mentioned to be reasonable compensation and reasonable cost to be awarded. Delays are important. We want, you know, all the businesses in our areas to be successful so we understand that delays can cause problems. But those terms are very vague and you need to have some kind of clarification as to what reasonable cost and reasonable compensation would be. We do appreciate the language that addresses the concern with some excavators that file location requests and continually refresh those. While this isn't as big an issue in rural areas as it is in urban, it has proven to be a burden for many utilities who have to continually refresh for those who just haven't gotten there. There has to be some kind of leeway given for-- we all understand when inclement weather or other construction delays come into play. But it needs to address the abuse of the refresh option, excuse me, is needed. I know you've got other testifiers coming up, but I'd be happy to answer any questions that I'm capable of answering.

FRIESEN: [01:19:59] Thank you, Ms. Gottschalk. Any questions from the committee? As a utility operator, I mean, when you're looking at the process now, I mean, some of these things are vague, but I guess my thought was that the board at some point would develop these rules and regs to address that rather than putting them in statute because things change. And so the more we can leave to rules and regs, it makes it a lot easier to make changes as technology changes.

KRISTEN GOTTSCHALK: [01:20:34] And we would agree with that. I will say, the board was not given the authority to do it through rules and regs, the Fire Marshal was given that authority. And with respect to the makeup of the board of directors, there wasn't really a clear process when they were developing their proposal. They did have stakeholder meetings. I did hear about the changes that were proposed from the board. Those changes did not come from the board, they came from the Fire Marshal's Office. And it was unclear. If I hadn't been notified by somebody, I

wouldn't have known to go to the stakeholder meetings to talk about our concerns or our express our concerns on those.

FRIESEN: [01:21:12] Okay. Any questions? Seeing none, thank you for your testimony.

KRISTEN GOTTSCHALK: [01:21:12] Thank you.

FRIESEN: [01:21:12] Good morning.

BRAD MOLINE: [01:21:33] Good morning. My name is Brad Moline, B-r-a-d M-o-l-i-n-e. I'm the president of Allo Communications. And thank you, Senator Friesen and committee, for letting me testify today. Allo Communications-- I probably better read with glasses on, I'm getting old. Here we go. Allo Communications has been part of a very large project, as has been mentioned several times here, in Lincoln, Nebraska. But we've also been a part of seven other projects throughout the state of Nebraska. The number one thing with locating, in our opinion, and particularly in a large project like Lincoln, is communication. We're getting the various utilities together. The contractors, subcontractors, boring crews, city of Lincoln in this case, and creating a schedule. And since we've been doing that in this project, in our opinion, it's gone very smoothly. We've been able to predict the areas that we will locate, the number of locates, and the contractors have been able to stay reasonably busy. Is it perfect? No. The volume of locates, at times you can't expect people to get it done in 48 hours so it may go into four and five days. We can all plan for that and we have all planned for that. So you ratchet forward to where we are today. Lincoln is a huge project. Eight million linear feet of underground boring; 100 percent boring in this community for the Allo fiber project. Simply, I don't-- I'm unaware of a project this large in the United States. So it's pretty significant. Now the good news is, we're over 90 percent done with the boring. So we anticipate that really by year end this project that's stressed the system, and we recognize that, will

largely be complete. We can't even identify another one that will relate to us in the state that would be this big, because most communities are mostly aerial and a lesser percentage boring. So in many cases this project, again, may have stressed the system, but I think the contractors and the municipality in this case and the entire crew has done a great job, because in the end it's: one, very large; number two, ourselves, our parent company is going to invest almost a quarter billion dollars in this. That's a huge amount of property taxes, that's a huge amount of jobs. That's a huge amount of changing how, in this case, the city of Lincoln has been able to operate. But we've also done this in Scottsbluff, Gering, Alliance, Bridgeport, Ogallala, and North Platte, and we're about a third of the way through with Hastings. So it isn't unique to this area. Finally, the huge project, on a per mile, per home pass, for business pass, safety has been very positive in Lincoln and we're very pleased with where it is. If you remember, Senator Friesen, particularly, our opinion was LB1031 had some issues. And it may surprise you, but Allo in LR426 with some of the discussions that others have had before me, I'm not going to reiterate those, we're very supportive of this procedure, even though it transfers some of the authority away from the Fire Marshal. We've had a great relationship in working with the Fire Marshal as well. So, hopefully, that frames where we are, where our support is, and probably more importantly I'll open it up to questions.

FRIESEN: [01:25:59] Thank, Mr. Moline. Any questions from the committee? I know during the project, when your contractor would hit a utility, whether it was mismarked or whatever the reason, do you then reimburse the company for the damages or how does that process play out? Do you-- who makes a decision whether or not you reimburse it or who's at fault or what's that?

BRAD MOLINE: [01:26:31] Well, the first thing is, what did we hit? If it's a gas line, first thing you do is you call 911. You know, just logic. Calls in and I think that's part of the recommendations. If their locate is within 18 inches and our contractor hit it, the contractor pays for it. And if it's outside of that 18 inches, then it's a no-fault hit, assuming that they called in the locate

correct and all those types of things. Then the various utilities would pay for it. While the focus may be that Allo is a construction company, which we are at times when we first enter a community; we actually employ 14 of our own locators. So very quickly, once the project is done or even partially done, as is the case and Lincoln and Hastings right now, we're locating as well. So we want to make sure that we protect this incredibly valuable asset as well as 911 and many public safety things so that we get an accurate locate. And if we make mistakes, which we've made a few and I mean very few in our 15-year history, then we bear the cost. But if the contractor hits us and it was properly located on time and all those types of things, then they bear the cost.

FRIESEN: [01:28:09] So if you, for instance, hit something and the utility says it was, you know, or the owner says, you know, it was mark incorrectly, you'll say, the contractors say it's marketed incorrectly. But the appeal process, who makes that decision? How far does this have to go if you deny that, you know?

BRAD MOLINE: [01:28:34] Well, eventually it becomes more a part of the insurance company and the standard commercial legal system. I would contend that less than 5 percent there's any opinion. Real simply, many people take pictures of their locates, which we do as well, file them so you have what it looked like before the construction started. And then you have [INAUDIBLE] that very seldom is it within an inch. We pothole, we do all of those types of things. Usually it's several feet off and most of those just get disposed of. That doesn't mean you don't get billed for it. Quite often groups, I kind of contend that they basically try to file a claim with everybody. So they file with the contractor, with the general, with the project owner, all for the full value hoping someone will pay because they're paid on a percentage of what they collect. But the reality is you look at it and you say here's our documentation. Not our fault. We'll supply it to them. Usually they go away. They may request again and again, but you just send the same things. If it does go to a more formal disagreement, then much like in any other parts of your business you defend yourself with the

accuracy and the validity of your claim.

FRIESEN: [01:30:13] So it ends up in the court system.

BRAD MOLINE: [01:30:15] Yeah, but that doesn't happen very often.

FRIESEN: [01:30:18] Do you feel that the locators need training or should be certified?

BRAD MOLINE: [01:30:22] Absolutely the locators need training. This is above my pay grade, if you will, on how this should all work. But the one thing that concerns me is, is legislating training because as you mentioned earlier in this proceeding, technology is changing all the time and so we have to make sure that it doesn't have to be legislated. So whoever is making the recommendation certifying, if it's an industry certification or if it's a government oversight I think we can all debate and come up with a reasonable solution there. I know our locators go through a substantial amount of training and retraining, because in the end 20 years ago there was far less things underground than there are today and 20 years from now there's going to be far more. I worked on a project this morning in Scottsbluff, Nebraska, where there is a five-foot easement and there is an ability to get there. And there's some large business owners that want their business tied together to their home with fiber. Wow, that's a challenge. So you can either squeeze it in in a very reckless, in my opinion, manner or we went and purchased a new easement because we didn't feel that it was safe to go down that path. We will never make money on those customers, but they'll get service and it blends into the overall result for that community.

FRIESEN: [01:32:03] Thank you, Mr. Moline. Any other questions from the committee? Senator Geist.

GEIST: [01:32:14] And I know the exception to this question will be a situation where you're-- okay, just let me ask the question. Do you feel like the things that are argued, arbitrated or whatever are handled in a timely manner? And my exception would be, of course, the ones that are appealed and those few. But, just generally, when you have a dispute with someone is it--

BRAD MOLINE: [01:32:35] It just depends on the group. There's competitive issues at times, but generally they work very well. We find that particularly working with electric utilities, we sit down and it's very smooth. Sometimes our competitors and us, I mean, real simply, we're competitors.

GEIST: [01:32:51] Sure.

BRAD MOLINE: [01:33:01] And it takes a little bit longer to come to a resolution. But in my history, that resolution still ends up the right decision. We may have to meet a couple more times. But generally, as operators-- I mean, if you think about it, the people we compete with or that compete with us, at an operational level we have to work together all the time to complete a phone call so that the world can communicate via the Internet or other things. We're all working together, so at an operational level we generally work pretty well.

GEIST: [01:33:41] Okay. Thank you.

FRIESEN: [01:33:41] Thank you, Senator Geist. So down the road as you get more facilities underground and located there and you have to go out and mark for other projects, do you feel if you don't get your facilities marked in a timely manner that you should pay for delaying the construction of a project?

BRAD MOLINE: [01:34:03] With the appropriate level of caveats, weather, all those types of

things, volumes, reasonableness of locates-- and I'm going to state that caveat and then I'll answer your question. And that is, one of the biggest things we had to do in our project is some of our subcontractors would say, hey, I'm only getting 40 percent of my locates, I'm going to ask for two and a half times as many locates so that I get enough to keep-- to stay busy. That's when it's broken. So we solved that through communications. So given a caveat that people are achieving the locates that they call in, I believe that there should be remuneration -- there should be some sort of liability for holding up a project. You know, if it's call in and it's, hey, we don't have facilities there, we can't make the contractors wait. How do they know that there are seven providers there? How do they know that the seventh one didn't locate? So they need to be able to say, go. And it's our job to meet them there. Now, if it's a major project we would hope they would give us the same consideration as we've given them in this big project is, hey, let's all get together and meet. Let's talk about, let's share our forecast and move on. And for your question that you've asked a couple of the providers, Senator Bostelman, we also then immediately, in a very timely manner we provide all our electronic documents to the 811, to the cities if they request it, so that you do have this good record of where things are.

FRIESEN: [01:36:07] Thank you, Mr. Moline. Seeing no further questions from the committee, thank you for your testimony.

BRAD MOLINE: [01:36:12] Thank you.

FRIESEN: [01:36:27] Welcome .

ROBERT EVERETT: [01:36:30] Good morning, Senators. My Name is Robert Everett, R-o--b-e-r-t E--v-e-r-e-t-t. I have prepared a testimony. I'm not going to go over it. In fact, I would rather just do a little bit of piggybacking off of some of the comments that have been made and then open it up

for questions should you have any. I feel that having excavators on the board of directors is an absolute must. The reasoning for that is, we have got to get away from the thought process right now that is an industry standard where it is the contractors versus the utility owners. At this point, contractors and excavators feel like they don't have a voice, so what's the point in fighting it? That is why Mr. Wegner has all of the suck vacs that he has. That's why our company has all of the suck vacs utility locating and we go through our own training to make sure that everybody knows how to use those that equipment and use it effectively. If we can get to a point where the excavators feel that they are represented, that will also ensure that on large projects we can communicate directly with those excavators in more of a friendly atmosphere saying, you know, we're on the board, we're hearing you. Let's figure out a way to make this better in the long run. The second issue, locator certification. There are certification schools. There are training courses. There are a lot of options to have that be not only cost effective, but also time effective. And the other part to that locator certification is, one thing that everybody hasn't touched on or that I have noticed is we're dealing with a huge amount of safety in this issue. The safety in this not only relies on gas lines and electric lines, but it involves the telecommunications lines as well, because if someone only has a landline, there are still people like that I'm sure, then their landline gets cut because of inaccurate locating, now they can't call 911. They don't have access to the same services that everybody else does. And if locators are held to a standard that is agreeable by all parties, then we can ensure that the best locating is getting done. There are several instances where I can show you that there is only one line and that line is only four inches wide. But the locator who isn't trained properly is making a four-foot line in the ground saying, well, it's somewhere in this area. So that means that contractors have to open up that entire area which is destroying our roads, destroying our "right-of-ways" just to spot one thing that is four inches big when if the locator had been trained properly and knew how to use his equipment effectively. I'm not saying that he has to only put a four-inch line down, he or she, but if they know, well, I'm only looking for one thing and my best locate is here, okay, here's a 12-inch mark. That is completely justifiable. But when we go out and we know we're only looking for

one thing and it's a six-foot mark that's not justifiable, that is laziness. One thing that I think needs to be more clearly defined is, okay, so I call in a locate at midnight tonight. It is due 48 hours later, I understand that. But when does that 5 days or 12 days start, however this goes? Is it when all locates are actually completed or is it when that timetable starts? I currently am the director of special projects for Bauer Underground and the Allo project in Lincoln is one of the projects that I am-- that I oversee. When we are constantly not getting locates for four to five days, when does our time start? Does our time start at that 48 hours when it was supposed to? And I agree that we have made the agreements with the locating companies that we know you can't keep up and we need that cushion, so we understand you're not going to be located. You got two extra days but does it start at that-- does that 12 days or 5 days start at the end of that extra time? That is not clearly defined. And that needs to be clearly defined so that we all have a very good understanding of exactly what is expected out of everyone. One last thing that I would like to address, Senator Friesen, is your question as far as how is the process when a utility line gets damaged and how does that billing and invoicing process work? Depending on the utility, so the majority of the utilities we don't hear anything from until we get an invoice that says, pay this now. Now, Bauer Underground and our projects, we have internal reporting and documentation and pictures that support whether or not it was a claim that it is a claim of a mark locate correctly or a mark locate incorrectly. If it is incorrectly located, we do support or we send the entire report to whatever the requesting agency is so that they have it and we send with our findings, we are not liable, this is who is liable. Constantly, a big problem with that is that the laws are vague enough that those outside agencies, which nine times out of ten are not in Nebraska, are interpreting our laws because of the vagueness and making it more difficult to process those in a more timely fashion. If we had more exact laws that made it to where we could pinpoint exact circumstances that would make the process go a lot smoother. And the other part to that is, the excavators don't currently have-- excavators and contractors do not currently have any recourse for mislocates, for nonlocates. And the big issue with that is if I'm digging and there's a power line that's not located and we hit that, there is a potential

for death. And us excavators have that potential, but yet when they didn't-- when a contract-- when a utility doesn't locate correctly, we have no recourse for, okay, well, except for an arduous process that takes 15, 16 months and that's still left up for interpretation. If we had a recourse and a quick, or not necessarily quick, but a timely way to get our grievances heard and a civil penalty levied, that would make the process go a lot faster. I will now open up for questions.

FRIESEN: [01:43:55] Thank you, Mr. Everett. Any questions from the committee? Senator Bostelman.

BOSTELMAN: [01:44:00] Thank you, Mr. Chairman. My question is, and you may or may not know the answer to this, but when a person-- when an individual goes out and locates what-- and-- what I'm trying to find out or get down to, if we have an individual that's not-- that is repetitively improperly marking something, okay, how do we figure that out? Does that-- when that person-- do you know when a person goes out and locates a spot, are they required to call back in to the one-call and say, we've marked it? And if so, then is there a process and say, you know, person X is the person who did that so you can track and find out if we have individuals out there that are incorrectly marking, how to I guess bring it to that company's attention to either remove that person from that or give them the training they need to properly mark? Do you see where I'm going?

ROBERT EVERETT: [01:44:51] I understand perfectly, Senator. Thank you. Currently-- as I understand it, currently utilities do not have to, and I could be wrong, utilities do not have to respond back to the call center. So what happens is, is if we call in a locate we get a start time when we get a ticket that says exactly who is in the area that was geographically assigned by us. And what happens also is at the end of every day whoever called in that report gets an e-mail with who is marked and who is not. Now, again, to my recollection not everybody has to. So in certain situations those companies don't have to respond that they did anything. It just says, company has

not responded. So you're left to figure out, did they or did they not, while you're there. And every locating company and facility owner that I know that locates does assign their tickets electronically, so they do know who is locating and who the problem is if there's damages and whatnot. And in my experience, everyone-- every player that I've dealt with when there are continued incidents with that locator, that locator has gotten extra training and/or been terminated.

BOSTELMAN: [01:46:15] Thank you.

FRIESEN: [01:46:17] Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you for your testimony.

ROBERT EVERETT: [01:46:24] Thank you.

FRIESEN: [01:46:39] Welcome.

JAMES PRUSS: [01:46:39] My name is James Pruss, J-a-m-e-s P-r-u-s-s, Pruss Excavation, Dodge, Nebraska. Thank you, Senator Friesen. We do mass grading in northeast Nebraska. I currently use the one-call every week. We had a project where we hit a four-inch gas main that was never marked. And nobody got hurt, but the cab filled up with gas and my guy was scared to death, he thought he was going to die. And we called 911, they came out. It was the main line, four-inch. We'd been on that job for weeks. The locate was refreshed numerous times. It was never marked. We had to file a complaint with the Attorney General's Office. We also have a complaint with the Attorney General's Office on a power line that was never marked. We were cleared to go. We did the work. We were done. They came out and put paint when we were done right on top of a high voltage power line. And I've done this once before years ago and until I-- my concern is that until I get somebody buried, these operators are not going to suffer any consequences. We get a letter, they

get a warning, and it goes on. And I do think you got to have some contractors on that board. And these operators that don't locate-- I don't know how you cannot locate. We're cleared to go and we're not and we don't know. I'll take any questions.

FRIESEN: [01:48:38] Thank you, Mr. Pruss. Any questions from the committee? So they didn't even acknowledge that a line was there? You were cleared and allowed to go and yet there was a four-inch gas line there?

JAMES PRUSS: [01:48:52] Correct.

FRIESEN: [01:48:52] Does that happen quite often?

JAMES PRUSS: [01:48:56] No.

FRIESEN: [01:48:56] You had two issues I guess already with one contractor, that--

JAMES PRUSS: [01:49:01] We've hit small, one-inch plastic lines that nobody knew were there that wasn't located and didn't even know we hit it till you could hear some whistling off in the distance. It had been leaking and nobody even knew it was over there.

FRIESEN: [01:49:19] So do you think the Attorney General's Office should be more aggressive in pursuing some of those complaints?

JAMES PRUSS: [01:49:25] Yes, yes. I mean, a warning letter is not going to change anything.

FRIESEN: [01:49:34] Okay. Seeing no further questions, thank you for your testimony.

JAMES PRUSS: [01:49:35] Thank you.

FRIESEN: [01:49:35] Welcome.

VAL SNYDER: [01:50:02] Good morning, Chairman Friesen and members of the Transportation Telecommunications Committee. I am Val Snyder, Val, V-a-l, Snyder, S-n-y-d-e-r. I joined the Nebraska one-call board of directors in 2008 and have been chairperson for the board since 2010. I currently work in the pipeline industry and have done that for over four years. As many of you-- as the committee can see, a lot of the material that I'm going to be talking about, Senator Friesen's legal aide has already passed it forward to you folks. The One-Call Notification Act was passed in 1994 with little or no change being made to the act unless the change would improve the safety of the excavator, the public, and the underground facility. I will not read each noted change in material or from the material, I'm just going to cover some of them briefly. In 2013, LB589 was a provision to allow bar testing to occur in a leak investigation prior to making a one-call. Again, this was in the interest of the safety of the public, the excavator, and the operator. In 2014, LB736, excavators must be use communication technology specified by the center, in the interest of public safety, the excavator, and the underground facility. Also in 2014, LB930, what I refer to as the 25-foot rule. Any time an excavator is digging within 25 foot of a high pressure transmission natural gas pipeline, the excavator must contact the operator of the natural gas pipeline to have somebody on site during the excavation, unless there is a signed agreement that has occurred between the excavator and the pipeline operator. Again, this is in the interest of the pipeline operator, the excavator, and public safety. The One-Call Notification Act board of directors has been in front of you several times and we have always been open and you have been open to us as well as our input. When it comes to the draft of the proposed 0032 the board feels there's no need for a director. We handle the needs of the board in a very positive way. We understand the needs of the excavator, the

underground facility operator, and the safety of the public. This is due because we are out there and most of us were in the field working amongst all these people and we understand and see what's happening. Most of the board members attend seminars to stay up to date with the changes in technology and are aware of the changes being developed. Currently, during a hearing period the stakeholder meetings with the Public Service Commission also did, in conjunction with the Nebraska 811 board across the state of Nebraska, we were made-- it was made very clear to me the Public Service Commission did not want anything to do with the one-call process. So I asked the Public Service Commission, what has changed? The one-call board would not be in favor of adding a director or the Public Service Commission at this time. During our stakeholder meetings two to two and half years ago and we were asked many times why the Fire Marshal's Office could not be the enforcement group. As I explained to many of them, it would take a legislative change. Those questions-- those asking the question then said, how can we help with this? Excavators as well as others said the Attorney General's Office would get a clear, concise investigation to determine if a fine, if needed, from the AG's Office on the noncompliant thing. On LB263, the one-call board had submitted some changes from all the stakeholders from across the state of Nebraska to the State Fire Marshal's Office. They're currently being changed, the current law, through rules and regulation. We are hoping to have a hearing on these suggested changes soon and if the hearing goes well enact those changes. Those changes will benefit the excavator, the underground operator, and the safety of the public. Some of those suggested changes include: Ticket life-- Nebraska has never had a ticket life. We came down to 17 days as a ticket life. If there's no activity on a ticket at 15 days and, of course, if there's still no activity at the 17th day the ticket would be void. Positive mandatory response-- that should be positive mandatory electronic response-- I just caught that. This is a process that will require underground facility operators to address the ticket and then the ticket system will send a message to the excavator on the status of either no conflict or marked and located with special notes, should there be something the excavator needs to know about. Therefore, all the underground facility operators would have addressed the ticket. The excavator would then be

able to begin his excavation sooner, provided that all the underground operators have acknowledged and marked the ticket accordingly. Again, a benefit to the excavator. We are currently working on addressing the project of a large project. However, to define large projects is a tough, tough thing because everybody has their own thoughts on what a large project is. We're currently working on rolling out a new program late this year and for sure by the spring of 2019 that will enhance the ticket portion of the one-call, both to the excavator and to the underground operator. On behalf of the one-call board I want to take this time to thank you for your time on this very important matter. Be glad to take any questions at this time.

FRIESEN: [01:58:05] Thank you, Mr. Snyder. Any questions? Senator Briese.

BRIESE: [01:58:14] Thank you, Chairman Friesen. Thank you for being here. What are your thoughts on a additional training or certification for our locators in the state?

VAL SNYDER: [01:58:23] Because I work for a pipeline, a federally regulated pipeline, and even ones that are in-- most pipelines the training for locators is specifically written by PHMSA. There's a specific called an operator qualification task that they have to pass in order to be able to do that test. And it's critiqued and reviewed by a supervisor, I would hope, within each agency. I know I say agency-- underground operator.

BRIESE: [01:59:09] I believe we heard earlier some testimony about the need to verify or double check some of the locations out here on some of these projects and contractors having to do their own locating to make sure they aren't hitting something that's mismarked or not marked well. And just what are your thoughts on that?

VAL SNYDER: [01:59:27] Training has never been a deal, never. You know, training and

monitoring is a good thing. It's a good practice.

BRIESE: [01:59:41] Okay. Thank you.

VAL SNYDER: [01:59:41] Thank you.

FRIESEN: [01:59:42] Thank you, Senator Briese. Senator Bostelman.

BOSTELMAN: [01:59:42] Thank you, Mr. Chairman. How often does the board meet?

VAL SNYDER: [01:59:43] We meet at least quarterly, sometimes more.

BOSTELMAN: [01:59:50] So how are complaints handled? Does the board handle the complaints that come in?

VAL SNYDER: [01:59:53] No. The complaints go straight to the Attorney General's Office.

BOSTELMAN: [01:59:58] And so the function of the board is exactly what?

VAL SNYDER: [02:00:01] We make sure that the vendor that we hire to do intake, the phone calls or the e-mails on tickets is holding up to that what we have set as business rules to ensure that we don't have any gaps that something can fall through.

BOSTELMAN: [02:00:27] So part of the things we're hearing is, I guess, is a part of just I think in construction in general, mismarking, you know, project management type things and then resolutions for that and having a more active role I guess maybe for the board, whether it has a

direct or not. What are your thoughts as the board having a bigger role in that, a more active role in that? Is the quarterly meetings enough? Should it be a monthly meeting so you can address concerns on a monthly basis versus a quarterly basis, because it seems like there's some-- maybe there's some complaints, some things that need to be-- that maybe are not currently in the purview of what you're talking about what the board does that needs to be added to the board if there's no director added? See what I'm--

VAL SNYDER: [02:01:23] Yeah. I guess we meet as needed. I mean, I say at least quarterly. If there is an urgent need we circle the wagons and bring everybody in.

BOSTELMAN: [02:01:41] Okay. So if it doesn't go to the Attorney General's Office, how is the complaint handled? Is there any other recourse, any other way to have something addressed? Does it basically [INAUDIBLE]?

VAL SNYDER: [02:01:50] They can bring it to us, but we're just going to ask them to take-- we're going to listen. And then ask them to send it forward to the Attorney General's Office.

BOSTELMAN: [02:02:00] Okay. Thank You, sir.

FRIESEN: [02:02:01] Thank you, Senator Bostelman. Any other questions from the committee? When you do have meetings is there a requirement that you have a quorum?

VAL SNYDER: [02:02:10] Yes, there is.

FRIESEN: [02:02:12] How many board members are there?

VAL SNYDER: [02:02:13] Well, where it's currently written it's 22.

FRIESEN: [02:02:19] 22?

VAL SNYDER: [02:02:19] And I have to have-- we're down to 18, so I have to have at least 9.

FRIESEN: [02:02:28] Okay. Just earlier we had testimony that a pipeline was not marked. How often do you run into that, where a facility just was failed to locate at all. Does that happen quite often?

VAL SNYDER: [02:02:46] No. I mean, from central Nebraska area, which is where I live, I don't see it. I don't hear about it. Most of those people doing the locates like I said, because of their OQ qualification task, they're on the money, so to speak.

FRIESEN: [02:03:18] Okay. So, you know, the one-call system has been before the committee for a number of years now. So we heard today again that the system needs some work. It's not working properly. It's broken. Is the board-- do you feel has been responsive quick enough or did it take too long for you to respond to some of the criticism that should have been addressed sooner? Are you able to operate as nimbly as you'd like? You seem to always be bringing stuff to the Legislature to get fixed when I think my personal feeling is it could be done through rules and regs. Getting those little changes made here are difficult. So do you see that the board has changed its process in how it deals with some of the complaints? Are you able to act more quickly than in the past?

VAN SNYDER: [02:04:14] When I got on the board in 2008, the philosophy was if it isn't broke don't fix it, giving no thought toward the new technology that was coming forward. And I slowly but surely worked on, and with the board, to get them to bring-- to be starting to look at new

technology, which has been a godsend in helping improve. I mean, we've gone from-- I used to get-- 40 years ago I used to get my locate or-- I guess I can't even go 40 years. In '94, '95, I got my locate through a fax machine. Today I get it either on my tablet, my computer, or my phone. So, you know, technology is great to enhance and move what we need to forward. And I don't know whether I answered your question.

FRIESEN: [02:05:28] Well, I'm curious whether you feel that the board has been responsive in the complaints that have been leveled today about the system or do you think you're adequately addressing those in a timely manner?

VAL SNYDER: [02:05:39] We were a little slow in the beginning, but we're trying to get-- we're working to get caught up and that's why we-- I and another board member went to Senator Smith and asked him, is there a better way than through the legislative process? And Senator Smith came up with the rules and regs process.

FRIESEN: [02:06:05] So part of that was to have an executive director and yet you're saying that you don't need that.

VAL SNYDER: [02:06:11] We never talked about an executive director in the very beginning.

FRIESEN: [02:06:18] Okay. All right, thank you. Any other questions from the committee? Seeing none, thank you for your testimony, Mr. Snyder.

VAL SNYDER: [02:06:22] Thank you. Oh, if I may, when we were talking and the discussion was on marks and getting a new ticket every five days, basically that is-- as long as-- and somebody on-- I didn't catch your name, but as long as the marks are visible that ticket is still good.

FRIESEN: [02:06:55] Okay, thank you.

SENATOR GEIST: [02:06:55] I have a question about that.

FRIESEN: [02:06:55] Senator Geist.

GEIST: [02:06:57] So if there is a misunderstanding about that--

VAL SNYDER: [02:07:01] There is a big misunderstanding.

GEIST: [02:07:03] And so that's not actually the rule, it's just the tradition?

VAL SNYDER: [02:07:06] It's just something that got communicated that shouldn't have. As long as the marks are good and visible, the ticket is still good.

GEIST: [02:07:30] Okay. Okay, thank you.

FRIESEN: [02:07:31] I want to clarify something, I guess, if when I go there. I was just going to let it slide, but if-- we heard earlier that that remark is going to happen because it is a misunderstanding. And so it is not clear in statute or in your rules and regulations that a remark has to happen or not happen. And so I guess one of the questions is, why hasn't some changes been made to clarify that in the past, because if you're looking for it and that goes to court or there's a complaint there filed when somebody damages your facility and they did not refresh but the paint marks were visible, they're still held liable if they did not refresh? That's what I understood it earlier.

VAL SNYDER: [02:08:19] As long as the marks are visible, the ticket is still valid.

FRIESEN: [02:08:22] But not in when it comes to a filed complaint, the way we heard earlier, and so there sounds like there is quite a bit of confusion.

VAL SNYDER: [02:08:30] There's some confusion that we, as the board, need to make-- get out and communicate that to the excavating world.

FRIESEN: [02:08:39] So do you have to change some rules and regs or how do you clarify that?

VAL SNYDER: [02:08:44] No. We'll just clarify it through the rules and regs. We'll clarify it.

FRIESEN: [02:08:54] Okay. Thank you.

VAL SNYDER: [02:08:54] You bet.

FRIESEN: [02:08:54] Any other questions from the committee? Seeing none, thank you for your testimony. How many more people do we have that wish to testify? Okay.

MICHAEL KLEFFNER: [02:09:18] Michael Kleffner, K-l-e-f--f-n--e-r, city of Omaha. I'll try to make it quick, because I imagine most everybody here has heard quite a bit and some will probably be repetitive but I'll make a quick. The city of Omaha is not really in favor of adding any additional cost or liabilities to the one-call in the sense of either adding additional fines or pushing costs onto the utilities, because in the end we currently would pass that rate on to the taxpayer or the ratepayers. So in the end, when you add additional fees I can only see the aspect being more legal

fees being added into that. So we're really do not favor that. One of the things I did notice was eliminating the two-day window. We're not in favor of eliminating the two-day window. We have multiple operators, not necessarily heavy operators, but we have multiple operators that do not mark within the two days and do not give notifications. If we were to pull that up it would provide substantial delays to construction and emergency repairs listed within our jurisdiction, from our experience. Also, currently, we have several fiber projects and large projects and we know Lincoln had several issues with that. Our experience has been that communication coordination is a big aspect to deal with those issues and that we feel that the jurisdiction or the jurisdictional authority of the right-of-way should really have the ultimate authority for that . We review plans that are submitted. We provide the permits to allow them to do the cuts within our right-of-way and we also require inspections of those cuts to ensure that everything is put back. And we provide-- we allow the restrictions for the lane closures and things along those lines to ensure those projects do not cause damage to our infrastructure and do not disturb our citizens in what we would call an extremely detrimental rate. One of the-- two of the other things I had are-- I'll just limit it to one. One thing that I noticed as I was going through was using a private organization for training or to certify the training. I'm all for getting the locators certified, but to me that should be something that should be done on a local level or with the state. Requiring a private organization to certify the locators could become basically a restriction on finding locators or getting them certified in a timely manner. Our biggest aspect, we use most of our operators within the city limits use third-party locators. Finding those locators is extremely hard. Our labor force is maxed out. So we have an issue just getting locators to do the locates because we don't have the-- they don't have the staff available to do it. And they're always looking for those, so adding a further restriction that would eliminate the availability of the labor force would be very difficult in that sense. That's all I have at this time.

FRIESEN: [02:12:15] Thank you for your testimony. Any questions from the committee? So if you

have a broken water main, do you have to call 811 before you dig to fix it?

MICHAEL KLEFFNER: [02:12:28] Yes, we do.

FRIESEN: [02:12:29] So are there requirements that they come and mark it in a timely manner or are they allowed the 48 hours?

MICHAEL KLEFFNER: [02:12:34] No, they're usually not allowed 48 hours, it's an emergency. And typically what they'll do is they'll go out there and shut it off and then they'll bring in whoever they need to within the area to do the locate. Typically with the water main it's nice because when it breaks it pretty much blows everything out so you can see everything within the hole anyway. But they coordinate very rigorously to make sure that nobody has damaged things and they also have to coordinate because if you have a hole and you're working within that hole anyway the utilities that are exposed have to be ensured that they're not damaged also in that process.

FRIESEN: [02:13:07] So did I hear you correctly in saying that you don't want the 48-hour period to be changed at all so that if a utility fails to mark in the 48 hours you're allowed to go in and dig without marking?

MICHAEL KLEFFNER: [02:13:20] Yes. Yes, we would prefer that. I think most excavators would agree that that's the best way to go about it. I would also add into that that we would actually prefer it in writing somewhere that those tickets have a time frame on them for the refresh. I think that was mentioned earlier 17 days or 12 days. We would be in favor of that. There is always confusion on the time limit that is allowed. And the aspect is, is that they say the marks are fresh in that sense or you can see. Most of the time those marks get disturbed. They'll usually take pictures to know where the marks were, you know, before they start disturbing the area, but they could be

working within that area for a whole week and as long as nothing changed most of them know where the utilities are at, but for liability reasons they have to bring it out for the refresh.

FRIESEN: [02:14:05] Okay. Any other questions from the committee? Seeing none, thank you.

MICHAEL KLEFFNER: [02:14:05] Thank you.

FRIESEN: [02:14:26] Any others wish to testify? Seeing none. We do have one letter/comments from the Public Service Commission, Mary Ridder. Other than that, I think that we'll call an end to the hearing and thank everyone for attending and for your advice.