

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 1, 2021
Rough Draft

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FRIESEN: Welcome, everyone, to this morning's hearing, Transportation Telecommunications Committee. I'm Curt Friesen from Henderson, District 34. A few procedural items. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited, and we ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing. We request for a face covering in the hearing room. Testifiers may remove their face covering hearing testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. The Legislature does not have the ability to have an overflow hearing room, which doesn't look like we have a problem today. We ask that you please limit or eliminate the handouts. Please silence all cell phones and electronic devices. We'll be hearing bills in the order listed on the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We have set aside an on-deck chair here in the front so that the next testifier will be ready to go when their turn comes. If you will be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required but, if you do have a handout, we need 12 copies. One of the pages will assist if you need help. When you begin your testimony, it's very important that you clearly state and spell your first and last name slowly, for the record. If you happen to forget to do this, I will stop your testimony and ask you to do so. Please keep your testimony concise. Try not to repeat what has already been covered. We will use the light system in this committee. Beginning with the green light, you will have five minutes for your testimony. The yellow light indicates one minute left, and, when the red light comes on, it's time to wrap things up. Those not wishing to testify may side in on the pink sheet by the door to indicate their support or opposition to a bill. And with that, I'll introduce my staff. On my right is Andrew Vinton, legal counsel. On my

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left is the committee Clerk Sally Schultz. And the pages are Turner and Lorenzo. Thank you very much for being here today. With that, I will let the committee introduce themselves, starting my right.

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

BOSTELMAN: Bruce Bostelman, District 23: Saunders, Butler, and the majority of Colfax Counties.

DeBOER: Oh, Wendy DeBoer, District 10: Bennington and northwest Omaha.

MOSER: Mike Moser, District 22: Platte County and parts of Colfax and Stanton Counties.

M. CAVANAUGH: Machaela Cavanaugh, District 6: west-central Omaha, Douglas County.

FRIESEN: And the other senators may join us, as they may be another committee introducing bills. So they may join us at the-- in the middle sometime. So with that, we will open the hearing on LB164. Welcome, Senator Erdman.

ERDMAN: Thank you, Chairman Friesen. My name is Steve Erdman, S-t-e-v-e E-r-d-m-a-n. I represent District 47, which is 10 counties in the Nebraska Panhandle. I have some handouts here. This is a very simple bill. I've been here in front of this committee with this same proposal before. As the bill states, it's allowing communities above 500-- down to 500 and above to determine if there's hazardous conditions and set the speed limit within their city limits, a very simple, straightforward bill. It was brought to me several years ago by the constituents of Oshkosh, Nebraska. Highway 26 runs through Oshkosh. And the speed limit there is 45 miles per hour. I have given you some maps there, and we'll go through those in a moment. But let me give you a little background. I contacted the folks in Oshkosh and asked if they would like to submit letters as they did the last time, and they declined because they said you can only be told to sit down and shut up so many times before you give up. And so they didn't believe that it would do them any good to write more letters or call more people or get involved; they have given up. I have not. It is time for the Department of Transportation in Nebraska to make some

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commonsense decisions. And I'm here to ask this committee to do just exactly that. They will tell you in their testimony that they can't change that speed limit sign because of federal regulations. And they will tell you that they're restricted to do those things and they can give you all that stuff to try to convince you that what they're doing is right. I have had numerous conversations with the Department of Transportation dating back to 2008 or '09, when I was a county commissioner. We had-- in our little communities, we had little signs on our sidewalk that said "chicken fried steak for dinner" or "roses for sale" in front of the flower shop. And the highway department came by and said, you must pick those up. That's state right of way. You can't leave those on right of way. And if you don't pick those up, we are no longer going to pay you the city, any compensation for maintaining the street and pushing the snow and doing whatever else. So then I knew-- at the time, I knew the Attorney General. I had his cell phone number, and happened to-- happened to call me on a Saturday. I called the Attorney General and told him what they were going to do. And his response was, there's the statute, and there's the interpretation and the implementation of the statute; one size does not fit all. And he stopped them from picking up those signs. And when I asked him, on every other street corner, there's a metal-- steel streetlight. Is that a danger, more so than a little placard? And I got no answer. So in Bridgeport, they left those things on the sidewalk. And what did the highway department do? They took away their funding. They didn't pay them anything for fixing the street, sidewalks, or maintaining the snow. Nothing. All right. So then in Bayard, they were going to overlay the city, and they said: You have to remove all that stuff from the sidewalk or we won't get any federal funding because we have to have the right-of-way clear. I told the owners of the business, you leave those stuff there. If they fine you, I'll pay the fine. They overlaid the highway. That stuff stayed right on the sidewalk. And they're going to tell you that the feds won't let them make these adjustments; that's bogus. All right. It's time for the Department of Roads to make decisions in these small communities that affect their well-being and their safety other than falling behind the skirts of the federal government, hiding them. I seem to be a little fired up because I have been dealing with these people for a long time. I work for a real estate company, and we have auctions. We would place a little-- like a political sign on the road with an arrow saying action. While we were having the auction, the highway

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department come and picked those up because they were on the right-of-way. That's the way we get treated out in western Nebraska. We are aliens. The Nebraska Department of Transportation is the state of Nebraska and the rest of us just live here. What I'm proposing today is not mind-changing, it's not mind-blowing. It's hard-- it's not hard to get your head around it. I'm asking to lower the speed limit in Oshkosh from 45 to 40. Down the street, down the road 12 miles is another community called Lewellen. Lewellen has a speed limit of 40. Lewellen has no businesses on either side of the street, but their speed limit is 40. And so I'm here today, asking the committee to advance this bill to make a commonsense application for the safety and well-being of the people in the community. I have submitted for your review-- there's four letters there. Those are dated letters. And as I said, the reason they're dated and they're not new and updated, they said: we've tried this. I also submitted to the committee the last time, for those of you who were here, they circulated a petition. This community has 900 people. They circulated a petition requesting that the speed limit be lowered. Over 100 people signed that petition-- one-- over 100 people signed the petition, asking the highway department to lower the speed limit. It fell on deaf ears. So if you would, if you would turn to the map-- and I think I gave all my maps, let me see if I did. No, I have. All right. So as you'll view-- you view the maps, there's a lot of differences between Lewellen and-- and the city of Oshkosh. And this is an overview. The first one is an overview. It has a legend at the top. It's an overview of the city of Oshkosh. The rest of those are the street shots that we've taken from there. The difference between-- the significant difference between Oshkosh and Lewellen. And I will show you the picture here. There is a intersection of Highway 27 and Highway 20-- and Highway 26, and it's probably the second to the last picture, and it's looking south. And what it is, is there's an intersection behind-- between 26 and 27, and you'll see the semis sitting there parked on the side. Semis use that Highway 27 to get down to I-80. All right? And I've been through there several times when the semi is making that corner. And you can see that corner is not wide. There's no real big turning lane for a semi. And when they make a turn there, they swing on to make that turn. And if you're going 45 miles an hour, it's kind of dangerous. And when they pull out from the south, turning east or west, the same thing happens. So they will tell you that 45 mile an hour is a safe speed. So my question then, if 45 is safe, let's make it 60. It doesn't make

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any sense to say that a faster speed is safer than a slower speed when you have intersections like that. And just adjacent to that intersection is this Ace Hardware store. The only hardware store they have in town is on the south side of the street. Now, these people have to walk across the street. The older people who can't drive walk across the street, from one side to the other, to get to the Ace Hardware. The school kids come around the corner from the-- from the west and turn to go north to the school, and the speed limit is 45 miles an hour. There's a letter from the school. There's a letter from the church that's in that same area, the city council and also the mayor-- I mean the county commissioners. This is an issue that needs to be dealt with. They have spent more money, they have spent more money coming here to testify against the bill last year and this year, than it would have cost them to change six speed limit signs. But this is not about the money; it's about control. They have been to city council meetings, the road department has, and instead of trying to figure out a solution on what we can do to make this safe for everybody, they just tell them that's the way it is, deal with it. And so, therefore, when I asked those people, would you like to get involved again, they say: we've tried that, we've tried that. So if you want to do that, you're on your own because we're tired of wasting our time trying to convince people to apply common sense. That last map, the one that's not colored, is a picture of Lewellen. All right? And when you come in from the east, just on the east side there, where you see the first 92 on the right hand side of the page, that's where the speed limit drops to 40 and it changes back to 55 over where it's the first 26 on the left. That community has nothing on either side of that street except you turn off to go into the-- into the community. And that speed limit is 40 miles an hour. If Lewellen can be 40 miles an hour and they have nothing entering the street, there's no intersection or anything, and you move down the road 12 miles, and Oshkosh has all those interferences with traffic, and we have to be 45, it doesn't make any sense. And so I'm here today to ask you to give us an opportunity to-- small communities to make decisions about safety. And we know best-- the people who live there know best what is safe and what isn't. And last time we introduced this bill, they had two engineers-- one from Lincoln, one from Omaha-- that came in and testified against the bill. I've never seen any one of those people in Oshkosh. And besides, what difference does that make to them what happens in Oshkosh, except it has to deal with their control? And so

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I'm asking today that you advance this bill to the floor. In fact, this bill would be so simple and straightforward, it ought to probably be on the consent calendar. I'll leave it with that and answer any questions you may have.

FRIESEN: Thank you, Senator. And thank you, Senator Albrecht, for joining us. Any questions from the committee? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen, and thank you for bringing this bill again this year, Senator Erdman. I have a similar concern on Highway, my end of Highway 92. I have an intersection at Wahoo that we've had multiple fatalities with, but yet we're not going to change the speed limit. I've got another just south on Highway 77, the same bypass. Hospital sits over the top of the hill. We're coming over 75 miles an hour. We've got people slowing-- nobody is slowing down. We got elderly folks and stuff. And when I talk to DOT, I get a similar response. So my question to you is, they say because of federal funding, federal guidelines, whatever, we can't change that. Is there something that you have found that allows them to make this decision that would not affect the funding coming in?

ERDMAN: Well, Senator Bostelman, what I discovered, especially in those little communities I just spoke about, Bayard and Bridgeport, when they were hiding behind the federal government's skirts and said we will lose federal funding if you don't remove that stuff, we didn't remove it. Guess what? They got the federal funding. So when they tell you that, what they're saying is: sit down and shut up. We don't need to hear that, and we're not interested in making a solution, solving it. We're just interested in doing what we've always done. And we're going to use the federal funding hammer to put you in your place. They are going to get their funding. If the federal government is worried about a little tiny street in Bayard, Nebraska, they got bigger fish to fry than that. And so that's their decision. And it's one of those things that happens all the time. And if nobody pushes back, they get all the authority they want and nobody ever says anything. And you got-- they're similar issues.

BOSTELMAN: So do you think that-- you know, part of the comments back in opposition are because of the engineering study, which you were talking about. Do you think there's a-- there's another way within the-- within the process to where the community has a bigger say in--

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in specific areas where you have a-- have a specific, you know, dangerous intersection, a proven dangerous intersection, but yet we're not going to change it because we have a-- the traffic count doesn't allow us to lower the speed limit and we're not going to do it. Or the state says we have to raise the speed limit. So do you have some thoughts along those lines?

ERDMAN: Well, I think-- I think, Senator Bostelman-- I think what-- what needs to happen is we start pulling back on some of these restrictions, like this bill would allow the little-- the community to make the decision. I think some of those same provisions need to be changed in the statutes so that you can make those decisions in your area, as well. When you're talking about safety-- so the first person that is in an accident there, a fatality in Oshkosh, and those people that were killed and their lawyer finds out that we had hearings and asked them to lower the speed limit to 40, and they didn't, they will not do well in court because they had an opportunity where they were made aware of the fact that it's unsafe. Now, all of their studies say it's safe, but they don't stand out there and watch what happens when a semi makes that corner, when that kid comes around going to school and slows down to turn, and a semi is coming from the west. When they come from the west in Oshkosh, you barely make the corner. It's still 40-- it's still 65 miles an hour. And so you make the corner and you come around there, and there's a kid turning to go to the school. This is-- this is not about-- they don't think it's about safety. It's about what their laws, and their jurisdictions, and their study-- traffic studies show should be done. Probably the same in your-- in your area. They probably said: Hey, it shows that this is the way it should be. One size fits all. We made this decision in Lincoln. All right? So it should apply wherever you live. It's all the same. And as-- as the Attorney General told me, there's the interpretation of law once a statute is passed, 'cause not everything is the same.

BOSTELMAN: Yeah, I-- I agree. We got a-- a problem with this because I have law enforcement, both the city and the-- and the county sheriff coming to me asking, really, things need to change. We've had enough fatalities on one intersection. The other one we're just-- it's ripe, it's waiting, it's going to happen. So how many people have to die before we make some changes? So I appreciate you bringing the bill today. And--

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ERDMAN: Thank you. You know, there's other issues we have. I could go on here for the next hour and talk about the issues that I've dealt with, but I'm not going to do that. But-- but it-- it--they can make commonsense decisions, Senator Bostelman.

FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Senator Hughes.

HUGHES: Thank you, Mr. Chairman. Senator Erdman, I've traveled this highway many times, so the distance through town is roughly the same between these two towns? Is that-- that would be my recollection.

ERDMAN: Yeah, it is. Yes-- yes, Senator Hughes, it is.

HUGHES: So you know, it's not a matter of distance or anything like that. And there's certainly a lot more businesses going through Oshkosh than there are in Lewellen.

ERDMAN: In fact, if you really analyze exactly where the speed limit should be different, Oshkosh is probably a shorter distance. Lewellen is probably longer.

HUGHES: OK, thank you.

FRIESEN: Thank you, Senator Hughes. Any other questions from the committee? So would your bill, when I'm-- when I'm looking through it, would-- you know, all cities need to appoint a city engineer, right? I think so. When I-- you always have-- you find an engineer and you appoint him as your city engineer for roads project.

ERDMAN: OK.

FRIESEN: So does your-- would your city base anything on your own engineering estimates, since they're more familiar with your local traffic flows? Or is this strictly up to the city council to set the speed limit-- now, whether they can go up or down, I take it?

ERDMAN: Right. As far as having a city engineer, I don't know those involved, the city government. But I- I have a letter here that was a resolution that was passed by the county commissioners, and I would assume in Garden County that their road superintendent is probably the

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person that we would advise the county commissioners on making that decision. They just wrote a letter of support a couple of years ago.

FRIESEN: I'll ask further later, but--

ERDMAN: OK. Yeah, I don't [INAUDIBLE].

FRIESEN: But let's see once if anybody else could look at that, that is more local, that would give you a little bit more cover, as a city, to make those decisions. Seeing no other questions, thank you, Senator Erdman.

ERDMAN: Thank you. Is it-- is it OK if I sit over here because I can't hear in here.

FRIESEN: Yes, yes. Proponents who wish to testify in favor of LB164. Seeing none,, any opponents who wish to testify on LB164. Welcome.

MOE JAMSHIDI: Good morning. That was quite a testimony. After that I feel like this powerful person going around making everyone's life pretty miserable all across the state. But it's far from it. Thank you, Senator Erdman, for-- for working with us through all these challenges. So--

FRIESEN: Could you state your name and spell it?

MOE JAMSHIDI: I will. Good morning, Chairman Friesen and members of the Transportation and Telecommunications. My name is Moe Jamshidi, spelled M-o-e J-a-m-s-h-i-d-i.. I am the deputy director for operations and, currently, the acting director for the Nebraska Department of Transportation. And I'm here to respectfully oppose LB164. To efficiently and effectively manage the 10,000 miles of highways, there needs to be consistency and uniformity throughout the system. NDOT's professional engineers utilize federal Manual of Uniform Traffic Control Devices, or MUTCD, to determine how traffic signals, road surface marking, and signals are designed, installed, and used throughout the state. NDOT professionals have extensive experience interpreting MUTCD to safely manage our transportation system while supporting the needs of the communities. LB164 diminishes this important component to safety by violating the federal MUTCD requirement that speed limit changes be based on traffic engineering studies. We believe safety is potentially degraded when speed limit

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determinations are altered by local governing boards, based on their individual interpretation of perceived hazards at certain highway locations. Essentially, LB164 does away with not only the standardization piece, but also the engineering component to determine and establish the speed limits. If passed, this legislation will allow cities or villages of more than 500 in population to alter the maximum speed limit of the state highway that runs through their communities. This change allows local governing boards to be the sole decider through their interpretation of what constitutes a condition that would justify a speed limit change. Local involvement and even control is not what is being opposed by the Department of Transportation. In fact, current state statutes delegated to the all municipalities of population of 40000 and more exclusive jurisdiction to facilitate all traffic control within the municipality. But even in the case of delegation, the local governments are still required to base the establishment of the speed limit on engineering and traffic investigations. What I'm cautioning is the negative impact of allowing speed limit changes to be made without proper conduction-- conducting an engineering and traffic studies. The department and the licensed engineers at the state largest municipalities conduct and document these investigations or studies, with careful consideration of national-- nationally recognized engineering and safety principles and standards. These studies do take into account the local conditions, such as: school zones; roadway geometry; and impact of the local businesses on traffic. The studies must be carried out in accordance with the MUTCD and the Federal Highway Administration requirement that speed zones, other than the statutory speed limits, be established on the basis of engineering a study that has been performed in accordance with the traffic engineering practices. I would also add that our traffic engineering office works closely with local government that requests the speed studies to document data and examine driver expectancy and the-- on the local conditions. In fact, we lower the speed limit all the time for many communities every year. In addition to our concern with LB164 bypassing an engineering study, the bill also not addressed-- the bill also does not address or define several other important issues. The bill does not establish a clear allocation of duties concerning whether the state or the locals would be responsible for installing the signs. And who would be legally responsible for any tort liability from these locally established speed zones? Finally, I want to take a moment and address the safety

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concern that I've heard all the time throughout my career. Although lowering the speed limit is often seen as a solution to preventing crashes and increasing safety, this is not always the case. Crashes are most often the result of driver inattention or driver error. If a posted speed limit is unrealistically low, it creates a greater speed variance, as in some drivers follow the speed limit, while most drive at a higher speed that seems reasonable to them. This speed variance can lead to tailgating, unsafe passing, road rage and ultimately to more crashes. My point is that lower speed limit does not automatically mean a safe highway. Thank you for your consideration of the department's opposition. Safety is always our primary consideration when making decisions on our transportation system. In closing, I urge you to continue to allow the trained professional engineers to make these critically safety decisions. Thank you. And I'd be happy to answer any questions you might have

FRIESEN: Thank you, Director Jamshidi. Senator--

DeBOER: DeBoer.

FRIESEN: DeBoer.

DeBOER: There you go. I wanted to ask you about-- you said that there might be a possibility of tort liability, but isn't that exempted through the State Tort Claims Act? Do you actually have tort liability already for whether you put the speed limit at one speed or another?

MOE JAMSHIDI: I'm not an attorney, but I'm told by our attorneys that, every time there's an incident, there's something that happens that week that ends up in court. We are dragged into the court. It's a state highway, and then we would have to defend it. Right now, we set the speed limit. At least we concur in setting the speed limit based on the-- on the practices. So and this-- this is right now what we would-- we haven't researched everything on this bill yet as to if a local's setting the speed limit, do they come defended, how do they defend it? That puts the department in-- it's a difficult situation.

DeBOER: OK. Well, if you have-- if you could have one of your lawyers send me information about that, because I would think that would be exempted through the State Tort Claims Act, but maybe it's not.

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MOE JAMSHIDI: I will certainly do that.

DeBOER: OK, and then you've heard the testimony that it's not just one place, but several places are saying that there-- there are real concerns that-- that people have about the safety in their communities because of these speed limit laws. What-- if this isn't the solution, then what is the solution to that?

MOE JAMSHIDI: I'm glad you asked that question. Traffic engineering is not a-- what I call a black and white. If you do this, it's going to be safe. If you do that, it's going to be less safe. It's always a-- when we're doing these traffic studies, we're always looking at the probability of certain type of crashes happening that-- that-- that-- that we can basically justify. So there is not a 100 percent safe intersection. And the intersections that we're talking about, we always study that, if we lowered the traffic speed from 45 to 40 or 35, that might reduce certain types of crashes, but also might increase other types of crashes on the same intersection. So when we do the studies, we always look at the-- statistically, at the end of the day, when we set all the speed limits, all the signs, all the timing of the traffic signals, what is going to yield us the least amount of number of crashes? And what's going to be the most appropriate one for that particular intersection?

DeBOER: Well, that almost argues for the passage of the bill then, because that suggests that there's a discretionary function which is being performed by the Department of Transportation in balancing the various kinds of crashes, which I understand that it's something that needs to be done. But there could also be an argument that says that, when making decisions about how to balance which types of crashes to prioritize preventing, that might be something that the local community might want to have a say in. So--

MOE JAMSHIDI: We don't have really any issues if the local communities want to hire a professional engineer to look at all those statistics, look at all those data, and-- and make a judgment based on sound engineering, instead of saying: I kind of feel like 40 is about right and, well, maybe if I'm right on this direction, what about the others? What about the blind sides? What about businesses that are there? So when we-- when we say we need these-- these engineering studies, it does exactly what-- what you just said. It looks at all

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the competing interests of the-- of the conditions and then, at the end of the day, puts together a most feasible set of signs and speed limits that meets all the engineering practices that we've learned through the years of our careers.

DeBOER: So if a community did their own engineering study, so if we change this so that a community that wanted to change it would have to perform their own engineering study, would you-- would your opposition go away?

MOE JAMSHIDI: I-- I-- yeah, absolutely, if there's a community of 500 or more, they want to hire a professional engineer or if they have one on staff that is experienced with these things, or we would even offer to-- we right now do it for them. And in fact, if-- if they want us to have a pool of consultants that do this for a living and then have them pick one of those consultants to do the study, we're fine. We have-- we really don't-- we really want the safest situation for all involved. It doesn't really matter who does the study, as long as it's done following the practices and fundamentals of engines and traffic engineering, and not just somebody feeling like it's a common sense, let's do it.

DeBOER: OK, thank you.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen. And thank you for being here today for the Transportation Committee. OK, I drive a lot of miles to come down here and I go through a lot of small towns, and every one of them is different. OK? It might be 30 mile an hour, might be 35, it might be 40. You have a neighboring city that's at 40 and nobody has to cross the road. OK? But this little town of Oshkosh, you know, maybe the hardware store when it came in, maybe created some problems, because when you have these small communities, you-- you see a lot of people afoot. I mean, there-- I mean, I have Winnebago in my area and everything is-- every bit of business, schools, post office-- everybody's on the east side of 77, and they all live on the west side. It doesn't make any sense when these small communities, number one, probably can't afford an engineering study to bring the-- the speed limit down five mile an hour, is my-- is my take on this. But

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more importantly, you have engineers on the state Roads Department that could probably, I would think, help them out in their quest. But how long has it been since this particular speed limits-- I mean, I think you have to take a look at the history of it, because it's-- it appears to me that, you know, law enforcement should be able to tell you how many close calls they've had, how many accidents they've had, how many fatalities. I mean, it's not rocket science. We're talking about five mile an hour. I really can't believe we're-- that we can't just go talk to the folks and handle it. But if the state feels that they absolutely can't do it because the federal government says that they can't, then the state needs to go to the federal government and say: Where's our latitude here? Can we have a little bit of-- of wiggle room so that we can help out these smaller communities? It just doesn't seem that we should even have to have a state statute change to do that. I mean, I know that you're up and down. The state Roads Department does an excellent job where I live. I mean, it's great. But guess what? We've had two fatalities on an icy road this past year, and it was horrible. But-- but to come in and change a state statute, to me, you should be right out there trying to figure out what happened, you know. And I think we all know what happened that particular day, but two in one day was awful. But that doesn't mean we come and change something. I think something like this-- I mean, Senator Erdman has brought it two years in a row, we aren't doing anything about it. I mean, it's a small town who's trying to protect their people. This-- this is a big deal. But it's-- but they don't have the kind of money it takes to go do an engineering study, you know, over five mile an hour. I-- I just think that's absolutely ludicrous. But I mean, if it can't be done with a phone call and a visit up to that particular area, I don't think it's-- it's not an interstate highway that-- that-- that you have to make these big decisions for. This is a tiny, small, little community that just needs a little bit of help. So is there any reason why you wouldn't be able to do that?

MOE JAMSHIDI: I-- I agree with you and I don't really think-- we-- you know, it may sound like we're hiding behind the federal government, and-- and we really aren't. As-- as we talked earlier, these engineers have a lot of latitude. They-- they look at-- they basically--

ALBRECHT: Then who's holding this back? Who's holding this small community back from lowering the speed limit five mile an hour?

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MOE JAMSHIDI: Nobody. It-- it's about the consistency. And I'm not here to tell you, though-- I'm not going to go back to our traffic engineers and take a second look to see how close were they-- was it-- does it make sense to go back in 40. We may very well be able to do that within the-- within the-- within the rules, because we look at all of those things. When a new business comes in, the cities all the time request: Hey, this is 40 mile an hour, we have a bunch of people leave here, the traffic is going a lot faster. Can you do another study? We'll do another study for them and take into account all of those incidents, all of those fender benders. Every one of those comes into it as to see which direction they're coming and what have you. And then there's always-- it-- it doesn't land on a-- on a number that says you got to be 40. It says it-- you always say it's between this and this, where you can meet the drivers' expectation so that when people drive through there, they don't feel overly slowed down where we have all these other issues. So I will certainly be looking at this. And Senator knows-- probably describe 10 percent of the things that I've been working with Senator for the last 15 years, 90 percent of the things we've done for the communities we've done, because he's always concerned about their communities and he brings it to us. We address it, we-- we take care of it. It's just that once in a while, things happen for those consistency reasons, and then, the next thing you know, everybody wants 40, everyone wants 25. And then we get into that-- that-- that-- that way that this city council is more conservative than this city council. So we will do this study. We will look at Oshkosh again. And I-- I will tell you that if they're within the margins, I have no problem. And it sounds like it should be. I haven't looked at this specifically, that location personally, but it's-- it's not over. But we're here opposing is not about doing the right thing. It's doing the right thing, utilizing the right methods and systems to make sure all the things you just talked about-- the incidence on every location, talk to the local cops, see what's going on, or there's a school that just ends up so that-- we want all of those studied and not be decided by some-- somebody that says, I drive it every day and it looks about right, type of thing.

ALBRECHT: But I'm just saying, if we end up doing something with this bill, then you have a bigger problem. If there's only one-- one city out there or two or three that have a problem with it, it's no big

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deal. But if we put this into law, you're going to have a whole lot more problems.

MOE JAMSHIDI: Well, I think-- I like to think that I-- as a-- as a society, as a state, we have a big problem. If we start allowing people to set speed limits what they feel like, they think it's common sense, what may be common sense to me may not be common sense to you. So we have to back our decisions with good, sound engineering practices.

ALBRECHT: Understood.

MOE JAMSHIDI: And then, within that, be reasonable.

ALBRECHT: I appreciate it.

MOE JAMSHIDI: And that's-- that's what we're trying to do. And if in Oshkosh we weren't that, I'll look into it to see that we are.

ALBRECHT: Thank you.

MOE JAMSHIDI: That's-- that's--

ALBRECHT: I appreciate that. Thanks a lot.

FRIESEN: Thank you, Senator Albrecht. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Thank you, acting director Moe, for being here today. And we've had conversations before, recently, on the intersections I talked about. I do have a question for you. In your testimony, in here you say: other than statutory speed limits. Can you explain that to me? What does that mean?

MOE JAMSHIDI: So there are some speed limits that are in the statute. For example, we can't exceed: on expressways, 70 miles; on interstates, 75 mile an hour; on a two-lane road in some places, 65; on gravel roads, 50; on paved county roads, 55. So those are the ones that, regardless of what the traffic engineering shows you, I could probably-- probably I'm guilty of, like many of us, driving 80 mile an hour on a lot of-- part of the interstate. I could probably make it 80, but the statute won't allow me. So that's what that is.

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BOSTELMAN: And I appreciate that; I do. I mean, I guess, you know, to one extreme potentially, what Senator Erdman could do is, would be, amend his bill and say that between mile marker X and Y, the speed limit will be 40 miles an hour. Then it's-- the statute is pretty clear what that is. So with that, I will--

MOE JAMSHIDI: I would think if that-- if Senator Erdman brings me a-- a study that the town did or they asked us to do or they asked us to hire some independent person to do, if-- if that study shows 40 mile an hour is reasonable, I wouldn't have any problem with that. But do we really want to have every segment of every highway someplace to have a statute that-- that sets it? I would think a lot our-- our communities are going to have a difficult time keeping track of it.

BOSTELMAN: But it's an-- it's-- to me, it may be an option. But I-- I guess one-- one comment I have is, when I have the chief of police from the city, when I have the county sheriff from that area come to me and say we have to lower the speed limit, people are dying at these intersections, and we come back to, well, the engineering report says there's not enough cars, not enough trucks, there's not enough people turning left, there's not enough people turning right. When we have law enforcement coming to us and saying these speed limits need to change because of fatalities that are happening now, and the danger we have at the hospital, because we have elderly people driving out, crossing a four-lane highway, people going 70 miles an hour and they're on the back side of a hill, people don't see them, we're just waiting. It's going to happen. You know, just down the road on the highway, on Highway 77, you go through Ceresco, the speed limit is reduced. You come around Wahoo, it's not reduced to the same amount. So they're just asking again. So, similar to what Senator Erdman is saying, is they've identified it-- a dangerous intersection-- multiple actually, there's three, where 92 and 77 come together, you come over that viaduct. I've sat there and watched semis and cars just-- red light, boom, they go right straight through. You got to watch it. Then, you know, it's just a matter of time. We're having more accidents than on 109 and-- and 77 up there. We've had multiple fatalities there, like I say, down at the hospital, as well. And these are within the city limits-- not all of them, two of them are; two of the three are. And we have businesses that are now building up on the bypass. So you know, I-- I-- you know, I find it similar to what Senator Albrecht was saying. I find it very hard to believe that,

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within regulations or that, that there's not some opportunity for the community, for law enforcement, for State Patrol to come in and say: Look, I understand that this should be considered part of your study, that we do need to reduce this at this amount because of what's happening there. I guess that's more of a comment you don't need to reply to me. It's just something that we've talked about. And it's just, you know-- some of these communities, you know, it-- they are in dangerous locations, and we are losing people, and we are having property damage accidents at these locations. And-- and when law enforcement says something needs to be done, I think we really need to pay attention. But I'll let you comment.

MOE JAMSHIDI: I really appreciate everything you said, and those are the things we-- we deal with all the time. There are over 230 some fatalities on our roads every year. And every one of those, that when it happens, I personally get a text when it happens; and I don't want to see those things. We work on every single one of these interchanges and intersections diligently with every piece of data that we have. It's always a balance fact, where we reduce, like I said earlier, on one direction could cause issues the other direction. But we do work for the communities. In fact, if you drive Highway 77 south to Beatrice, there are at least three communities there where we-- that the speed limit could be a little bit higher. But we worked with them. They understand that they-- we-- we talked to their-- their hospitals, we talked to the-- to the school folks there. And it makes sense to use some of that flexibility that we have to lower it instead of setting it higher. So when it's reasonable, when it makes sense, when if it's defensible in the court, we do-- we do everything possible to both make the communities happy and reduce the number of fatalities, and number of crashes, and-- and what have you. So we look at all of those things through the practices that we've learned, and we try to listen to people. But there's-- there's also these-- this notion that-- back when I was doing some engineering work, everybody seemed to know what traffic engineering is. And it really isn't that simple. You have to look at all the data. We're not this big gorilla that comes in and says, it is my way or highway. We never have been, and we not that way now. It just sometimes that, when people ask you for to do something that is outside of the engineering practice, that we come across that way; and we have to work on that. We have to be listening

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more, and we have to talk into our constituents closely, and we're committed to doing that.

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Senator Hughes.

HUGHES: Thank you, Mr. Jamshidi, for being here today. I guess I want to understand the process that you go through when a community asks for-- asks for you to look at an intersection or a stretch of highway.

MOE JAMSHIDI: Sure.

HUGHES: How does-- how does that work?

MOE JAMSHIDI: So that the-- so that normally what happens is, believe it or not, we get an e-mail or a letter from a constituent, a letter then that says, this-- this speed is too fast here. We-- we tell them you need to go through the-- through the city, through your council, through the mayor's office, and they will officially request. And they send us a letter, simply saying from this location to this location, please study and recommend a-- a speed limit. And then, that's when the-- when the things start. In fact, I was just-- I just handed out this list. We have lowered the speed limit in six locations-- seven locations just this year, based on that. So our engineers then get to work. They do all-- they pull all the data, all the crash tests, all the crash data. They talk to the -- they-- they simply go to the location. They look to see if there's any new businesses since last this thing was set up, any kind of a new conflict. And then they do their-- their study, and then they recommend whether lowering or "highering." Some-- believe it or not, half and half-- most people sometimes ask us to speed up-- I'm tired of going 45 through this-- this thing. And we say, well no, you got some blind spots coming up. You have to be careful.

HUGHES: So when was the last time a study was done in Oshkosh, Nebraska, on this stretch?

MOE JAMSHIDI: I believe that-- that Oshkosh was just done last year. I have-- like I said, I have to go and look to see who did this study, what happened. And I believe we just did that in 2021, looked at it again. But again, I-- I've got to go look at the study to see what

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were the parameters. Why was it that that five mile an hour was such a big deal? And why couldn't we do it 40?

HUGHES: So do you have the same-- I'm assuming you have a team of safety engineers that look at these. Do you have-- do the same people look at the same stretches year in and year out, or every five years, or when you get a request? Or do you make sure that you have someone different look at it so you have a different perspective when you get a request from a community or a request-- request like Senator Erdman's.

MOE JAMSHIDI: Good point. We typically follow the same set of standards. Now, the MUTCD changes and the traffic engineering science changes, as-- as-- as you-- as just like anything else, but the person in charge of it still has to follow the same standards. Whether it's the same person or not, I-- I really can't tell you. We have a team, and different people are assigned different-- one of these studies.

HUGHES: Well, you know, we all have pride in authorship.

MOE JAMSHIDI: Of course.

HUGHES: But I'm thinking that, if you have the same person looking at the same section-- well, I just did that three years ago, nothing's changed-- you know, it lays on their desk for two weeks and they sign off on it. But-- and--

MOE JAMSHIDI: I'm sorry, but we have to look at the fresh data for the crash that are happened. So sometimes the people ask me: How many crashes does it happen before you put a light? Believe it or not, there is a science to that. So when you're studying an intersection, you've got to know how many crashes are there. If there are fewer than the other intersection, you don't change things because, if you change things, sometimes you can create more crashes the other way. So it's not that-- we have to pull the new data every time we do this thing.

HUGHES: Right. Well, I guess my last point is in your-- in your comment here, that you have-- your professionals have extensive experience interpreting, the MUTCD, to safely manage it. So there is some latitude--

MOE JAMSHIDI: Oh, absolutely.

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HUGHES: --within your safety engineers. And, you know, I-- I have similar situations in my district, but it's-- it's frustrating, I guess, for us, as elected officials, to have our constituents come to us, as Senator Bostelman, Senator Albrecht, Senator Erdman have, and not be able to-- I don't know if it's public relations or what the problem is, but it's-- it's extremely frustrating for us to--

MOE JAMSHIDI: I totally understand.

HUGHES: --when we have these situations.

MOE JAMSHIDI: I totally understand. And-- and the speed studies are the most sensitive, personal, emotional thing that people deal with and our folks deal with all the time. So I really understand where you're coming from, tough position you're in. And we want to provide as much flexibility as possible. Like I said, if the-- if the cities and villages don't like our study, the study is not done by just one person. We can hire any kind of consultant to do this kind of thing and see what they say independently. So it's not-- we just want this study done by professionals instead of people who think they know what's best on a complicated situation as traffic.

HUGHES: Thank you.

FRIESEN: Thank you, Senator Hughes. Any other questions from the committee?

DeBOER: Yeah, I have one.

FRIESEN: Senator DeBoer.

DeBOER: How much would one of those studies cost to do?

MOE JAMSHIDI: It will depend. Again, it depends on the community, the amount of data that needs to go into it. So we're doing a major study on an intersection in Omaha, where it-- it-- it-- I-- I really could-- I haven't hired a consultant lately to do exactly that. So anything I'd throw out there is probably the wrong number. But in a small community, maybe \$10,000, \$15,000, \$20,000, maybe less. It-- it just depends.

DeBOER: OK. Thank you.

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FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? So I've-- I'm going to kind of go through some steps here, I-- cities, are they required to have a contract with an engineering firm if they're going to get state roads money? Do you--

MOE JAMSHIDI: The major cities have their own, but sometimes they have a list of consultants on their on-call, whether it's for traffic work or bridge work or what have you. So they call upon them to do the study.

FRIESEN: And I think a council is-- is required by statute to appoint someone to be their city engineer.

MOE JAMSHIDI: Right, right. That's--

FRIESEN: So if-- if you would say in this bill, for instance, that the city then would have their city engineer do a study, would that meet the requirements of the Department of Transportation?

MOE JAMSHIDI: Well, that would then require, if they want to do their own, to have a city engineer. Many of these 500 and-- and bigger, they have a superintendent, who is not a registered professional engineer, that takes care of their affairs.

FRIESEN: I'll look into that further. But I think you're required to have an engineer that you appoint. If you're going to get federal funds or those cost shares, you have to appoint someone. Now, you may not use them for work. You may hire somebody else, but you have to appoint someone. So OK, I have-- I've served on a city council and I've thought over speed limits before. So according to this bill, I could also raise the speed limit--

MOE JAMSHIDI: Right.

FRIESEN: --or I could lower down to 25 or 15; I can take my pick. Is that correct?

MOE JAMSHIDI: Yeah. I mean, if this bill passes, you can drive some communities at 20 mile an hour. It-- and people-- yeah.

FRIESEN: So from the-- from the state's point of view-- and I understand that tort claim and all this-- but the state does get sued

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for certain road incidents, whether or not it's safety issues or markings-- go down a long list. So if you're going to turn this responsibility over to a city council, what liability are they going to assume then, if something happens and the trial attorneys say: Well, you didn't follow highway safety standards, you're guilty of creating a bad situation here, whether they've lowered it or raised it or whatever they did. They've-- there's no study backing them up. So what would be the state's position if that happened?

MOE JAMSHIDI: Well, if it-- we're talking about the state highways going through communities.

FRIESEN: Right.

MOE JAMSHIDI: So any good lawyer would-- if there's something wrong, they'd bring everybody in, including the state, that, in their view, has a deeper pocket, if you will. And that's-- that's what-- that's what happens when-- we get-- we get sued all the time for an incident that happened that had nothing to do with where the sign was or the speed limit was. But attorneys bring everything in. How come there was a stop sign-- there was stop sign here? How come there was a light here? We said, well, we did an engineering study and didn't require it. Well we-- so we back-- and-- and the courts are really good at looking at the right people, doing the right work. So in this case, I think of a-- a-- a town of 7,000 people. If-- if they get dragged into it because they just arbitrarily set up a speed limit, still, I think the state would have to go in there because it's a state highway. And so if the law allows them to do it, I really don't know what the legal ramifications of it would be.

FRIESEN: I assume you'd be brought into that trial.

MOE JAMSHIDI: Oh, absolutely.

FRIESEN: But at that point, would you say we didn't have anything to do with setting the speed limits or putting up that sign or whatever? It's not our responsibility. Take us out of the--

MOE JAMSHIDI: Well, we would-- we would help the communities defend it, of course. We would ask the communities: OK, so you didn't do an engineering study. What did you do? We will help them to come up with

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the right answers. So we're on the same team with them. But at the end of the day, I can't put it in front of a judge that-- here's my study, here's what it said, I followed the national standards. And then both us and the city would be in good shape. It would be-- it would be problematic.

FRIESEN: OK. Thank you, Director. Any other questions from the committee? Thank you for coming in.

MOE JAMSHIDI: Thank you so much.

FRIESEN: Any others wish to testify in opposition? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Erdman, you can come up and close. We do have position letters in opposition from the city of Omaha, and a neutral letter from Bike Walk Nebraska.

ERDMAN: Thank you, Chairman Friesen; I appreciate it. This room is difficult to hear in. I heard about a third of what Director Jamshidi said. But what I did hear, I believe I was correct when I said they will hide behind the federal skirts when they come up; and they did that. They have never reached out to me to try to see if we can compromise or do something different on this bill and make it so that it'll work with them. \$15,000 to \$20,000 for a traffic study in a community of 900, that's job security for some engineer. Some guy sat in a pick up one day, marking down the people who turn, the people who go left and right-- cost \$20,000. That's what's wrong with government. If they would have just worked with the city, made suggestions, went to them and said, how can we work together to resolve this, rather than saying, we are the Department of Transportation, we are following the federal regulations, and we are not interested in helping you. It sucks to be you, but that's where it is. So Senator Albrecht, Hughes, Bostelman, and others who have small communities, have the same issues that I have. So instead of cooperating with these communities and trying to figure out what's the best solution, we have this federal mandate hanging over our head that we have to do a traffic study. We don't apply common sense, and common sense is a flower that doesn't grow in everybody's garden, and it's quite obvious that's true. So if they would have just worked with the community years ago and try to figure out what the best solution is, I wouldn't be here and you wouldn't be here listening to me. That speed limit used to be 40 in Oshkosh. In '14, they raised it to 45. So it's not like it's always

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been 45. They made the decision. They can make the decision to change it back. They don't want to. They could make the decision to help Senator Bostelman's issue. They don't want to, the same as Senator Albrecht and Senator Hughes. They could work with these small communities, and be cooperative and get along, and try to solve the problem before we get to a statute change. But they don't want to do that. It is job security to have engineers do studies that cost thousands of dollars. And they don't live there, and so it doesn't make any difference to them. At some point in time, we have to start applying common sense, the way we govern people and the way we deliver service. I couldn't hear exactly what he was saying, but I can tell you this: That are the kind of answers I get when I deal with the Road Department. It's talking in circles and going around and around and around. And when they get done, what did he say? Am I a little frustrated? Yeah. I am, because I've been dealing with this department for a long time, and the only way to force them to make a decision is to change the statute. I tried to get them to put the road marker signs for each county road on top of the stop sign back in '05. You can't do that because that's state property-- or-- or county property on a federal highway, on a state highway. Guess what? We changed the law. All those county road marker signs are on top of the stop sign because we changed the law. When I asked them to do it. I asked him voluntarily, do it for a safety issue, because it was brought to me by an emergency responder that went past a road, couldn't see the sign because it had to be back off the right of way. And I said if it had been on top of the stop sign, they would have seen the road number. That didn't make any difference to them. So we changed the statute, and now they're on top of the stop sign. So how do we force these people to apply common sense? We have to change the statute. They're not going to volunteer to help anyone unless they're forced to. So I'm asking you to move this bill to bring some commonsense application to the Department of Transportation. It's long overdue. Thank you.

FRIESEN: Thank you, Senator Erdman. Any questions from the committee? Seeing none, thank you, Senator Erdman.

ERDMAN: Thank you for your time.

FRIESEN: That will close the hearing on LB164.

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FRIESEN: Everyone, we will now open the hearing on LB226, Senator Hilkemann. I believe there's some staff here to open on this bill. Welcome.

MATTHU BECK: Oh, this is comfortable. Good afternoon, Chairman Friesen and members of the committee. I am Matthu Beck, M-a-t-t-h-u B-e-c-k, and I am appearing before you today on behalf of Senator Robert Hilkemann, who represents Legislative District 4. Senator Hilkemann regrets that he is unable to be here today but, as you may be aware, he is currently in quarantine. I am here today to introduce LB226, which would limit motor vehicle tax exemptions with the intent to cap the tax exempt dollar amount for vehicles purchased and licensed by nonprofit entities. The intent of this bill is to limit the use of tax exemptions on excessively priced vehicles. Certainly, nonprofit organizations deserve the tax exempt status that they have for many good reasons. But Senator Hilkemann has witnessed and has received comments about seeing certain vehicles that are clearly not being used to fulfill the mission of the nonprofit. This bill does not prevent nonprofits from providing high dollar vehicles for their employees. It does provide that, if they do, they will be subject to the taxes on the price in excess of the average registered vehicle that, according to the DMV, that value this previous year was \$33,287. The purpose of this bill is fairness. Senator Hilkemann believes there are a number of Nebraskans who would enjoy driving luxury vehicles if they didn't have to pay the initial sales and motor vehicle tax, as well as motor vehicle taxes in subsequent years. After conversations with stakeholders, we realized that, as drafted, the bill could have a negative and unintended effect on some vehicles. Vehicles such as vans to transport individuals with developmental disabilities and shuttles for hospital employees are just two examples. We have drafted and shared with the committee an amendment that makes two changes. First, it will change the \$28,000 cap, which we used as a placeholder, to the average MSRP of all registered vehicles in Nebraska from the previous year. Second, the amendment also adds clarifying language to exempt the cap on vehicles owned by hospitals or organizations that provide services to individuals with a developmental disability. Senator Hilkemann would like to thank the many people who have worked with our office on drafting and improving LB226. We will continue to work with the stakeholders and the committee to see if this is something that we

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can solve. Senator Hilkemann will be submitting his closing in writing. And with that, I thank you for your time.

FRIESEN: Thank you, Mr. Beck. So anyone who wishes to testify in favor of LB226? Seeing none, anyone wish to testify in opposition to LB226? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, we do have one neutral letter from NACO, a position letter in opposition from the Nebraska Catholic Conference. With that, I think we will-- since Senator Hilkemann is not able to attend, we will close the hearing on LB226. And we will close the hearings for the morning.

FRIESEN: OK. Welcome, everybody, to this afternoon's meeting of the Transportation and Telecommunications Committee. I'm Curt Friesen from Henderson, District 34. A few procedural items I'll go through. For the safety of our committee members, staff, pages, and the public, we ask that those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside of the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committees will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testimony. Public hearings for which attendance reaches the seating capacity or near capacity, the entrance door will be monitored by a sergeant of arms, who will allow people to enter the hearing room based on seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. And the Legislature does not have the availability of an overflow hearing room for hearings which attract several testifiers and observers. We ask that you please limit or eliminate handouts. Please silence all cell phones or other electronic devices. We will be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We have set aside an ondeck chair here in front, so that the next testifier will be ready when their turn comes. If you will be

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testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required but, if you do have a handout, we need 12 copies. One of the pages could assist you. When you begin your testimony, it's very important you clearly state and spell your first and last name slowly, for the record. If you happen to forget to do this, I will stop your testimony and ask you to do so. Please keep your testimony concise and try not to repeat what's already been covered. We will use the light system in this committee, beginning with the green light. You have five minutes for your testimony. Yellow light indicates there is one minute left. When the red light comes on, it's time to wrap things up. Those not wishing to testify may sign in on the pink sheet by the door to indicate their support for opposition to a bill. And with that, I'll introduce my staff here this afternoon. And I have Andrew Vinton, the legal counsel for the committee, and Sally Schultz is the committee clerk. And the pages today are Samuel and Peyton. Thank you very much for being here. And with that, I'll let the rest of the committee introduce themselves, starting at my right.

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

BOSTELMAN: Bruce Bostelman, District 23: Saunders, Butler, and Colfax County.

ALBRECHT: Joni Albrecht, District 17: northeast Nebraska-- Wayne, Thurston, and Dakota Counties.

GEIST: Suzanne Geist, District 25: the east side of Lincoln and Lancaster County.

MOSER: Mike Moser, District 22: Platte County and parts of Stanton and Colfax Counties.

M. CAVANAUGH: Machaela Cavanaugh, District 6: west-central Omaha, Douglas County.

FRIESEN: And Senator DeBoer-- probably not with us right now, but she might join us later. So with that, we'll open the hearing on Elby293. Welcome, Senator Flood.

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FLOOD: Thank you, Chairman Friesen. Members of the committee, my name is Mike Flood, M-i-k-e F-l-o-o-d. I represent District 19, which is all of Madison and a part of Stanton County. This bill has two objectives. The first is to provide greater representation and accessibility within the Public Service Commission districts and, two, to provide the opportunity for commissioners to hold occupations so long as they are not holding an occupation that's already regulated by the commission. In 2011, the state began operating under our presently drawn Public Service Commission districts. Currently, the 4th and 5th District represent roughly 87 percent of all counties within the state, with the Fifth District representing 47 of 93 counties and the Fourth District representing 34 of 93 counties. Essentially, 81 of the 93 counties are-- fall under the jurisdiction of two commissioners. This legislation would increase the current number of commissioners from five to seven, which is allowable under our state constitution and provides greater representation and accessibility of the commissioners to the communities they serve. I think what's important here is that every county and every city has its own unique story and its own telecommunications issues. The idea here is, by creating two additional districts, the two largest districts will be somewhat smaller and give us a chance to have more commissioners touching rural Nebraska. Commissioner Mary Ridder, for instance, who lives near Broken Bow, represents over half the state's geographic area, 47 of 93 counties. That, in my opinion, is too big when the Constitution allows us to go to seven instead of five. And it has to be next to impossible when you think about every community having a different story as it relates to broadband and the Internet. I also submitted to you an amendment which was handed out, along with a list of the counties by district, which clarifies language for an increase in both the number of commissioners and drawn districts by two, for a total of seven districts. If, for some reason, this committee would see fit to send this to the floor, it would probably have to be done rather soon because, the way the amendment is written and the way I have envisioned it, is that the redistricting committee would have to know they'd have to draw seven districts instead of five if it were to pass. The second change allows for commissioners to hold another occupation so not-- so long as it's not regulated by the commission. I will-- given your time today, I will waive closing. We're in the middle of a riveting discussion on the uniform trust deed in Banking that I just don't want to miss. But I-- I would welcome your

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questions, and I-- I really do believe, at the end of the day, we could use some more representation of rural Nebraska. There are so many different issues and so many different towns when it comes to broadband and the Internet, obviously grain warehouses and all the other industries that the Public Service Commission regulates. So thank you.

FRIESEN: Thank you, Senator Flood. Any questions from the committee? Senator Moser.

MOSER: What does a public service commissioner get paid now?

FLOOD: I believe it's \$75,000.

MOSER: OK. These districts, as they're divided, are they based on population?

FLOOD: Yes. And the new districts would be, too.

MOSER: So you're still going to have two really big-- no, a really a large number of counties in two districts, no matter what you do.

FLOOD: Of course, just given the population. It's somewhat similar to my predecessor's bill to expand the Legislature from 49 to 55 senators to increase access to state senators, only obviously, in this case, we'd be adding two commissioners. And my idea is that you'll have some commissioners that will end up with some of those outside-the-metro, rural counties and will be able to shrink the size of Commissioner Ridder's district to make it even easier. Our commissioner lives in Sutton, and his district goes from the Kansas border to the South Dakota border. And that's just the way it has to be drawn. We have two very different areas of the state there. And we'd really like to have a commissioner that focused on maybe the northeast county is extending into Washington and Dodge County, for instance, if, you know--
[INAUDIBLE].

MOSER: But what about going with a hybrid plan where it's partly on area and partly on population?

FLOOD: I would love that, but the Supreme Court in 1962-- Baker v. Carr-- ruled that one person, one vote, which wouldn't let us set up a

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U.S. Senate-like structure for-- trust me, if we could do it, I would be introducing that.

MOSER: OK. Thank you.

FRIESEN: Thank you, Senator Moser. Any other questions? Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen, and thank you for bringing the bill, Senator Flood. So he asked the question about population. But would you say, in the last 10 years, some of these in Districts 4 and 5 have increased in population? Decreased? You weren't looking at that at all, or just the fact of the amount of miles that you have?

FLOOD: Sadly, I think that when the lines are redrawn, those counties will grow due to population decline in rural Nebraska, especially in the northern and western tiers in the state.

ALBRECHT: And these don't have term limits. Correct? It's just you vote for the candidate best suited.

FLOOD: I don't believe so. But they-- it is a partisan. I don't know. Is it partisan?

ALBRECHT: Is it a partisan? I don't know.

FLOOD: I'm not certain.

ALBRECHT: OK. I'll check on those two things. And-- but you're saying that if-- if passed in the manner it is now and that amendment, you'd want it up sooner than later so that the redistricting can play a part in that.

FLOOD: If you're inclined to pass it, it would have to go early so that whoever is on the redistricting committee would know they have to do so.

ALBRECHT: OK. And the other thing was you said-- you[-- about them having other jobs. So those other jobs should not be in whatever's in the bill right now that they can't be affiliated with somebody that's in that line of work. Correct?

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FLOOD: My theory there is, if you want something done, give it to a busy person. And if they aren't regulated themselves, and they can fulfill their obligation to the-- to their constituents, they should be able to have an outside income, if-- if they so choose. That could be a farmer or a pharmacist.

ALBRECHT: OK. But in the bill, isn't it spelled out? So you're saying that it doesn't matter what kind of job you have?

FLOOD: Well, they couldn't work, for instance, for a telephone company that would be under the regulatory purview of the commission, or a grain warehouse, which is another-- or a taxicab service, for instance.

ALBRECHT: OK. Anything dealing with what they do. OK, thank you very much.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? Senator Cavanaugh.

M. CAVANAUGH: Yes.

FRIESEN: It comes to me slowly sometimes.

M. CAVANAUGH: It's Machaela Cavanaugh, not Matt, just for future reference. Senator Flood, thank you for being here today. The PSC-- so my questions are more about the fiscal note. With the increased salaries, how often does the PSC meet?

FLOOD: They meet-- I mean, my sense about the PSC is they're in there weekly, and they have hearings certain times during the month, they have offices in Lincoln. I think that Commissioner Ridder, for instance, like Commissioner Vap before her, can do a lot of things remotely, but that they are often engaged during the middle of the week or at different points. So I think it's-- it's closer to a full-time job than a lot of other positions.

M. CAVANAUGH: Well, I noticed because, in addition to the salary, it also has retirement, health, and FICA. And so I was intrigued by that because we meet for 90 days consecutively and make five dollars and-- was it twenty seven cents an hour-- and no health benefits. And so I

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just thought this was an opportunity to let the-- remind the public of that. And--

FLOOD: You get what you pay for.

M. CAVANAUGH: Gosh, I hope not. Thank you.

FLOOD: Thank you.

FRIESEN: Thank you. Senator Cavanaugh. Any other questions from the committee? Seeing none, and you're going to leave and not be here?

FLOOD: I'll waive closing. Thank you.

FRIESEN: Thank you, Senator Flood. Proponents who wish to testify in favor of LB293? Seeing none, anyone wish to testify in opposition to LB293? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, and since Senator Flood waives closing, we'll close the hearing on LB293. We'll wait a few moments while people change spots. OK. With that, we will open the next hearing on LB619, Senator Sanders. Welcome to Transportation and Telecommunications.

SANDERS: Good afternoon, Chairman Friesen and the Transportation and Telecommunications Committee. For the record, my name is Rita Sanders, R-i-t-a S-a-n-d-e-r-s, and I represent District 45, which includes much of the Bellevue/Offutt community in Sarpy County. Before I begin, I want to thank the many people and organizations that have spent many hours compromising with us on this bill. While I cannot possibly name every stakeholder that I met with, I sincerely appreciate their time and effort that they have spent with me. Some of these organizations will testify today. Today I'm introducing LB619 because of the concerns from home builders and contractors across Nebraska. The bill does two things: 1) sets minimum depths for utilities to be installed; 2) it exempts fine grading by homebuilders from One-Call Act. My goal for introducing this bill is to start a dialogue between utility companies and contractors, but also to find a practicable solution to the concerns on both sides. In the light, I would like to draw committee's attention to AM70. I am asking the committee to adopt this as the committee amendment. AM70 is a white copy amendment that would replace the bill, and I will reference LB619, as amended by AM70, in my testimony. This is the product of many meetings and discussions

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with stakeholders to find a compromise. This winter, I heard from numerous builders who expressed concerns of growing frustration about the improper installation of utilities, mainly telecommunication lines, on their work sites. Lines are haphazardly installed outside the easement or casually dropped on the top soil of the lot. This delays projects and causes conflicts between the contractors and the utilities-- and the utilities. LB619 would establish a requirement that utilities be buried at a certain depth in order to protect the safety of the workers on a job site and to avoid future issues with excavating, hitting facilities that were probably improperly installed. As a real estate developer, I have personally experienced this issue during the building process for one of my private businesses. Construction workers hit a utility line that was unmarked. They were taken by surprise but, fortunately, no one was hurt in the incident. It is events like this that we are hoping to avoid by implementing this legislation. The second thing the bill does is exempt fine grading from the One-Call Act. Fine grading is essentially the final preparation of the lot, removing around an inch or so of the topsoil. An example would be preparation of a lot for seeding, for lawn or laying down sod. I have heard from numerous builders that they are currently required to call One-Call when they want to quickly carry out this task. It causes unnecessary delays at the job site. One-Call must currently be called any time someone wants to move or displace ground unless an exception is listed. Because of minimal amount of soil being removed in fine grading, I believe the exemption-- exception is appropriate in this case. Upon discussion with various stakeholders, we designed AM70 in order to distinguish between commercial and residential properties, distinguish between mainline utilities and service drops, set minimum depths and also tailor the definition of fine grading. Additionally, we are determined that oil, gas, and hazardous liquids' underground facilities should follow federal guidelines. So we would eliminate that provision from this bill with AM70. Following my testimony, you will hear from Jerry Torczon. He has personal experience with this issue and will tell you more about the issues contractors face with misplaced utilities. Thank you for your time and attentiveness. I welcome any opportunity to answer any questions that you might have.

FRIESEN: Thank you, Senator Sanders. Are there any questions from the committee? Senator Moser.

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MOSER: So looking for the purpose of your bill, is it to increase the depth that utilities need to be buried or to name certain things that need to be included that are not now included?

SANDERS: All of the above. And that's really for the discussion you have with-- so Cox Cable and any of those that do bury lines, and that they come to an agreement for the depth that is required. Right now, some of the stories are that, as I said in my opening, sometimes cables or broadband wiring is just left on the ground or may be buried six inches. And that can cause an issue when you're tearing those lines out accidentally. So they're working on that right now to come up with those depths. But the oil and gas, they have federal requirements that are already in place.

MOSER: So what if there's frost in the ground, and your cable goes out or your phone goes out? Is there a work-around for that somehow?

SANDERS: Yes. And I'll let the experts talk about that, that are here today. But yes.

MOSER: So all of these contract or all these utility companies have to respond to the One-Call and work their cables?

SANDERS: Yes.

MOSER: Regardless of what they are? Regardless of how much power they carry or--

SANDERS: Well, it depends on the federal guidelines as well as the local, so currently, gas, electric, and oil are by federal guidelines.

MOSER: So they're currently required, but the phone company is not necessarily required to mark theirs?

SANDERS: Correct.

MOSER: Yeah, we've hit a few. The city of Columbus had a lawsuit over it. We marked something-- well, let me rephrase that. Somebody marked something incorrectly. Yeah, I ain't that stupid. Thank you.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? Seeing none, are you going to stick around for closing?

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SANDERS: Yes.

FRIESEN: OK. Thank you. Proponents who wish to testify in favor of LB619?

GERALD TORCZON: Good afternoon, Senators, I'm Gerald Torczon; G-e-r-a-l-d, Torczon, T-o-r-c-z-o-n. I'm here to testify in support of this bill. I'm vice president of Build Omaha, a group of almost 100 custom home builders in Omaha. I'm also here representing MOBA, the Metropolitan Omaha Home Builders Association and ENDC. I would like to initially say that most of the utilities do an excellent job. We just seem to be having some problems with some shallow lines that are being cut. You might ask yourself, why did-- why did this come up all of a sudden in the Omaha market? For years, the utilities, especially phone and Internet and cable, were buried by OPPD in the same trench-- for years, 20 years probably. And so whenever you marked the OPPD line, you knew you had phone lines and etcetera stacked above that. Over the years, that separated for whatever reason. And now a lot of the lines are being buried separate. And if you look at some of the handouts I have, as builders and developers, we also have to meet the guidelines and rules of the city's jurisdictions. EPA-- EPA gives their authority to the state of Nebraska, and DEQ-- DEQ gives it to the city of Omaha for erosion control. And it seems like we've been hitting a lot of phone lines, fiber lines that are running to houses. Obviously on the handout, the cities want us to install silt fences six inches deep and we're hitting lines that are six inches or less deep. We don't seem to have a problem with any-- any power-- no gas. Usually they're marked and the contractors take enough time to investigate. But the phone lines and some of the shallower buried lines have become a problem. And the biggest problem is-- is when they're marked, then we have to find it. So we have to-- they don't put any depth, so we have to dig down and find it. We can't do erosion control if we find a line three inches down, because we're going to call the phone company or whoever and they're going to say, well, you're going to have to pay us to move it. Well, we can't afford to pay to move it when it's going up the lot line where we're supposed to do our erosion control. So that's really been-- that's really the crux of the problem. That's why we support the amendments that Senator Sanders has worked out with the utility companies. And I think it's an easy fix. You know, we install and cut frost all through the year or, if they do lay it on the ground, as long as there's a vehicle or time frame where they come back and

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trench it. Other than that, I think-- I think it's an easy fix if they just do it deep, and the machinery is available to do it. And I guess I would leave it at that and answer any questions from the committee.

FRIESEN: Thank you, Mr. Torczon. Any questions from the committee?
Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Question comes around. This can be either fiber or other. So is it fiber coming from a central box that's shared by multiple residents? That [INAUDIBLE].

GERALD TORCZON: Yes. It's usually-- it's development they'll-- they have the backbone and it'll come out of a box. And if you're building on a lot and this particular person asks for service, they have ten-foot, five-foot easements on both sides of the lot line and they can trench it anywhere within that ten feet. And a lot of times it's on the vacant lot that hasn't been built on. And another thing is when-- going back to when-- when we buy ground as developers and we submit our plats and go through the entitlement process with the cities, we have to show a master grading plan. We-- we have to show where all the water goes when all the houses are built and all the paving is down. And-- and evidently, it's-- it's always going to go to the rear lots, side lots, and drain to the-- to the storm sewer system in the street. Well, that's the most important place where we have to have swales and drainage but, unfortunately, that's where a lot of the lines are buried. If they were just a little bit deeper, it gives us a little leeway to-- to grade and butt our lots together with other builders.

BOSTELMAN: Do you have any problems with SAT connections, satellite dishes?

GERALD TORCZON: No.

BOSTELMAN: 'Cause those are usually on the house.

GERALD TORCZON: Right.

BOSTELMAN: Other than the fiber, what's the other?

GERALD TORCZON: Well, when I say fiber, it's just anything buried.

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BOSTELMAN: Cable, fiber--

GERALD TORCZON: Cable, fiber, Internet-- I don't really know what's in every line, but it's-- it's not gas and it's not electric.

BOSTELMAN: OK. Thank you.

GERALD TORCZON: You bet.

FRIESEN: Thank you, Senator Bostelman. Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen. And thanks for being here today, Mr. Torczon. So most of the Internet or what you're here to talk about is something that gets added after the fact. Like you build the house, you get the gas and electric to it. Right?

GERALD TORCZON: Um-hum.

ALBRECHT: So is there already something in statute that says that they can put it wherever they want to put it? Do they not have any regulations at this time?

GERALD TORCZON: It's my understanding, there's no state regulation on any depth of utilities. There are some federal regulations and an electrical code for power. But I don't think there's, to my knowledge, any minimum depth for phone or cable. And-- and-- and you're right, Senator, when we build the house and turn it over, the buyers get to pick the service, usually, of who they want to do business with, at least in the Omaha market. So if they decide to go with Cox or CenturyLink or whoever, that's who they call, and then they'll come out and provide the service, trench it in. But they have, like I said, ten feet to do it, five on this side, five on this side. And there typically will always avoid the finished product, which is the sod and sodded house with sprinkler lines. So they just go up to five feet on the vacant lot and that tends to be the problem. So when we go to start the house and build a house per city code, we have to install silt fence, and that's where the conflict is.

ALBRECHT: OK. Thank you.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? Senator Moser.

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MOSER: So are the phone and fiber companies party to the One-Call? Are they supposed to come out and mark those if you--

GERALD TORCZON: Yes.

MOSER: --call One-Call? And as long as they're where they say there are-- they are, if you hit it, then you're not liable?

GERALD TORCZON: Well, if it's too shallow, we're going to hit it because we can't install our silt fence or do anything per code because there's times I should have brought the pictures. I had another gentleman that was going to testify but, unfortunately, one of his family members was-- has COVID, so he's quarantined. But that-- that's exactly right. If-- if they show where it's at and if it's deep enough, we can work around it. It's-- it's when it's below, you know, or less than 6 inches. We'd like to see at least 12 inches, not 18 inches, especially with the machinery and technology today. You can put it in fairly quickly. Then-- then we can-- we can avoid it. And another thing, they never, you know-- and it's nothing derogatory to the utility companies-- but they never go in a straight line. They're trenching and they kind of do this. And so we're-- and when they-- when they flag it, they flag it, and then they have 18 inches on each side and it's somewhere in that. And that's a-- that's a pretty wide opening to try to figure out where the utilities are, the depths are; and they don't mark the depths.

MOSER: Are they required to bury tracer wires now?

GERALD TORCZON: I don't believe so, on phone. I know power does and I believe gas does, but I don't-- I don't know.

MOSER: Yeah. I've got one of those locators and we can-- based on the tone of the beep, you can tell where the line is. Thank you.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? Have you ever had a lot of trouble with missed markings or companies not coming out to mark?

GERALD TORCZON: More than you can believe.

FRIESEN: OK. Is it-- I won't-- I won't go there.

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GERALD TORCZON: It could be dangerous because I've had some where--

FRIESEN: Yeah, [INAUDIBLE].

GERALD TORCZON: --there's a very high powered line and--

FRIESEN: So is it-- you know, in your case here, you're-- you're talking mostly about lines that are not, at least, dangerous if you hit them, but there is a cost to have them fixed. And-- and obviously, you've-- required to put in these silt fences. And so the biggest problem is these-- that-- that trench you have to make for the silt fence. And that's when you're hitting these lines, I take it.

GERALD TORCZON: Um-hum, or establishing grade and-- yeah.

FRIESEN: 'Cause we've had-- I mean, we've had a lot of stories about them laying on top of the ground, which then would be very easy to see, but-- so I-- I was just curious more about your-- your-- do they come out in a timely manner and mark your line, so does that--?

GERALD TORCZON: They've expanded the time frame just because the activity is so strong. And in the home building construction market, they used to be three days, but they've told us it's taking longer. And, you know, it is what it is. We can-- we can live with that. But the mismarks or outside of the easements can be a big problem, and-- and the-- the-- the fact that they don't tell you how deep-- and-- and I kind of understand why they do it-- but the fact that they don't tell you how deep it is. One particular instance, I called for a locate, and they marked the line. And I looked at the line. I have a picture of the line and it went right through a four-foot diameter cottonwood. And the standard practice is I'm supposed to dig down and find the line. Fortunately, the person putting in the line told me he put it in by trenching it through the boring, and it was 10 feet deep. If I wouldn't have known that, I'd still be digging. And that was my own personal house.

FRIESEN: So there is no standard depth that they put them at and, yes, when you locate, you really can't tell what depth they're at.

GERALD TORCZON: Directional boring you can go pretty deep.

FRIESEN: Right.

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GERALD TORCZON: And I understand why, but it sure would be nice if they had a minimum/maximum depth so you just know kind of how deep you're going to dig. But right now, they just have the easement so they can go in the easement.

FRIESEN: OK. Thank you. Senator Bostelman.

BOSTELMAN: Thank you. One more question. And just looking at this, this is-- so Omaha establishes how you install your silt fence. Correct?

GERALD TORCZON: Yes.

BOSTELMAN: I'm reading here. What about Lincoln or other towns, for instance?

GERALD TORCZON: I believe they're all the same 'cause they get their-- their guidelines and standards from the cities, and the cities get it from the state. But I think this goes to the EPA and Clean Water Act and erosion control.

BOSTELMAN: Yeah, I'm just-- yeah, my-- yeah, my-- my question really goes to if this is an Omaha issue or if this is really a statewide issue. If it's an Omaha issue, then has it been taken up with Omaha. City Council, or whoever, to fix it there? Or are we fixing-- I mean, are we fixing an Omaha issue or we fixing a statewide issue?

GERALD TORCZON: I don't think Omaha Council has the authority over the utilities like that.

BOSTELMAN: OK.

GERALD TORCZON: And I-- and I happen to build in Lincoln, and I have hit them in Lincoln.

BOSTELMAN: Yeah, for your-- yeah. I'm-- I'm just looking at the storm-- for your silt fences, it's omahastormwater.org is the publication, I guess, that says how you do it. So someone must regulate how those get put in or what the depths and that would be. And if it's not the Council, then who would it be?

GERALD TORCZON: The silt fence?

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BOSTELMAN: Right.

GERALD TORCZON: That-- it's part of your building permit. They're-- the city enforces it because Lincoln, you know-- or not Lincoln-- but DEQ would have a tough time enforcing all the silt fence installations in Omaha. It's such a big undertaking. Even Papillion, La Vista, Gretna-- they have Omaha inspectors come out to inspect their erosion on a regular basis, because they have-- well, you know, they look at it every couple weeks.

BOSTELMAN: Right, right. And I under-- thank you for that. And again, it's-- we're looking at-- it's in Omaha, but it sounds like it's more of a-- every state-- a statewide, a DEE issue--

GERALD TORCZON: Um-hum.

BOSTELMAN: --on the run off. I'm just kind of curious as to why our fiber or others aren't required to-- already are not required to bury deeper than what they are, from the-- I'll call it the junc-- the box, the junc-- whatever you want to-- the box to the residence. So I'm kind of curious why that is.

GERALD TORCZON: I would agree.

BOSTELMAN: OK. Thank you.

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

GERALD TORCZON: Thank you for your time.

FRIESEN: Any other proponents? Anyone wish to testify in favor of LB619? Seeing none, anyone wish to testify in opposition to LB619? Welcome.

REGINA SHIELDS: Thank you. Good afternoon, Chairperson 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 agency legal counsel and legislative liaison for the State Fire Marshal Agency. I am here to testify in opposition to LB619. The One-Call Notification System Act was passed in 1994 with the purpose of: aiding the public by preventing injury to persons and damage to property and

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the interruption of utility services resulting from accidents caused by damage to underground utilities. LB61 seeks to exempt a type of excavation from using the One-Call System. This new exemption would be for "fine grading of lots used for single-family residential property construction." Since there is no definition for fine grading within the statute, there will be disputes regarding when the exemption should or should not be used. Currently, there have been many instances where grading work has caused damage to underground utilities. Adding a new exemption creates an unnecessary risk to public safety and undermines the purpose of the system. LB619, also includes language regarding the minimum depth at which certain utilities must be installed. The State Fire Marshal Agency administers the Pipeline Safety Program, which is governed by federal regulations issued through the Pipeline and Hazardous Material Administration, commonly known as PHMSA. Within these regulations, depth requirements are listed for various types of installations that occur. For example, a gas main line must be installed in the depth of 36 inches and a service line must be installed at 18 inches. However, even within those broad categories, there are numerous factors that must be considered before determining the proper depth. Some of those include the surrounding geographical structures, soil composition, material type, and the location of multiple utilities within a single conduit. Having a single depth for all types of lines and conduits creates many conflicts with federal law. Thank you for your time and attention. I'll be happy to answer any questions you or the committee may have. And so I apologize, I am testifying on LB16 [SIC], not the amendment that's been discussed, as the agency has not been contacted about the bill or an amendment.

FRIESEN: Thank you, Ms. Shields. Any questions from the committee? Senator Moser.

MOSER: And who are you representing today?

REGINA SHIELDS: The State Fire Marshal Agency.

MOSER: The State Fire Marshal's Office? OK. I didn't see that in your handout. It said you're agency lee-- legal counsel, so-- thank you.

FRIESEN: Thank you, Senator Moser. Any others? Senator Albrecht.

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ALBRECHT: Thank you, Chairman Friesen. And thanks for your testimony today. So you're talking about more of the-- the larger utilities. Do you also look at the Internet and phone and anything else that would go in, because [INAUDIBLE]--?

REGINA SHIELDS: The State Fire Marshal Agency has jurisdictional authority over what you would think of as the gas lines.

ALBRECHT: Um-hum.

REGINA SHIELDS: However, the One-Call Notification System Act and the One-Call Notification System is within the State Fire Marshal Agency.

ALBRECHT: Oh, very good.

REGINA SHIELDS: So we appoint the board members, we attend the meetings, we help craft the messages.

ALBRECHT: So you can-- you can help us understand then, are there any regulations for the telecom companies or Internet or any regulation on them on-- on depth?

REGINA SHIELDS: Yes. There is a variety of regulations regarding them. Again, it depends on the type of conduit that's being put in, it depends on the type of fiber networks that's being put in, depends on the type. There's also many local jurisdictional controls on those. Most of the control of that is done through your local zoning ordinances or what you have for information on those, as well. As beyond just the telecommunication lines, electrical lines also have both state and federal guideline regulations based on the amount of amperage and wattage within the lines that are being buried and things like that. It's very rare that there's a single jurisdiction or regulation for any one single line. There's numerous things that interact.

ALBRECHT: So you're in opposition because this is just for like the residential area or it's just not widespread? Because they're just singling out residential?

REGINA SHIELDS: Well, 'cause they-- for us there are two main issues. This would add a brand new exemption to a type of excavation that would be exempt from the One-Call System. Currently, fine grading is

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an excavation activity. The state statutes define excavation as basically moving of dirt. So the State Fire Marshal Agency, from a public safety standpoint, if the act was designed to help prevent damages and to prevent-- and help public safety, building a new exemption-- to [INAUDIBLE] in using the system at all, we would be in objection to, because we think it's a public safety issue.

ALBRECHT: Very good.

REGINA SHIELDS: The second portion of that is, in the specific areas we regulate for pipelines, we already have federal regulations--

ALBRECHT: Right.

REGINA SHIELDS: --which give us depth requirements. And I said it's not as simple as just saying X feet. There's numerous-- about two and a half pages of the CFR that discuss situations.

ALBRECHT: And so do these folks who-- who cut those lines in and put whatever fiber to the homes or businesses, do they have to do anything through your One-Call or is it just through the city that they are representing? Is it just under their--?

REGINA SHIELDS: Every member of the One-Call System has to-- if you conduct under them-- if you're a facility owner, when you put in new facilities, so new piping, new whatever it is, you provide maps to the One-Call Notification Center. So that's when an excavator wants to conduct an activity, they call in their activity location, and every utility that has something in that area receives the ticket. So they know that someone wants to conduct excavation in an area where they have underground facilities. They are then required to come out and mark those facilities.

ALBRECHT: OK. Thank you for your testimony; appreciate it.

FRIESEN: Thank you, Senator Albrecht. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. I have questions, I guess. One is, I don't-- I think in her amendment-- you've seen the amendment.

REGINA SHIELDS: Yep.

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BOSTELMAN: So in the amendment, it does not touch-- it-- it's-- it says that the 2017 National Electrical Safety Code published-- in other words, I think it recognizes underground facilities. And the underground facilities are recognized as what you're saying, established for electrical, gas. Those type of things stay the same. The thing that I think what she's trying to-- what the bill is trying to do and the amendment is trying to do is to identify these other fiber, cable, telecommunication, those type lines that are-- that have been from the-- again, I'll use a junction box for a lack of a better term-- to the home, which would be reasonably short distances that you would think. But in those specific cases, they-- she-- it is specific into a depth, but not-- perhaps it would be more of a "not-less-than." So we're not tied into a specific depth, but we're a range of depths. You can't-- you need to be at least not less than 20, whatever it is, 24 inches, whatever the number she has on those type of lines that go in there. But would that be something that would be more, in an-- in the amendment than that you could see would be less-- less restrictive and more acceptable?

REGINA SHIELDS: Say that again. I have not seen the amendment, but to speak to what I think it's saying, if it's going to exempt out certain things that already have both federal and state, that would be helpful. I will let the other utilities speak to that, because I know each utility often has their own standards that they utilize within certain areas, like I said. But the problem sometimes, just with a minimum, even a minimum depth, is again, it doesn't take into consideration all the other factors that are in that area, for example, if the drop line is going through an area that has a subdivision that built in a giant pond.

BOSTELMAN: Oh.

REGINA SHIELDS: When you have those, the drop lines themselves still may need to be at different depths and things like that, based on the soil composition and surrounding geographical features, what else they're trying to avoid and things like that.

BOSTELMAN: Understand. And I would have to go into the-- the Institute of Electrical and Electronics Engineers for their underground facilities and see what that says, if there's language there that could be incorporated into the amendment, if it's needed or not. But I

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guess we'll wait to hear from the other, maybe, opponents on-- on their perspective as far as facilities, the cable fiber that's being buried, because, obviously, there's an issue here of some-- of some type that-- that needs to potentially be resolved. But what that answer is, I am not for sure what it is right now. So thank you.

REGINA SHIELDS: OK. Thank you.

FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you, Ms. Shields.

REGINA SHIELDS: Thank you.

FRIESEN: Welcome.

JILL BECKER: Welcome. Hello. Good afternoon, Senator Friesen and members of the committee. My name is Jill Becker, and I'm a registered lobbyist, appearing before you today on behalf of Black Hills Energy. I'd like to provide some comments and opposition to LB619. First, I'd like to thank Senator Sanders and her office for several discussions regarding this bill. We do appreciate that, in the amendment, that Senator Sanders offered that the natural gas depth requirements are removed. Since we do follow dpath requirements, as you've already heard, determined by the Department of Transportation's Pipeline and Hazardous Materials Safety Administration, otherwise known as PHMSA. Second, we remain in opposition to the legislation, though. Adding another exemption to the state's One-Call Act would lead to greater risk to Nebraska citizens. By the very nature of this request, facilities will be close or actually on the property. It is not good policy and is, in fact, bad policy to not require a free call and to ensure the public is safe and facilities are not damaged. In addition, the proposed amendment would only allow the exemption when the grade is-- grade is greater than three inches. And we believe that number is very subjective. You've heard about that a little bit. Three inches from where? Is it just the-- a portion of the property? Is it the entire property? We just don't believe that adding an exemption to the state's One-Call Act really would increase safety. The entire One-Call Act itself is really a partnership between all of the parties involved. And allowing exemptions to that really, really creates additional risk to the public at large. Finally, I know that broadband is certainly a priority of this committee. Changes to the One-Call

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Act, as our state continues to look at additional broadband deployment across our state, is critical. Safety cannot be placed to the side just because people want to move faster. We have to have continued adherence to the state's One-Call Act. Thank you for the opportunity to provide comments, and I'd be happy to answer any questions from the committee.

FRIESEN: Thank you, Ms. Becker. Any questions from the committee? So if-- you are regulated in the minimum amount of depth, you can be at. But can you go deeper if you want to?

JILL BECKER: We can, but there-- it's kind of a balancing act for us, because if we would ever have a natural gas leak, as a natural gas provider, we've got to be able to get to that facility. And so you don't want to be so deep that you can't get quickly to your facilities. So--

FRIESEN: Do cities, counties, anybody, any other entities require any different depths that you'd be at besides the minimum?

JILL BECKER: Sometimes they try. And I say try, because sometimes, if you've ever seen any of the pictures of some of the right-of-ways, especially in our cities, they are filled with utilities. And so sometimes, just due to the area where we're looking, where we're working, or where somebody wants to put some facilities, we may have to go lower. But at the same time, we don't want to have a patchwork quilt across the state of having a certain depth requirement in one community and then a different depth requirement in another; that doesn't increase safety either. And so, like the testifier from the State Fire Marshal said, there are other factors that can be taken into account, but generally we try to stick to those federal requirements.

FRIESEN: Have you had a lot of trouble with mismarked lines?

JILL BECKER: I don't know how I would define a lot of trouble. Certainly it happens, and it happens no matter whether they're our internal locators, external locators, locators from other companies; it happens. It is not a situation that anyone wants to find themselves in. Certainly when our facilities are mismarked, it is a greater risk than maybe cutting a tel-- telecom or a cable line, except for maybe,

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you know, Super Bowl Sunday. But, you know, past that day, it's a big deal. So you never want to have those mismarkings. And I-- I would say for any of the people who have complaints, I think the biggest thing to do is that-- is-- when there is an issue, to say something about it. We have to spend a lot of time as an organization, and, frankly, a lot of resources in developing those partnerships with every-- every entity involved in projects, because that's what it really takes to make them happen. Nobody wants to have something mismarked.

FRIESEN: And you're required to bury a tracer wire with your plastic lines? [INAUDIBLE].

JILL BECKER: We are. And I was-- someone asked that question earlier. I believe that this committee passed a statute last year requiring tracer wire. Yep.

FRIESEN: OK.

JILL BECKER: It will help, but it's not going to solve everything. But it will certainly help because it's only the facilities installed, you know, moving forward as of last year.

FRIESEN: Right. Any other questions from the committee? Seeing none, thank you for your testimony.

JILL BECKER: Thank you.

FRIESEN: Anyone else wish to testify in opposition to LB619?

TIP O'NEILL: Your legal counsel got a lot younger and skinnier.

FRIESEN: A lot better looking, too. Welcome, Mr. O'Neill.

TIP O'NEILL: Thank you, Senator. Chairman Fresen, members of the committee, my name is Tip O'Neill, spelled T-i-p O-apostrophe-N-e-i-l-l. I'm the president of the Nebraska Telecommunications Association. The NTA is a trade association that represents the majority of companies that provide landline, voice, and broadband telecommunications services in Nebraska and across the state. We oppose the introduced version of LB619. LB619 would establish a minimum depth requirement of 18 inches for all telecom-related underground facilities installed after January 1,

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2022. Our companies do not oppose this requirement for communication facilities buried in the public right of way. In fact, national standards have established minimum standards at or greater than 18 inches for feeder cables and other similar facilities located in the public rights-of-way. However, LB619 provides minimum depth requirements for drop facilities across private property to the customer premises. We oppose the 18-inch minimum burial requirement. Most customer premises locations are served via drop facilities, and an 18-inch minimum depth requirement is not only unnecessary but, in many locations, also impractical. For example, one of the NTA members, CenturyLink, currently buries underground drop facilities to a customer premises location to 12 inches. And its contract with third-party excavators also have a 12-inch bury requirement for drops. Mandating minimum depths of 18 inches for communication drop facilities will greatly increase the costs of burial, which will be passed along to the property owner. Also, in many circumstances, burying drop facilities 18 inches may not be feasible to-- due to specific location conditions which would prevent a buried approach and require an aerial solution In developments where an aerial approach is not allowed, expensive, underground, boring solutions may be required which, again, adds unnecessary costs to companies which would be forced to pass those costs on to property owners. The NTA would support an amendment to either exclude telecommunications drops across private property to the customer premises or establish a minimum depth of 12 inches for such drop facilities. Either of those amendments would rectify our concerns. Thank you for your consideration. I'll be happy to answer any questions you might

FRIESEN: Thank you, Mr. O'Neill. Any questions from the committee? Senator Geist.

GEIST: I couldn't resist. I have to talk to you, Tip. And thank you for your testimony.

TIP O'NEILL: Sure.

GEIST: So I'm just going to, for the record, have you state-- then the amendment that Senator Sanders brought forward, you would be in agree with-- agreement with?

TIP O'NEILL: I-- I have not reviewed that amendment.

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GEIST: OK.

TIP O'NEILL: So I would have to-- I'd have to look at it. But assuming it has a 12-inch minimum for-- for drops, we would-- we would support that amendment.

GEIST: OK. Thank you. That's all.

FRIESEN: Thank you, Senator Geist. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Good afternoon, Mr. O'Neill.

TIP O'NEILL: Senator, how are you?

BOSTELMAN: I'm fine, thank you. Thanks for being here. I'm curious, if your CenturyLink is placing a line now 12 inches, how are they doing that-- 12 inches deep, how are they doing that? [INAUDIBLE].

TIP O'NEILL: I assume they're either-- they're either--

BOSTELMAN: I mean, would it be a-- use a trencher?

TIP O'NEILL: Trencher or handing it, I would guess.

BOSTELMAN: Well, I guess-- I guess my question comes up, if they're going 12 inches, what's another 6 inches of like a trencher-- a trencher? And how much more is that going to like [INAUDIBLE]?

TIP O'NEILL: Well, it has to do with being able to fix the lines, for one thing, but 12 inch is kind of the standard that's-- that they believe is the appropriate standard for drops.

BOSTELMAN: So what-- what situations are they not able to-- in your testimony, you said there were some-- certain situations they wouldn't be able to go 18 inches. What-- what would those be?

TIP O'NEILL: I-- -- I'd have to talk with the CenturyLink people. Again, that was just-- but I could-- I can get that information for you, Senator.

BOSTELMAN: I guess-- I guess my-- really-- obviously, the comment or the question is-- is -- is, if we're hearing from a large segment of contractors in Omaha that says, well, we're cutting these lines 'cause

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they're too shallow, wouldn't it make sense if there's not that much of an "impedement" or-- or a problem to go ahead and just put it another six inches and then we don't have the issue?

TIP O'NEILL: I didn't hear him say that they were cutting lines that were buried at 12 inches. I think I heard him talk to cutting lines that were not buried as deeply as that, maybe at 6 inch or 3 inch or something like that.

BOSTELMAN: But he did say they're cutting a number of lines. Correct? Other lines, less than 12 inches. Right? I mean, CenturyLink is one, but there's other-- there's other-- there are other providers out there that--

TIP O'NEILL: Other cable companies-- Cox. I mean, if you're in Omaha, you have Cox, you have CenturyLink, you have other-- other providers.

BOSTELMAN: Um-hum.

TIP O'NEILL: So--

BOSTELMAN: So if there's an issue, I guess, they're-- do you just represent CenturyLink or do you represent others?

TIP O'NEILL: I don't represent cable companies.

BOSTELMAN: But do you represent other providers in the Omaha area?

TIP O'NEILL: Are there other-- not that I'm aware of in Omaha, no.

BOSTELMAN: All right. Thank you.

FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? I know one of the comments on-- these silt fences were needed to be buried 6 inches deep. And so I think the comment was, from Omaha, that a lot of them were shallower than that, and then they were hitting them while they were trenching in their silt fence. So a 12-inch trench seems to be that it would fix that. You know, and my experiences with this, is they usually use a vibrating plow. They do not trench. I don't know how deep they can go. But that's-- I guess, you know, the-- the theory is, some, in the past, we've been told, were just laying them on top of the ground, some were inch-deep, lots

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of different variations, so because there's no standard. So do you feel, as an industry, that you would prefer that there was a standard? Would you-- would you think you'd have less cuts if-- if everyone knew that your facilities were at least-- were buried 12 inches deep? Would that-- would that save some line cuts for you guys?

TIP O'NEILL: I would think so, yeah. I mean, that-- there's a reason why CenturyLink has-- has those particular standards is to-- to make sure their lines don't get cut because, if their lines get cut, it's no-- it's no bonus for the company who gets cut, that's for sure.

FRIESEN: Do you think sometimes excavators, since we're not shown the depth, we're just given a range of where it is, sometimes have either mismarked or the lines are much, much shallower, you don't expect them there?

TIP O'NEILL: It's-- it's certainly possible. I mean, that-- there are a lot of, as the the gentleman-- the gentleman indicated, that there are a fair number of mislocates out there, whether that's due to lack of training or lack of appropriate mapping sometimes. I mean, there are a lot of-- there are a lot of reasons why-- why you might have a mislocate. And so--

FRIESEN: Any questions from the committee? Seeing none, thank you for your testimony.

TIP O'NEILL: Thank you, Senator.

FRIESEN: Any others who wish to testify in opposition, LB619? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Sanders, you're welcome to close. We do have one letter in opposition from the Nebraska, One-Call Board, Robert Everett, and a position letter, in opposition, from MUD.

SANDERS: Once again, thank you to the committee for their time and attentiveness. I would like-- like to also thank all the stakeholders that worked with us on this bill. And I also need to mention that AM70 eliminates gas line regs so that the federal law can remain unhindered. We agree with the Fire Marshal here; AM70 does define fine grading. Also, AM70 differentiates from the main distribution line to the line that goes right in to the customer. Just for the record,

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Cox-- Cox Cable uses 24 inches as their standard; 12-inch is what's in the AM for residential. I look forward to having ongoing discussions on this topic in order to find practicable solutions. Finally, if you have any questions in closing, I'd be happy to take them.

FRIESEN: Thank you, Senator Sanders. Any questions from the committee? Seeing none,--

SANDERS: Thank you very much for a great afternoon.

FRIESEN: --thank you for bringing the bill. And with that, we'll close the hearing on LB619.

GEIST: With that, we will begin the hearing, LB344. Senator Friesen, you may go ahead and open.

FRIESEN: Thank you, Vice Chairman. Geist. Members of the committee, my name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent District 34. Today I'm bringing LB344 before this committee to continue the work that we have begun on Nebraska's One-Call System with LB462, which this committee prioritized and which the Legislature passed in 2019. Our One-Call System has two goals. The first goal is to ensure the safety of Nebraska contractors and citizens who work around the underground utilities. The second goal is to protect Nebraska's underground utility infrastructure from damage. To make sure we're meeting both of those goals as best we can, we need to be efficient and effective in enforcement of the system for violations. And right now, for violations of the One-Call Act, a complaint is filed with the Attorney General, and the Attorney General's staff have-- handles every complaint from the time it is filed until it is either settled or prosecuted in court. I understand that this process can take sometimes anywhere from 18 months to 2 years to conclude, and sometimes even more. Oftentimes, excavators and underground utility operators won't even file a claim because they know how long they generally take to get resolved. So this leads to many smaller claims never being recovered, and the responsible parties are never held accountable. That's the issue I'm trying to fix with LB344. I think the One-Call complaints need to be-- be resolved much sooner. If there is an excavator, a locator, or a utility owner out there that doesn't understand how to comply with One-Call or doesn't feel they have-- they have to comply with the One-Call, that behavior needs to be

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corrected much faster than a two-year time frame. It's a basic safety issue, in my mind. I want to say that, in bringing LB344, I'm not criticizing the work of the Attorney General or his staff. They're doing what they can with the resources they have. LB344 is intended to bring some help to the Attorney General's Office so that they can focus on their efforts on the most serious violations. Under LB344, that help for the Attorney General comes in the form of the Underground Excavation Safety Committee, consisting of two excavator representatives, two utility operator representatives, and the State Fire Marshal. I have an amendment that would add two representatives of locators, as well. This committee would review all One-Call complaints that are filed. They would conduct administrative hearings, which would provide both sides of an issue, the complaining party and the alleged violator, an opportunity to provide information on the alleged violation. The committee would then produce findings of whether a violation occurred and, if so, what the penalty for that violation should be. The committee determines that a-- if the committee determines that a serious violation occurred, and that's-- a civil fine is a-- is a right penalty, then the matter would be referred to the Attorney General's office for further handling. In this sense, the committee would act as a filter for the Attorney General's Office. First-time or minor violations would, I believe, be resolved with a penalty in the form of continuing education requirements that the Attorney General wouldn't need to be involved with. Again, the goal of this would be to speed up enforcement, free up the Attorney General's Office to focus on the most serious matters. With that, I'm looking forward to testimony on this bill. And if there would be concerns, I'd be happy to see if we can correct some of those things. I'd be happy to answer any questions you might have. Thank you.

GEIST: Thank you for your testimony. Are there any questions? Yes, Senator Moser.

MOSER: Are-- when you're talking about violations of the One-Call System, violations in not marking your utilities, or they're not being utilities where you marked, or people digging without doing One-Call?

FRIESEN: All of the above. We have mismarks, we have cases where they're not marked, we have excavators that dig without notifying; there's just lots of things. There's-- there's companies we've heard from in the past that, even though the facilities were marked, they

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just went right on through and kept the current facilities and then turned around and fixed them. It's been a whole host of different issues.

MOSER: Is it improper to try to repair something that you strike if it's somebody else's line?

FRIESEN: Yes. It is not your duty to fix that, especially if you're hitting a gas line or a fiber line.

MOSER: Well, I wouldn't fix a gas line.

FRIESEN: I mean, there are issues there where-- but in the past, they've just-- companies have hit those lines and not reimbursed the facility owner for the damage because they're small amounts. If you hit an underground sprinkler line or a cable--

MOSER: Cable line.

FRIESEN: --cable line running into a house. I mean, you're not going to turn that in to the Attorney General's Office. And generally, you don't even report those because they know that nothing's going to happen. Now, if you hit a-- an eight-inch high-pressure gas line, it'll end up at the Attorney General's Office. I mean, obviously, the damage is much greater. So this is for all those small hits that have happened or mismarks or everything else where everyone has been just negligent, not even wanting to turn them in because the Attorney General's Office won't look at them.

MOSER: So this commission is going to go out and investigate these?

FRIESEN: What's that?

MOSER: This commission would go out and investigate?

FRIESEN: Only-- only if these-- they were turned in and then those-- both parties would come and present their case to this board. So if they would meet quarterly, for instance, all those that have filed a-- a-- you know, a complaint, would come before this committee. And then this committee would sort through those. From the minor ones, where maybe you didn't train your locator properly, they would recommend or say that you need to have more training for your locators. And if it

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was a more serious, where they actually felt you needed a civil penalty, then they would recommend that with a unanimous vote of the board to send it on to the Attorney General's Office for prosecution.

MOSER: How would you handle when they use contractors to locate? Because I know, in some cases, utilities will hire a contractor that has[-- they have employees who only do tracing.

FRIESEN: Right. So we-- we--

MOSER: So would you go after the contractor or the utility or--?

FRIESEN: Whoever's at fault. And that's where the-- I-- I believe the commission or the-- the safety committee or that One-Call Board or that excavation would-- would look at that. And-- and some of these guys behind me can describe that process better. But that was the the idea behind this in these minor hits or close calls where you turn someone in or file a complaint with a-- whether it's a third-party marking company, that they don't do a good job of marking their lines, this gives them a place to file a complaint and for this-- this committee to do something.

MOSER: How serious of a problem would they handle? I mean, if you mismarked the gas line, the gas line fills a building full of gas. It blows up, kills people. Would this tribunal do that or would that be better tried in court?

FRIESEN: Well, this-- this-- this-- if a complaint was filed, I assume that this group would handle that. And if it was a serious violation of someone, they would turn it over to the Attorney General's Office for-- for civil fines. The Attorney General's Office currently handles all complaints. And so the minor ones are the ones that get dropped. They just don't do anything with it. So the big ones, the Attorney General's Office deals with, regardless.

MOSER: A lot of minor ones people just fix--

FRIESEN: Right.

MOSER: --cause it's just cheaper to fix it than it is to argue about whose fault it was and what happened. My neighbor was putting a mailbox in, and there was this yellow line right along the edge of the

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curb, and he hit it with the tile spade. And then it started hissing and I said: Get out of there; don't stand there. He's looking around down there, digging in the dirt. And there's this noise coming. He hit the gas line.

FRIESEN: And he didn't call 911-- or 811.

MOSER: He didn't call the One-Call System, no, but the gas company came out and-- and they put a-- some kind of a tourniquet over it, and patched it. And I doubt they turned him in. I don't know.

FRIESEN: I'd say that would be a violation of the One-Call Act, and they could have if they wanted to.

MOSER: Yeah, you hit some of those fiber optic cables, those can be really expensive to terminate. Sometimes you have to dig up some kind of a vault or something to terminate or pull a new line in, 'cause you can't just patch it in the middle of the yard.

GEIST: Thank you, Senator Moser. Any other questions from the committee? Yes, Senator Albrecht.

ALBRECHT: Thank you, Vice Chair Geist. Thank you for bringing this bill, Senator Friesen, and I'd like to ask just a couple quick questions. If these-- if this committee is only going to meet, say, quarterly, how many-- how many actual claims would you say would they have in a year's time? Lots?

FRIESEN: I-- I really don't know, 'cause right now a lot of claims are not even filed because they know the Attorney General's Office won't do anything. And maybe one of these guys back here--

ALBRECHT: OK.

FRIESEN: There are some excavators, I think, back here that can answer that.

ALBRECHT: OK, because I'm-- I'm kind of concerned if-- are they just going to be mediators and say, well, you know, we'll just give you a pass or-- or one, two, three strikes, you're out, you owe? I mean, how would they?

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FRIESEN: The way we envision that this group would-- it would be more of, you know, if it's a minor violation, you-- you know, you're not a habitual bad actor, they might just recommend that you take your locators-- if it's bad locations, for instance, just more training for your locators. Teach them how to do it better, more training.

ALBRECHT: Um-hum.

FRIESEN: And the only way that you would probably rise to the level of sending it on to the Attorney General's Office--

ALBRECHT: Is if it was a--

FRIESEN: would be as if it was a high-dollar thing.

ALBRECHT: Or if somebody got hurt.

FRIESEN: And so some of these some of these hits that have happened in the past, there-- they could be a \$5,000 fix. And so the Attorney General's Office obviously gets involved in those, but that sometimes takes two years before you're going to get your money. And what I envision from this group here is that, once this system has been in place for probably a year, everyone is going to know how this all works, and they're going to stop doing some of these bad things. They're going to know what this committee is going to do, how they're going to handle it, and they're not going to want to go there.

ALBRECHT: OK.

FRIESEN: And so they'll-- they'll-- they'll fix what they're doing wrong because they don't want to go in front of this board. And so I think the number of near misses, and mismarkings, and all that is going to decrease.

ALBRECHT: And so would you say this bill came to you because the Attorney General said, hey, I don't really want to be dealing with this? Or was it the One-Call people that came in? Or how did this come?

FRIESEN: Probably more the excavators and some of the facility owners where it takes so long for something to happen.

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ALBRECHT: To get done.

FRIESEN: So if we filter some of this away from the Attorney General's Office, I think some of those bigger complaints will be happening, you know, will be resolved quicker.

ALBRECHT: I mean, a lot of these jobs, which I see because we have some excavators in the family, that you need to have that fixed like the next day. You need to be after it.

FRIESEN: They do get it--

ALBRECHT: I can't imagine waiting quarterly.

FRIESEN: They do get it fixed. It's where-- who is responsible and who pays the claim, you know. And if you're a facility owner, and no one-- you don't want to turn this in, you're just going to pay for fixing it. But if-- if you could go to this, what we call a hit corridor, or whatever you want to call it, they might-- setting some blame there. And-- and again, if it rises to the level of it should be a civil penalty of some sort, the Attorney General's Office will handle it just the way they do now.

ALBRECHT: OK, thank you.

GEIST: Any additional questions from the committee? I do have one, Senator, and if-- I might need to address it to someone behind you, and you-- they may or may not know, but is there any way to determine, for the claims that are turned in, about how much annually is spent on these types of issues, what kind of dollar amount we're talking, that this takes annually?

FRIESEN: I think-- I think-- you know, I- I recall when-- when we had some hearings in the past, when Allo was working in Lincoln here, there were lots of hits, and-- and none of those were really turned in, I don't believe. Everybody just kind of paid their own fix and and walked away because there were just numerous small hits- water lines, things like that.

GEIST: OK.

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FRIESEN: And so it was-- I don't really have that answer. The One-Call Board might have some of that information that we could get for you, or--

GEIST: OK.

FRIESEN: --some of the excavators or-- or facility owners might be able to answer that, too.

GEIST: OK. Thank you. Any others? Yes, Senator Moser.

MOSER: Just a real quick question. Was this your idea or did somebody bring this to you? Or--

FRIESEN: This is just something that we've been working on with the One-Call Board for a long time, trying to come up-- we've had different ideas in the past, and we've just been refining it. Other states follow some similar procedures that's--

MOSER: OK. Thank you.

GEIST: Thank you. Thank you, Senator Friesen. Those who are proponents may testify at this time. Good afternoon. Thank you for being here.

B. J. WOehler: Hello.

GEIST: Hello.

B. J. WOehler: Hi, Joni-- Senator Albrecht.

ALBRECHT: That's all right.

B. J. WOehler: She's my senator, so--

ALBRECHT: That's right.

B. J. WOehler: Senator Friesen and fellow members of the Nebraska Transportation-- Legislative Transportation and Telecommunications Committee, my name is B.J. Woehler, W-o-e-h-l-e-r. I am the co-owner of Robert Woehler and Sons Construction, Inc., in Wayne, Nebraska, and vice president of the National Utility Contractors Association of Nebraska, NUCA of Nebraska. I am testifying on behalf of NUCA of Nebraska's memberships, in support of LB344. We want to thank Senator

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Fresen for his leadership and work on this legislation. NUCA of Nebraska members use the One-Call System every day. Our member-- members build Nebraska's sewers, water mains, highways, bridges, and electrical systems for you and your constituents across the states, and, hopefully, more broadband. Our top priority is public safety. We know how important and critical it is for all stakeholders who use the One-Call System to comply with the law. Our state relies on the Attorney General's Office to receive and investigate complaints about One-Call locates, requests that result in no responses, mismarked, no markings at all, and utilities that are hit or damaged as a result. NUCA of Nebraska members have often waited up to two years for the Attorney General Office to complete investigations and issues a warning letter or monetary penalty after submitting a complaint. NUCA of Nebraska members have experienced issues hitting gas, electrical, cable, Internet and fiber-optic lines. As you can imagine, it puts our members-- employees-- at risk, along with anyone in the jobsite area and disrupts services, and businesses, and residents in the area. LB344 would create a streamlined industry-proven process-- driven process that would reduce complaint resolution timelines and increase safety for all Nebraska. It focuses on enforcement and compliance through education and training, and not monetary penalties. NUCA of Nebraska supports establishing an underground excavation committee to meet and gather information from stakeholders involved in a potential One-Call violation impacting underground excavation safety laws. The structure of the committee supports balanced representation from excavators and facility operators. These are steps in the right direction towards better and more efficient enforcement of the One-Call Act, and promotes accountability by all stakeholders. We also support the requirement for the Attorney General to support a quarterly report to the state, to the status of each active violate-- that filed. This would also help support accountability. A similar One-Call model is in place in Colorado and has helped improve enforcement. We respectfully [SIC] ask your support and vote in favor of LB344 to protect our citizens and support continued building and the [INAUDIBLE] of infrastructure which leads to economic and job growth. That's the written testimony and, again, the main concept of this is safety, with speed and efficient-- efficiency to improve enforcement. What I've seen is it takes too long, and the bad actors are getting away. And we need to concentrate on filtering through all the complaints. And a lot of them can be dealt with-- with education.

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But there are some bad actors out there that need to get dealt with a lot sooner than 18 months. That's all I have. Thank you.

GEIST: Thank you for your testimony. Are there some questions from the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairman Geist. Thank you for being here this afternoon. I'd like you to explain a little bit more about how you see this--this body-- this-- how do you think it will function? Especially when we look at part of it, is-- is-- has to deal with the Attorney General's Office and how that relationship is, and how that's not how that would work, I guess, from both as-- as the contractor, then walking through the entire process.

B. J. WOehler: OK. First of all, we don't want to give up the Attorney General Office because that's kind of the big hammer that's on the back end. And the CGA actually recommends that all-- that's the Common Ground Alliance that oversees or recommends rules and regs for everybody. They-- they recommend we keep the Attorney General as the-- as the final enforcement, but it's also the biggest hammer, and they're overloaded and it's tough for them. I've talked to[-- Melissa is here. She'll probably testify later. She designates-- what she's told me-- about 10 percent of her time, which, unfortunately, has not been able to keep up the load, and a lot of people aren't doing the-- even filing complaints anymore. So the way I see this is, it'd kind of be the filtering process, or I call it the front porch, where we could all kind of sit down and look at it. And if there's enough evidence and it's egregious enough, it'd move on to her-- or to the Attorney General's Office. If it's something that needs education or something needs solved, it could be done there, dealt with, and moved on. That way, they're dealt with faster.

BOSTELMAN: I guess my question would be, if-- is if we have a bad actor, so repetitive bad actor, how this is really going to resolve that?

B. J. WOehler: In two ways, I see. Number one, it'll help identify them because they'll be coming in with complaints to them more often than not. And secondly, by this committee identifying them as a bad actor, and with the Attorney General having less of the filtering

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process, give them a quicker response to it. That's how I see it working.

BOSTELMAN: Sure. So-- so I have another-- I have a bill that will be coming up later in here, and it-- it really talks about on the bid-- pre-bid process-- that utilities are identified so that when you bid, you're aware of what it is, what's their-- but my-- I guess where I'm going with this is that it seems to me that if-- if things are not being marked appropriately, would it not be quicker to fine or have a process to fine those bad actors, those who are not marking of a utility itself? Say it's Company X, has their own utility and they have their own personnel trained and they mark, and they're fined. But we have personnel-- and we have company Y that hires a subcontractor to come out and mark, and we know they're bad, would it not-- would it-- would it not benefit us more to look at fining those individuals? And do you see this as a process to potentially go through to do that?

B. J. WOehler: One-- one option we looked at was giving the State Fire Marshal the ability to actually issue fines, like speeding tickets. That I got a lot of pushback, when I talked to different members about that. They don't like to give that authority to that. So this is kind of the middle ground 'cause there's also a hit court out in Maryland and D.C. area, which is very strict. It runs its own self. And so this is kind of that middle zone. And-- and your bill, I'm very interested to see how far it goes, because I hope it-- I mean, that's-- that's my dream, right, as I show up on a job and I have no utility conflicts? I dealt with that all summer. Every-- that's all I deal with pretty much. My brothers are out digging, and I'm out trying to figure out how we can work around the stuff and how to get those utilities to show up and move their stuff. And they- I sat down in Tekamah, Nebraska, for two years waiting for a line to be moved. I lost over \$100,000 because somebody could not mark their line because they were using a private third-party locator. So they didn't even have access to the building to get in to locate the fiber. We dug it all up for them. We still had to wait for them to show up and move it. It took forever. Then one day I show up and here's the State Fire Marshal on my jobsite. And I know him, so I went up and talked to him. And he goes: Boy, there was a gas hit here yesterday. I said, what? You know, what do you mean? It was a third party working for a telecom, moving the telecom, hit a gas line which wasn't marked. My guys actually dug through it two weeks earlier. No marks-- how we didn't hit it, I still

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haven't figured out-- luck of God, I guess, because we were six foot in the ground, putting in water main. Luckily they bored-- they must have bored under it because it was a ditch-- if you know Tekamah, there isn't a flat piece of ground there except for on the-- we were on the non-flat part. There is this flat part and there's a non-flat part. We were on the non-flat part, which I could barely even set a trailer. Anyway-- sorry, I'm getting a little lengthy-- but moral of the story there is, that was a bad contractor that had-- the Fire Marshall had to run out of Lincoln. They were on-- then up there doing that, working under somebody else's locate ticket number. That's who I want caught. Those are the guys I want out of the state. They're bad contractors, whether or not they work for a utility or they work for themselves, whatever. But those are the ones I want caught. But when it takes that much time, they're on to Texas, they're gone. They're not-- you know, we're not going to catch them. So that needs to be quicker.

BOSTELMAN: OK.

B. J. WOehler: So that-- that's where I'm hoping to get.

BOSTELMAN: Thank you.

GEIST: Senator Albrecht.

ALBRECHT: Thank you. Thanks for being here, B.J. Had I known you were following Senator Friesen, I probably wouldn't have asked him so many questions. So I know how much dedication he's put into the 811 and the One-Call. So anyway-- and the amount of work that you all do in my district. And I just thank you for being here today and offering up your testimony. Thanks.

GEIST: Any additional-- yes, Senator Moser.

MOSER: So you represent contractors who install utilities?

B. J. WOehler: Yeah.

MOSER: OK.

B. J. WOehler: We have private-- we do water mains, sewer mains, storm sewer, gas, electric. It's a-- we're-- National Utility Contractors,

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even-- even municipalities can be members, but primarily in Nebraska, we-re-- we're private contractors.

MOSER: And in your experience, the biggest problem is mismarked utilities?

B. J. WOehler: It's like Senator Fresen said, it's the gamut. I mean, this board will see everything. It will see mismarks, locates not done in a timely manner-- they have up to 72 hours now to respond. And there are contractors that we unfortunately hit stuff.

MOSER: Well, I-- correct me. Well, just, I would say, not correct me. The-- currently, if you mark it wrong, then it's the fault of whoever marked it if you hit it. And if you-- if you mark it where it is and the contractor hits it, it's on the contractor. Right?

B. J. WOehler: Yes.

MOSER: And they have 18 inches or so of slippage, depending on the depth that they're going?

B. J. WOehler: Eighteen inches plus half the distance of the utility. So if it's a 12-inch water main, you got 6 inches plus 18 inches. So you can imagine a 72-inch culvert, storm surge gets really large where a pea-size telephone line, it's--

MOSER: It's not going to give you much more room.

B. J. WOehler: You get 18 inches on both sides, which is still 36 inches. And just to comment on the depth earlier, I've tried to get in depth several times, but the locating equipment is not accurate enough. And unfortunately, you got to start digging, if you're at zero, and start looking for that line. But the key is to have that line and has a-- have it as accurate as you can. What we're finding right now is guys are not getting the-- the-- the locates on time. That's the biggest problem we're having right now. So we're hoping--

MOSER: So what would you do for somebody that doesn't show up in time?

B. J. WOehler: Hopefully, this committee, if it starts seeing enough of those, like Senator Friesen said, that they'll start to realize we don't want to be called in front of this committee all the time, and

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they will come up with a better solution, more staff, better ways to get those locates done on time. We understand locates are difficult. They're not always going to be accurate, but when there's no paint on the ground and we get a -- what now we're getting a yield and a stop sign through the system to tell us to stop and not dig. That puts crews on hold and costs us and taxpayers and everybody money because most of us are on big jobs that need to get done. And we're on timelines. A lot of my members work for the Department of Roads. That can be the-- or Transportation. That can be an issue. So--

MOSER: So if you dig, though, and they haven't been marked, are you liable? Or is the utility or the marketing company liable?

B. J. WOehler: As long as I've waited--

MOSER: 72 hours.

B. J. WOehler: --my 72 hours. And then I need to give them another notice, which is two hours, I believe. I'm not going to say because I'm also on the Nebraska 811 Board. Thanks to this body, I got put on-- well, you guys put some contractors on it. The law is gray at that point. I personally will not dig because it says you-- you need to have due diligence that there's nothing there. If I don't see any lines and nobody's notified me, I start making phone calls. And that's-- that's the way I work. Up in northeast Nebraska, luckily, we-- I know most of the guys. When I have a-- a beginning of a job and I get it, I have a-- we have a planning meeting and I get as many phone numbers as I can for the local locators. That's the way to go. But unfortunately, some guys are under a very tight time frame and they-- they go and dig. I don't want to put myself in that situation.

MOSER: I wouldn't want to take that risk either.

B. J. WOehler: It's risky. I mean, gas, electric, and even some of the fibers. And the cost and the life and the safety, it's just not worth it. But--

MOSER: Yeah, we had a-- I'm from Columbus and I worked for the city of Columbus for 12 years. We had a situation where we had a mismarked line in a subdivision where it had gone broke and the records were poor. And the city supposedly who-- the guys who worked for me marked

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it. But then the utility contractor had hit a main, a manhole and broken the top off the manhole, hit it with a bay loader, and then subsequently dug into a water main. And the water gushed up, ran over into the manhole and did several hundred thousand dollars worth of damage to several houses. And the-- it went to court, obviously, and the city, I think, wound up paying in this particular case. But it was-- after that, they marked-- they bought one of those jetter vac things--

B. J. WOehler: Duct vacs.

MOSER: --so you can shoot a stream of water down there like a huge garden hose and then suck it out of there. And then you can actually look down in the hole and see if you can see what you're looking for.

B. J. WOehler: Yeah, those are really changing to help the industry.

MOSER: Yeah, I think that was pretty cool. I mean, it cost us \$150,000, but I think that one loss I think was several hundred thousand, just that one.

B. J. WOehler: And what you're talking about is what we refer to as civil damages. And those are the-- the cost outside of this. This board will only deal with the One-Call law and the fines associated with that. It would not-- it would not award me or the utility operator damages for-- for the actual hit or mismatch or anything like that. This would only deal with the 811 call and the fines associated with that.

MOSER: And so maybe this is too-- if it's currently being litigated, I'd better be careful how I describe it. So a utility marks a utility, somebody comes along, they're doing underground boring and they hit it, and then people die, your board would not assess fault in a case like that.

B. J. WOehler: Only if they violated the law. That's what we want. We-- this, with what the Attorney General and what the One-Call law does, is it would only deal with the One-Call law. Was the line marked? Was it mismarked? Was it marked timely? You know, there's the whole statutes of what-- what this would deal with and what, currently, the Attorney General would like. Now, a lot of my members

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would like to see a board that would deal with that. And I can see the purpose of that. But I think we have the civil court cases and the whole thing set up for that. So why don't we just leave that and [INAUDIBLE]?

MOSER: Yes, thank you. Appreciate it.

GEIST: Thank you. Thank you. Thank you for your testimony, Mr. Woehler.

B. J. WOehler: Thank you.

GEIST: Are there any other proponent's? Good afternoon.

MARY JACOBSON: Good afternoon, Vice Chair Geist and members of the Transportation and Telecommunications Committee. My name is Mary Jacobson, M-a-r-y J-a-c-o-b-s-o-n. I'm a registered lobbyist, appearing today on behalf of USIC, the largest utilities-locating company in North America. USIC's core business is protecting underground infrastructure from damage, protecting communities from dangers associated with excavation, and providing essential services for the repair and maintenance of utilities, critical infrastructure, and response to disasters. They provide locates for utilities, including: gas; telecommunications; electric; sewer; water; and fiber, as well as for municipalities. As you've heard, timely and accurate locates and marking of underground facilities is a key tenet of Nebraska's One-Call Notification System Act. When paired with best practices in excavating, accurate locating protects underground facilities from damage caused by boring machines, backhoes, and other equipment. Conversely, failing to locate underground utilities or inaccurately marking them often results in facility damage that can cause customer outages and leaks from gas, water, and sewer lines, which can present dangerous hazards for the community. Perhaps more importantly for LB344, questions as to whether locates were performed and are accurate or whether markings were visible at the time of excavation are often central to disputes over liabilities for facility damage. Moreover, independent locators like USIC can be held liable for damages to facilities by the utilities for whom they perform locates. Accordingly, USIC has asked that Senator Friesen include locators as members of the Underground Excavation Safety Committee created by LB344. And we ask that you support him in that change.

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Locating is central to the resolution of disputes following damages to utility infrastructure, and that's why experienced locating professionals should have the opportunity to be represented on the committee. Thank you, and I will do my best to answer any questions you have.

GEIST: Thank you, Ms. Jacobson. Are there any questions from the committee? Seeing none, thank you for your testimony.

MARY JACOBSON: Thank you.

GEIST: Any additional proponents who would like to testify? Seeing no proponents, I'd ask for any opponents who would like to testify. Good afternoon again, Mr. O'Neill. You are welcome.

TIP O'NEILL: Been waiting for this for three years [LAUGHTER].

GEIST: Go right ahead.

TIP O'NEILL: Vice Chair Geist and members of the committee, my name is Tip O'Neill; that's spelled T-i-p O-apostrophe-N-e-i-l-l. I'm the president of the Nebraska Telecommunications Association. The NTA is a trade association that represents companies that provide telecommunication services to Nebraskans across the state. LB344, as we have heard, would establish an underground excavation safety committee to work in conjunction with the Nebraska State Fire Marshal in hearing complaints and evaluating civil penalties regarding excavator damages to underground excavation. And we take no position regarding the creation of the proposed underground excavation safety committee. However, we are concerned that LB344 does not address the costs associated with the newly proposed safety committee. The-- the current One-Call System is-- is funded by-- by a charge for locate tickets that are-- that are-- that are charged back to the utilities, and they're based on the number of locate requests. If-- if the costs of this new safety committee are paid by the One-Call process, it would represent a potentially significant cost increase. As an example, one of the NTA members, CenturyLink, performs more than 10,000 One-Call locates every month, and even a modest increase in the cost of locate tickets would-- would have a significant impact on the costs-- on costs that can't really be recovered except by increasing the rates we charge to customers. And if the committee advances LB344,

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the NTA supports an amendment that clarifies that the costs would be paid from general funds and not from the One-Call System. I'd be happy to answer any questions you might have.

GEIST: Thank you for your testimony. Are there any questions from the committee? Yes, Senator Moser.

MOSER: Your immunity evaporates instantly when you leave.

TIP O'NEILL: I-- I-- I have noticed.

MOSER: Yeah. So you're saying that you believe that the cost of-- the increased cost of locating would be more than what you'd gain by fighting with the people who were in the wrong?

TIP O'NEILL: I'm just saying that the-- the increased costs to the One-Call System, in terms of how-- how it's paid for, all goes to the utilities, whether the excavators are-- are responsible. You know, it-- it's-- it's the facility owners that pay for that whole system. So there-- and there is no-- there is no cost, for instance, to homeowners who call 811 to get-- to find out where they can dig.

MOSER: I think they do that so that people call.

TIP O'NEILL: Yes. Oh, absolutely. I'm not saying--

MOSER: If they had to pay \$100 or what it really costs,--

TIP O'NEILL: Right.

MOSER: --they wouldn't call.

TIP O'NEILL: That's right. I'm not saying it's wrong. I'm just saying that any time you increase the costs going forward of that system, you're-- you're going to increase the cost to people who own the facilities.

MOSER: OK. Thank you.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. So what's been-- Senator Friesen said and a previous testifier said was that they believe that

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if this commission would be put into place, that would reduce the number of incidents of facilities being breached, being cut off-- whatever. Having said that-- and we're going back to the-- we're going back to the fiscal note now and looking at costs-- my assumption is-- my guess is-- is that, as you pay-- that the insurance potentially would pay for mismarked, not marked accidental cuts of a line. Who pays? How does that come out? Is that insurance or is that strictly out of the contractor or the facility owner's pocket? And where I'm going with this is that, if-- is that-- is that if we're reducing the number of strikes or cuts, if you will-- damage-- that should reduce the amount of your insurance payments over the year, your cost to that company. Would that then off-- offset the-- the-- the-- the fee, the-- the fiscal note that we have?

TIP O'NEILL: I-- I see--

BOSTELMAN: Do you see where I'm going?

TIP O'NEILL: I-- yeah. I-- and-- and I don't know what-- what the deductibles are, where-- what sorts of claims are insured claims and which ones aren't. I assume it's a really high deductible. So I mean, I'm-- I'm sure it's mostly self-insurance on-- on that stuff.

BOSTELMAN: Well, and-- and perhaps someone behind you will testify to that. But I-- because I'm curious. I mean, if the whole point is-- is to reduce the number of incidents--

TIP O'NEILL: Um-hum.

BOSTELMAN: --and that actually transpires, then you're saving money, if you will. And-- and is that--

TIP O'NEILL: In the-- in the--

BOSTELMAN: --cost-- would that offset the--

TIP O'NEILL: --in the long, longer term you may be correct. And, you know, let's-- let's fund it with general funds for the first three to five years of the safety committee, and then determine what-- what the impact is, with respect to the companies and then-- then maybe revisit it at that time.

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BOSTELMAN: I'm-- I'm not for sure that we can set up a special-- special appropriations site and general funds for the Tip O'Neill contribution to take care of that [LAUGHTER]. Thank you, Mr. O'Neill.

TIP O'NEILL: Thank you.

GEIST: Any additional questions? So may I ask one?

TIP O'NEILL: Sure.

GEIST: I'm curious if the costs were not returned back or are not tacked on to the current cost, but the additional costs were handled in some other way,--

TIP O'NEILL: Um-hum.

GEIST: --would the NTA come in support of this? Is it simply the cost?

TIP O'NEILL: Yeah, we-- we have-- we have no objection to the creation of the Underground-- the Underground Excavation Safety Committee. No, we-- we have no opposition to that at all.

GEIST: OK. So currently, what does it cost to-- to-- for a ticket to-- a One-Call ticket?

TIP O'NEILL: I think there are people behind me who are going to testify.

GEIST: Who will speak to that.

TIP O'NEILL: And I don't know if they're going to testify in opposition or neutral,--

GEIST: OK.

TIP O'NEILL: --but they probably should have that information,--

GEIST: OK.

TIP O'NEILL: --I would hope, because I-- I don't know exactly what each location ticket costs at this point. We-- we did have that information in one of the interim study resolutions that was

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introduced two or three years ago. I remember we had the interim study hearing in the-- in the Chamber-- in the East Chamber upstairs.

GEIST: OK.

TIP O'NEILL: And I think we had got the information at that time, but I don't-- I don't recall what-- what that was.

GEIST: I was probably there, and I don't recall that was, either. Thank you. Thank you for your testimony.

TIP O'NEILL: Sure.

GEIST: I don't see any further questions.

TIP O'NEILL: OK, thank you very much.

GEIST: You bet.

TIP O'NEILL: Appreciate it.

GEIST: Any additional opponents? OK. Seeing no opponents, is there anyone who would like to testify in the neutral capacity? Good afternoon.

JILL BECKER: Good afternoon, Senator Geisten and members of the committee. Again, my name is Jill Becker, J-i-l-l B-e-c-k-e-r, and I'm a registered lobbyist on behalf of Black Hills Energy, and I'm providing neutral testimony today. As many of you know, we've seen many bills introduced over the last several years regarding proposed changes to the One-Call Act. While some of those bills were enacted into law, many of them weren't. Instead, we've seen changes over time that have really helped, hopefully, at least in some places, change the culture around underground facilities. We've seen a greater focus on education and developing partnerships, a heightened awareness of the safety implications, and increased involvement by both the State Fire Marshal and the Attorney General's Office. That's certainly not to say that things are perfect. There still needs to be much attention and a greater emphasis placed on all of those things that I just mentioned. In some of the states that Black Hills Energy operates, we do have a model similar to Nebraska's current model with the enforcement by the Attorney General's Office. However, in some states

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we do have damage prevention boards. And I don't know if I was mentioned specifically, but some pieces of LB344 are similar to the provisions in Colorado. However, we don't believe that LB344 has all of the statutory language passed in Colorado. And if the committee is interested in looking at either the Colorado legislation or legislation that other states have passed regarding what we kind of call a hit board, we can certainly be involved in those conversations and provide some real-life experiences on both what has worked and what really needs to be done to increase success of-- of those damage prevention boards. Legislating changes, unfortunately for this committee, isn't ever going to be solved with just one bill; it's just never going to happen that way. All of the interested parties need to continue to be involved in both education and sharing that sense of safety, really, for all of our communities. I would be happy to answer any questions that the committee might have. And thank you for the chance to provide comments.

GEIST: Thank you for your testimony. Ms. Becker. Are there any questions from the committee? Well, I'll ask you my question. Maybe you know how much a-- a 811 ticket is.

JILL BECKER: I don't, but I would be happy to get you that information.

GEIST: OK.

JILL BECKER: And I think it's-- in response to what Senator Moser indicated earlier, we want people to call.

GEIST: Um-hum.

JILL BECKER: So whatever that cost is, it's never going to be a cost to the-- the homeowner or the person calling in. We want them to call. But like it's been indicated, those costs are costs that are paid for by the-- by the utilities, essentially.

GEIST: Yeah. Seeing no other questions, thank you for your testimony.

JILL BECKER: Thank you.

GEIST: Any additional neutral testimony? Good afternoon.

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REGINA SHIELDS: Good afternoon. Good afternoon, members of the Telecommunications 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 agency legal counsel and legislative liaison for the State Fire Marshal Agency. I am here to testify in a neutral capacity regarding LB344, which creates the Underground Safety Advisory Committee. In order for the agency to comply with the requirements of LB344, clarification regarding the purpose of the committee and its functions is needed. Currently, complaints about possible violations are filed directly with the Attorney General, who processes them to determine if legal action will be taken. This new process will have these complaints come to the committee for hearings. The regulations that are required to be promulgated by the agency will vary greatly if the committee is required to provide a legal foundation for the Attorney General to seek a civil penalty, or if the committee's purpose is merely to provide a recommendation to the Attorney General of a possible course of action. How these findings are to be used will also help determine the amount of time needed for each hearing, which will affect both the fiscal impact for reimbursing the committee members and the amount of time each committee member will need to plan to devote to the committee. Thank you for your time and attention. I would be happy to answer any questions you or the committee might have.

GEIST: Thank you, Ms. Shields. Are there any questions from the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. The previous testifier mentioned Colorado specific. Do you know of other states? How does that work? Is there a dollar threshold or something put in there where a-- this type of a-- this committee would-- would set where the Attorney General says you can handle them under \$150,000, those type of complaints? Those claims go to you, we'll relinquish, actually. How does that work in other states? Do you know?

REGINA SHIELDS: I think one of the fundamental things, to make sure we understand, is this kind of a committee is not hearing any kind of a complaint about the liability costs associated with it. So to say that you could hear under \$150,000, there is no limit like that because these complaints are merely: Was there a violation of the law? It's not about the cost to recoup, to recover it. It's not about the time lost cost, any of that. That all has to be done in litigation outside

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of this kind of-- these committees only hear complaints based on whether or not-- was there a violation of the One-Call law. So it doesn't matter how much the damage might have been or how big the issue might. It's, was there a violation of the law? In this case, what the legislation would be doing, there are penalty amounts for violations listed within the statute. The committee recommendation, as I read the current bill, would be talking about if they were going to make a unanimous recommendation to the Attorney General's Office, they can say, within the current statutory structure, a fine amount for a violation. They could say, we believe X amount. But that, again, is completely outside of any kind of cost recovery, civil litigation for other issues.

BOSTELMAN: OK. Thank you.

GEIST: Thank you. Any additional questions? Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you. That just sparked-- sparked some questions.

REGINA SHIELDS: OK.

M. CAVANAUGH: So this would just determine whether or not there was a violation and a fine is due. It wouldn't impact if damages were incurred by a property owner.

REGINA SHIELDS: That is my understanding of the current legislation, yes. Like I said, that's one of the things we would like clarified is, what the findings-- they call them in the bill-- of the committee is supposed to actually do like that. If it's supposed to provide a legal basis or a-- some sort of a determination the Attorney General is currently making, the committee will function in X manner. If it's merely that the committee is saying, we heard these people come in, we talked about, we think this, that will lead to an entirely different write-up and things like that, going to the Attorney General and then the process she must take beyond that.

M. CAVANAUGH: And then if there is a violation of the One-Call law and a fine, who does the fine go to, the state?

REGINA SHIELDS: Back into the county in which it occurred for their educational--

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M. CAVANAUGH: OK. So it doesn't go to the property owner.

REGINA SHIELDS: No.

M. CAVANAUGH: OK. Thank you.

GEIST: Thank you. Any additional questions? Seeing none, thank you for your testimony, Ms. Shields. Is there anyone who would additionally like to testify in the neutral capacity?

MILISSA JOHNSON-WILES: Good afternoon. Vice Chairwoman Geist and members of the telecom-- Telecommunications and Transportation Committee, I'm Milissa Johnson-Wiles, Assistant Attorney General, appearing on behalf of the Attorney General's Office and testifying in a neutral capacity.

GEIST: And would you step-- spell your name, please?

MILISSA JOHNSON-WILES: Sure. It's Milissa, M-i-l-i-s-s-a; last name is Johnson, J-o-h-n-s-o-n-dash-W-i-l-e-s.

GEIST: Thank you.

MILISSA JOHNSON-WILES: OK. Thank you. First, I would like to clear up a little bit of a misconception. Our office has-- and I know that some of you were part of our interim study, it's been a few years-- but our office has been enforcing the One-Call law since 2004, with one attorney-- Assistant Attorney General who handles the complaints; that would be me. So we're looking at, now we're moving into our 17th year. And just so you know, we've received complaints from everyone. So if we get-- we receive a complaint from a homeowner who's complaining about another homeowner, or we receive a complaint from an underground utility that's complaining about an excavator, or an excavator that has a complaint against a utility, we receive all of those. And there are a number of different types of complaints that come in. And we do handle every single complaint. So we don't have small complaints or large complaints. We handle every single complaint, and we've done that from the beginning. So for example, in 2016, we received 60 new cases, we resolved 61, and had total civil penalties assessed of \$54,000-- \$54,500. And that would include a civil penalty, in some cases, of \$250, because, at that time, we had lower civil penalties for nongas utilities. OK? So I just wanted to kind of clear that up.

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We-- we treat all complaints equally, but I will tell you that, in-- in the past five years especially, we've had so many more cases that we've had to prioritize. But they are all considered important, and they are all handled equally. OK? So what we would like to talk about today is the-- the issue that we see with respect to LB344 and enforcement. And that would be an understanding that there's nothing wrong with a process where you could have a level where you can kind of have this, like this hit court. We're not having a-- we don't have an issue with that. But what we found is that the-- LB344 is having this committee make findings and recommendations. Well, those are not-- they're not binding on a court. And-- and-- and it's not very helpful for us, in terms of any findings by this committee, because I have to litigate a case from-- with the personal witnesses, and I have to take it to court under this-- the current procedure. And LB344 is really just adding a layer of review that actually is going to slow down the process rather than speed up the process. Ms. Becker mentioned something about Colorado. I haven't had a chance to look at that. But the piece of the puzzle is that this-- these findings and recommendations are not binding, as well as the civil penalty. And so, Senator Moser, I think that you had mentioned the word "tribunal," and I think that, if this was a tribunal, such as administrative agency that had final authority to make findings of fact to conclusions of law, and-- and adopt those and actually enforce the One-Call Act, that would be subject to appeal under the APA, like we do with some of our other agencies, that might be the way to go, but that's missing in this particular legislative bill.

GEIST: OK.

MILISSA JOHNSON-WILES: So-- so I think that it was-- I'm not sure that it serves a purpose because I've heard a lot about wanting to kind of move things along more quickly. But I would get a recommendation or a finding, and I would not be able to do anything with it because I still need to prove all of those things to the court, so--

GEIST: Thank you. Thank you for your visit.

MILISSA JOHNSON-WILES: OK..

GEIST: I mean, thank you for your testimony.

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MILISSA JOHNSON-WILES: Yes.

GEIST: Are there any questions? Yes, Senator Moser.

MOSER: So how many cases do you get a year?

MILISSA JOHNSON-WILES: In-- we get an average of-- we had 67 cases in 2020, and we get an average of about 40 to 60 in a year.

MOSER: So the number of cases is up a little bit.

MILISSA JOHNSON-WILES: Yes.

MOSER: So this bill, according to the fiscal note, is going to cost us a couple hundred grand. Would it be cheaper to hire you an assistant?

MILISSA JOHNSON-WILES: Well, I-- just to another point, we do actually spend more than 10 percent of my time. I'm not sure if that was a miscommunication between B.J. and I, but we have a goal of 25 percent of my time and 25 percent of my assistant. And currently I have-- instead of an assistant, I have an Assistant Attorney General who has that goal, as well. So-- but we anticipate that this would-- I mean, obviously, you-- you have this layer of review, but it comes to us. We assume that the cases, the number is going to go up and that we still need to litigate them.

MOSER: So-- so you get 71 cases a year. Do you decide 71 cases a year or do you get farther and farther behind?

MILISSA JOHNSON-WILES: Well, I-- no. I don't-- I don't decide 71 cases a year, so I would be-- I would get further and further behind. We're sitting at 89 right now, with having received 67 in-- in 2020. So at the end of 2020, we received 67 new cases and we resolved 31. And I'm at-- at 89 right now. So--

MOSER: Is there more potential liability for the person complaining, the complainant? I don't know if that's the right legal term. But is there-- I mean, I could go in and complain about something and then I could be wrong, and I could actually wind up regretting that I came to complain because I may be found guilty of a violation. Has that ever happened?

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MILISSA JOHNSON-WILES: Well, I--

MOSER: Just because I'm mad 'cause something went wrong doesn't mean it's somebody else's fault?

MILISSA JOHNSON-WILES: Right, right. I mean, I don't think a complainer-- a complainant is going to be liable for filing a complaint with our office. But the process is: a complaint is filed; we notify the respondent that a complaint has been filed; we give them the opportunity to respond. At the end of the day, I still need to prove all of it, though. So I need those witnesses that saw what happened. And so we'll give them a chance to respond and-- and so they'll know who the complaining person is. And sometimes that makes for interesting conversation right outside of the halls of justice. But, yeah.

MOSER: 'Cause I, from experience of seeing these things happen, quite often, the guys just work it out themselves.

MILISSA JOHNSON-WILES: I have seen that. I mean, I've been doing this for a long time, so I have seen that a lot over the years, where-- and I'm not even sure that this is necessarily going to fix that. There are still going to be a lot of decisions not to file, just because they don't want to cause, I guess, hard feelings out in the field. That has happened.

MOSER: I-- I would think, if there was more chance of getting in trouble, some people would be less likely to report-- self-report.

MILISSA JOHNSON-WILES: Right.

MOSER: I mean, sometimes--

MILISSA JOHNSON-WILES: Right.

MOSER: We were digging a coax cable in or something. We hit the plumbing and-- and we told the plumber, showed him where we hit it, and he fixed it-- free. But if they'd have buried it and it started leaking later, I could see where he'd be mad and--

MILISSA JOHNSON-WILES: Right, yeah. So--

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MOSER: So I don't know if it's going to solve the problem or make it worse.

GEIST: Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you, Vice Chairwoman Geist. The 811 right now, does it protect only businesses or does it also protect homeowners?

MILISSA JOHNSON-WILES: The Nebraska 811, the system?

M. CAVANAUGH: I guess, like the-- when people are making complaints to you.

MILISSA JOHNSON-WILES: OK, yes.

M. CAVANAUGH: If they're a homeowner, let's say-- like I represent Omaha, and there's a lot of homes and businesses next to each other, and we've got a lot of businesses laying fiber throughout the city. So if it's a homeowner that has an issue with somebody coming in and laying fiber through their property, does-- are they protected or is it only businesses and operators that are protected?

MILISSA JOHNSON-WILES: Well, so the One-Call law requires that a call be made before digging and that the-- the line is marked by the underground utility within two business days. And then, if damage has occurred, that the excavator needs to notify [INAUDIBLE]-- that sort of thing. So if I got a complaint-- which I have, by the way-- if I got a complaint against-- from a homeowner that says that someone is digging in my yard and they have-- they didn't call in a locate, those are actually harder, because I don't really know where to begin, because I don't know who's been-- who's been digging or what the underground facility was that supposedly, you know, didn't-- didn't do something.

M. CAVANAUGH: Um-hum.

MILISSA JOHNSON-WILES: So I don't know, I might be going a little bit further than your question. But if it-- if a homeowner has a problem with something happening, the One-Call law, I mean, they can file a complaint with us. But my complaint is going to have to be: OK, I need to know who you're filing it against, whether it's the excavator for not doing their part or the operator for not doing their part.

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M. CAVANAUGH: OK. Thank you.

MILISSA JOHNSON-WILES: Um-hum.

GEIST: Any additional questions from the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. It really comes down to the bottom line, is-- what can we do to make it better? I've heard this for four years. I'm sure it's been before that. I would-- I would be very interested, if not now but, you know, afterwards, to get some reply back from you. Is-- if this is not an answer, what is? What can we do? What-- what is it? Is there something we can do to really help? 'Cause we've heard this-- like well, it's been in committee for four years, and it's been around before that. So I'm not really for sure, you know. This doesn't fix it, I'm sure. But is-- what are the steps that we can start taking to-- to help out? Because if we are both-- both-- I guess the amount of work your office does, as well as what we see happening with our contractors, as well as those who have the utilities or-- or fixtures in the ground, you know, we need to figure out a way to-- to help the process or the system, so-- be glad to listen today or another day. I just-- I think this is something that has been worked on. And if you're the-- you're the person to go to on this, you know--

MILISSA JOHNSON-WILES: Well, I kind of try to stay a little out of policy, I mean, away from policy But we just enforce the law that's written. But I understand what you're-- you're suggesting, as far as trying to fix it. If it's important for the state of Nebraska that-- that we assess civil penalties against violators of the One-Call Act faster than it's happening now in our office, then my guess is it would have to be a hit court of some sort that has actual enforcement authority.

BOSTELMAN: Yeah, and--

MILISSA JOHNSON-WILES: And I don't know if Colorado fits that bill or not.

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BOSTELMAN: I don't know either. It's just one of those things. I understand what you're saying. Yes, it-- you know, our place is to set the policy. But if we don't really know the-- the mechanisms,--

MILISSA JOHNSON-WILES: Yeah, sure.

BOSTELMAN: --as something goes through the process,--

MILISSA JOHNSON-WILES: Right, right.

BOSTELMAN: --it's really hard to come back and set that policy, so appreciate any information; thanks.

MILISSA JOHNSON-WILES: Yeah. And if I just may mention that this is, of course, one part of the process, and that it's-- a civil penalty is-- is a pretty serious thing, a civil penalty for violating the-- the act. And so that's-- that's what the whole goal is of the One-Call, and what our enforcement is. And so I just wanted to kind of share that, so--

BOSTELMAN: Thank you.

MILISSA JOHNSON-WILES: OK, thank you.

GEIST: Thank you very much for your testimony.

MILISSA JOHNSON-WILES: Thank you.

GEIST: Are there any additional neutral positions that would like to testify? Seeing none, I will ask Senator Friesen-- I failed to ask you if you would stick around for closing, but I see here you are. So I would let you know it's time to close. Oh, and I do have letters that I need to read into the record. In lieu of in-person, I have AGC Nebraska, Matt Schaefer, in support. These next three are in opposition: Northern Natural Gas, Randi Scott; Omaha Public Power District; Seth Voyles; Nebraska Rural Electric Association, James Dukesherer. A neutral: Nebraska One-Call Board, Robert Everett. And then two position letters: one in support, which is VanKirk Bros. Contracting; and one in opposition, Nebraska Cooperative Cancel-- Council. And with that, Senator Friesen, you are welcome to close.

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FRIESEN: Thank you, Vice Chairman Geist. So I'm going to just touch on a couple of things that-- that I was trying to listen to. And it is hard to hear from the sides. It doesn't-- doesn't very conducive to hear in here. So again, the Safety Committee members are just going to be reimbursed for expenses. They're not going to be paid anything. And so again, I-- I don't look at this as a high cost thing. I-- I look at it as the industry does want to find a solution. And this gives them a method, I think, that they feel, at least from my years working with this, that this-- it's a start. And I don't know whether this is right or not. Again, from what I've heard over the years, a lot of times I don't know if a civil penalty is needed as much as, you got bad actors out there that either didn't train their locators, didn't train their excavators to look for the marks, their methods of excavation. And there's-- a lot of it is in education. And so I-- I look at this as only those cases who deserve a--you know, if you are having a unanimous vote of this board to assess a civil penalty, there's not as many cases that are going to go to the Attorney General's Office, I don't feel. They're going to sort through these, and some of those cases, maybe, that have been fined in the past won't receive a fine this time. But they will either do more continuing ed or do a better job of training their locators or-- or working on that, which actually solves the problem. And so-- and then when those cases do make it through, and you have a unanimous vote of this board to assess a civil fine, I hope that fine is large. Again, the One-Call-- I do believe each facility owner is-- and I'll check into this-- but I think it's a \$1.00 charge for every locate that's out there, but there's a lot of locations. And so that's what the board uses to fund itself. It's cash-funded and their whole thing, in all the years working with them, is they have been strictly focused on education. They have never really wanted to get into the enforcement end of it. But obviously, education isn't always going to fix everything. We have-- we have struggled with that over and over. We keep hearing about the near hits and the near misses that happened out there, where gas lines were mismarked, mislocated. And in the end, nobody even wants to turn these complaints in because they know it takes too long and it just overloads the Attorney General's Office with things that didn't happen. But if you have bad actors that are continually mismarking and you have these near misses, after a while, there are certain names come to the top. And those-- those companies or whoever's doing this will get referred to the Attorney General's Office. And it won't be

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because something got hit. It's probably because they've had too many near misses or mismarks or those types of things. So that's where I look at that. You know, if they-- if they're doing 40 to 60 complaints a year now, I would see that there might be 150 to 200 complaints filed with the Safety Committee, but none of them probably resulted in a hit. They were near misses, close calls where somebody just barely missed an electric line or, you know-- nobody got hurt, nobody got killed. They didn't hit it, but it wasn't marked, things like that. That's where I think the frustration with the excavators comes in. They have not been listened to, and so that's part of that problem. With that, I-- I-- unless you have-- somebody has any questions-- I mean, we'll always be-- well, we're listening. And if there's ways to improve this bill, whether it's through the Attorney General's Office or wherever, I'm willing to make the bill better. I'm-- I'm just-- we've dealt with this a long time and we keep looking for the solution, and then everybody always finds something wrong with it. Thank you.

GEIST: Any questions from the committee? Seeing none, that will conclude LB344. Thank you.