

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee February 16, 2021
Rough Draft

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FRIESEN: OK, everyone, welcome to this morning's public hearing of the Transportation and Telecommunications Committee. I'm Curt Friesen, from Henderson, Chairperson of the committee, and I represent District 34. I'll begin with a few procedural items. For the safety of our committee members, staff, pages and the public, we ask those attending our hearing 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 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 room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and the transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by Sergeant-at-Arms, who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the ability, due to the HVAC project, of an overflow hearing room for which hearings-- for hearings which attract several testifiers and observers. We ask that you please limit or eliminate handouts. We will be hearing the bills in the order listed on the agenda. Those wishing to testify on the bill should move to the front of the room and be ready to testify. We have an on-deck chair up front so the next testifier can be ready 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 and testify, Handouts are not required, but if you do have a handout, we need 12 copies and one of the pages can assist you with that. Now we're ready. 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 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

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covered. We use a light system in this committee. Beginning with the green light, you'll have five minutes for your testimony. Yellow light indicates there's one minute left. When the red light comes on, it's time to wrap it up. Those not wishing to testify may sign 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. Andrew Vinton, to my right, is the committee legal counsel. To my left is Sally Schultz, the committee clerk. Pages today are Peyton and Samuel. Thank you very much for being here today. And with that, I'll let introductions, beginning on my right.

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

BOSTELMAN: Bruce Bostelman, District 23, Saunders, Bu-- Butler and Colfax Counties.

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

GEIST: Perfect timing. Senator Geist, Suzanne, District 25, east side of Lincoln and Lancaster County.

MOSER: Mike Moser, District 22, which is Platte County and small portions of Colfax and Stanton Counties.

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

FRIESEN: And Senator DeBoer may join us at some point during the meeting. We will move LB670 up next after LB610, so we did make a change in the-- in the order. And with that, we'll open the hearing on LB610. Welcome.

BEAU BALLARD: Good afternoon, Chairman Friesen, members of the Transportation Committee. My name is Beau Ballard. For the record, that's spelled B-e-a-u B-a-l-l-a-r-d. I'm the research analyst for Speaker Mike Hilgers. I'll be brief today. I'm just here to open up on LB610, which clarifies some language in the Motor Vehicle Registration Act. So with that, I'll close.

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FRIESEN: Thank you. Does anyone wish to testify in favor of LB610? Anyone wish to testify in opposition to LB610? Does anybody wish to testify in a neutral capacity on LB610? And with that, seeing none, we will close the hearing on LB610. Next we will open the hearing on LB670, Senator Murman.

MURMAN: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, my name is Dave Murman; that is spelled D-a-v-e M-u-r-m-a-n. And I represent District 38, which includes the counties of Clay, Nuckolls, Webster, Franklin, Kearney, Phelps, and southwest Buffalo County. The practice of memorial-- memorializing victims of highway accidents has been occurring for years, both in Nebraska and across the country. It has become part of our culture. Sometimes you'll see flowers, balloons, white crosses and pictures along the side of the road near the site of a fatality. After being unregulated for years, a number of states-- Florida, Missouri, Arizona, Virginia, California and Idaho, Kansas, Texas, Illinois and Wyoming-- having enact-- enacted a variety of laws and/or regulations to allow for the practice by memorializing the victims-- victim or victims on a sign erected by the state. This has the advantage of making it easier for maintenance crews to mow and maintain the right-of-way, as well as promoting uniformity and safety. Sever-- several of you may remember Senator Erdman's LB612, considered by this committee a couple years ago. This bill is similar in that it authorizes the display of a sign along a Nebraska roadway to memorialize persons killed, as well as display a safety message. It also would have permitted a photographic image of the deceased person on the sign. My bill does not. That bill did not advance and since that time, I've been contacted by constituents and others to address this issue in-- in state law, as other states have. As you may hear, the Department of Transportation has adopted a roadside memorial policy allowing immediate family members the ability to apply for a sign that memorializes a death occurring on the State Highway System while phasing out any private memorials along the highway. Last fall, my office reached out to the Department of Transportation to see if they would be open to giving families the option of adding a symbol next to the name of the individual memorialized. For many families, deeply held religious beliefs are important and-- and they find the display of such a symbol next to their loved one's name comforting. After seven weeks, we finally heard back from the department that they

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would not allow any religious or other symbols, state-- stating that to do so would be impossible and inappropriate. Thereafter, I started looking at this bill. LB670 simply permits a qualified relative-- spouse, parent, sibling, child, grandparent or grandchild-- to apply to the Department of Transportation for a memorial sign to raise public awareness about highway safety and the dangers of-- of impaired driving, and to afford the family an opportunity to memorialize a family victim killed on Nebraska roadways. A fee of \$75 would accompany the application. The sign will have a safety message-- "don't drink and drive," "don't text and drive," "seat belts save lives"-- as well as commemorating the deceased person or persons. At the option of the qualified relative, an emblem of belief may be displayed next-- next to the deceased person's name. To ensure that the optional emblem of belief does not run afoul of any establishment clause concerns, we turned to established language in the Code of Federal Regulations governing federal headstones or markers, 38 C.F.R. Section 38.632, to describe in Section 5(c) of the bill the process of requesting an emblem of belief and what emblems may not be acceptable. This long-standing language has withstood the test of time, worked well for the department, the federal Department of Vet-- Veterans Affairs, and I believe that it would be appropriate in this instance. Contrary to what we are told, allowing loved ones of an accident victim the option of having an emblem of belief next to the victim's name would not be impossible and appro-- and inappropriate. As long as the emblem of-- emblem of belief meets the criteria of the statute, it would be permitted. The sign would be posted for five years and may be renewed for another five years. No signs will be allowed for a deceased-- deceased person who was the operator of the motor vehicle with a blood alcohol level above the legal limit or was found to be impaired by an illegal substance. A number of years ago, I lost my brother, Larry, who was a victim of a Nebraska highway accident. I wish I would have had that-- had the opportunity to honor his memory with a roadside sign-- roadside signs such as that permitted by this bill. Thank you for your consideration of LB670, and at this time I'll take any questions you might have, or there'll be others behind me that-- well, not sure if there will be others behind me, but I'll take any questions you might have.

FRIESEN: Thank you, Senator Murman. Any questions from the committee? Senator Geist.

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GEIST: Thank you-- thank you for bringing this bill. And as I was reading through this, I did have a question about it. And I'm curious if the \$75 fee would cover the entire amount of what the actual cost of the sign is.

MURMAN: I assume it would, because the Department Transportation right now is-- is charging \$50 for the sign without an emblem of belief, so--

GEIST: OK.

MURMAN: --so I assume they could put-- you know, that sign has quite a few characters on it. I assume they could put one more character on it--

GEIST: OK.

MURMAN: --for \$20-- less than \$25 actually.

GEIST: OK. All right. Thank you.

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

BOSTELMAN: Thank you. What's the size of the sign? What does it look like?

MURMAN: The-- I think the Department of Transportation is going to be testifying. It-- I haven't changed any of that, so.

BOSTELMAN: OK, thank you.

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

MURMAN: Yes.

FRIESEN: OK. Anyone wish to testify in favor of LB670? Seeing none, anyone wish to testify in opposition to LB670? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Murman? We do have a position letter on LB670 from Nebraska Department of Transportation.

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MURMAN: Thank you all for your consideration of this bill. As many other states have done, Nebraska should provide the family members of accident victims the right in statute to apply for a sign to promote public safety, memorialize the victim and, at their option, include an emblem of belief next to the deceased person's name. I ask for your support of this bill and timely consideration and to move it forward out of committee. Thank you.

FRIESEN: Thank you, Senator Murman.

MURMAN: Any more questions?

FRIESEN: Senator Cavanaugh.

M. CAVANAUGH: Yes.

MURMAN: Yes.

M. CAVANAUGH: I apologize. I-- I was saving my questions because I-- I thought perhaps we were going to have the department here. And I'm just quickly looking at their letter, but maybe you can tell us a little bit more about what their opposition specifically was.

MURMAN: I-- I hate to speak for [INAUDIBLE] don't know if I need to speak for them, but it was the establishment clause. They-- they were nervous about that.

M. CAVANAUGH: OK, and-- but you feel that you looked at federal language and this is compliant with federal language?

MURMAN: Yes,

M. CAVANAUGH: OK.

MURMAN: it's a language that the-- I think it's the Veterans Affairs use for like headstones in cemeteries.

M. CAVANAUGH: And I know this is something that we've had. We've talked about these signs in the past and about how they look and having them be uniform so that they aren't a distraction. And I noticed that it says that if there are additional victims, that their

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names could be added. So I-- I guess my question would be, if they are of a different religious background, how would that be addressed?

MURMAN: There are-- according to those regulations-- I don't know what the exact-- that-- the federal regulations that the Veterans Affairs used. I think there's approximately 25 different symbols. Could even be more than that, but it's-- it's a large number.

M. CAVANAUGH: Is there an established, like, list of what those symbols are or could families come up with a different symbol?

MURMAN: Yes, they-- they do have an-- a examples of list-- or symbols that can be used.

M. CAVANAUGH: So it couldn't-- you couldn't just, like, put your coat of arms on there?

MURMAN: No, no. It would have to be one of the--

M. CAVANAUGH: Recom--

MURMAN: --symbols that they have for-- in their regulations.

M. CAVANAUGH: OK, thank you.

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

MURMAN: Thank you.

FRIESEN: --thank you, Senator Murman. That will close the hearing on LB67. [SIC] OK, next we'll open here on LB339. Welcome, Senator Bostelman.

BOSTELMAN: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Bruce Bostelman; that's B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I'm here today to introduce LB339 with AM220, which was just passed out to you. The bill would require the Department of Transportation, metropolitan class cities, cities of the primary class, cities of the first class, and counties with a population more than 25,000 people to develop a utility coordination

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plan for any work conducted on a roadway. This utility coordination plan will be included in the original contract and will identify all utilities, their operators, and the dates which they will be removed or moved. AM220 provides three changes for the bill by striking the el-- elevation requirements, exempting emergency projects, and adding an-- an effective date. This bill was brought to me by AGC, the Associated General Contractors of America, after they had several instances where a contractor showed up to the job site to begin work, only to discover that the utilities were not marked or moved. This can delay projects for months at a time, which can result in lost money and time for contractors, and the blame for delays in construction is often shifted on-- shifted onto them, resulting in even more cost due to fines. By requiring the utility coordination plan, contractors will be able to show up to a job site on a day-- on day one and begin working as they know exactly what utilities are there, where they are located, and when they will be moved. This will allow for contractors to better manage their schedule and allow for road construction to be completed in a more timely manner across the state. There are a few states, such as Minnesota, here's Minnesota's plan, Wisconsin, here's Wisconsin's plan, New Hampshire-- I have that in my binder-- and Colorado and other states that already have utility coordination plans in place. Minnesota, for example, has a 14-step plan which details responsibilities and also lists timeframes on when each should be completed. The utility coordination plans are feasible and can save the state and all parties involved in time and money. Therefore, I ask for your support of LB339 and its advancement to General File, and I'll take any questions you may have.

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

GEIST: Sorry, one more. You listed what the exemptions were and I can't cross-reference it because I forgot my computer. You said exempt elevation, emergency projects. What was the third thing?

BOSTELMAN: And changes the date--

GEIST: Change-- OK.

BOSTELMAN: --the effective date, start date.

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GEIST: OK, thank you.

FRIESEN: Thank you, Senator Geist. Senator Cavanaugh.

M. CAVANAUGH: Thank you, Chairman Friesen. Senator Bostelman, I-- is it-- sorry. I'm trying to think of how to frame this. We have One-Call. How is this different or how-- how do they intersect?

BOSTELMAN: Sure. Well, One-Call is usually when they go to site. This is pre-plan-- this is pre-bid. This is as a site is being-- as a project is being developed, this goes into the development proj-- portion of it. So in other words, if you're the contractor and say, I have a project that I want you to-- that I'm putting out for a bid, for request for proposal on, prior to that information going out, there's-- this information is already included for your bid so you know exactly what you're bidding on. Right now, you don't necessarily know that. You do not necessarily know what utilities exist, where they're at, and when they may or may not be moved. You just know that--

M. CAVANAUGH: And who--

BOSTELMAN: --here's a project and-- and you get to do that, so--

M. CAVANAUGH: Who's responsible for putting all of that together?

BOSTELMAN: I'm sorry?

M. CAVANAUGH: Who's responsible for putting all of that together?

BOSTELMAN: Right-- right now, that's the point, is it should be the owner, but that's not happening. So there is no one doing it to the extent. So once a contractor gets on site, that's when they call One-Call to have the markings and those things done. What this is-- what the utility plan does is to ensure there's a plan in place, people know what utilities are there before they bid as the pro-- as-- as the project is being developed, so they know exactly what work they need to do. And then as they go through that process, they have someone there to make sure-- a planner there to make sure that as the project progresses, utilities removed, replaced, wherever they may-- may be, in a timely manner so that a contractor doesn't come on site

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and say, oh, there's utilities here, now I got to wait however long to move them--

M. CAVANAUGH: So it's--

BOSTELMAN: --and that delays them. And there's people behind me that will--

M. CAVANAUGH: OK.

BOSTELMAN: --definitely speak more to this point, so.

M. CAVANAUGH: It-- but it-- the responsibility is beared by the owner of the property?

BOSTELMAN: The responsibil-- no, owner of the contract--

M. CAVANAUGH: Owner of the contract.

BOSTELMAN: --whoever is-- what's-- say if it's a state road, it'd be a state; if it'd be a city or county project, they're the owners of it.

M. CAVANAUGH: I see. OK, thank you.

BOSTELMAN: And I-- and there's-- like I say, again--

M. CAVANAUGH: Yeah.

BOSTELMAN: --there's folks behind me that-- please ask them the same question [INAUDIBLE]

M. CAVANAUGH: I will. Thank you.

FRIESEN: Thank you, Senator Cavanaugh. Any other questions from the committee? Seeing none, thank you, Senator Bostelman. Proponents who wish to testify in favor of LB339?

KATIE WILSON: All right.

FRIESEN: Welcome.

KATIE WILSON: Good afternoon, everybody, Senator Friesen, committee members. My name is Katie Wilson, K-a-t-i-e W-i-l-s-o-n, and I'm the

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executive director of the Associated General Contractors, Nebraska chapter, testifying in support of LB339. I want to outline to you today the basics of the problem and why we've worked with Senator Bostelman on the legislation. After me, you will hear from contractors, general contractor, a grader, a utility contractor with specific real-life examples that happened on their job sites. Utility conflicts in the public right-of-way have been an ongoing issue for heavy highway contractors for many years, costing taxpayers and contractors delays and money. Since the passage of the Build Nebraska Act, there's been an increased focus towards capital improvement projects as well as system modernization-- modernization projects, which increase the likelihood for utility conflicts because of adding or widening lanes, adding shoulders, and removing and replacing culverts or bridges. This issue can be confused with the inadequacies of the 811 One-Call notification system. However, it is completely different. 811 is more of a process to locate what's under there when you go to excavate. This-- this issue is more prior to bidding it, prior to the contract, and we will try to explain to you today of what all those issues are. So highway capital improvement projects and the system modernization projects require advanced design, significant planning, and work that must be performed sequentially by a number of different parties. Thus, for a project to be completed on time and without cost overruns, it is important that all known underground facilities and utility companies affected by the work have been identified and notified and communicated with during the planning and design-- design stages prior to bid letting and awarding of that contract. Then, of course, the affected utilities need to relocate or move their facilities in a timely manner, and the project owner needs to be in good communication with all parties to keep them up to date with everyone's schedule. But we are noticing that on too many jobs, the project owner-- that is, Department of Transportation, the county, the city, whoever's project it is-- fails to coordinate the utility issues up-front or the utility fails to move when they said they would or when they were told to move and, worse, the project owner fails to take any action to require in a timely manner the utility to perform the job it is legally obligated to do. So the status of re-- utility report states in the project did-- bid documents so my members, the contractors, as they're bidding it, this document is in there and it says, if a utility is deemed to be in conflict, the relocation work will be concurrent with construction. Understand, the contractor on a

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project is not the one responsible for moving the utility in question. They don't own it. They don't have a contract to do it. That needs to be done away from them. But they're-- they're responsible currently to coordinate it once they get on the job. So we've seen this result in delayed projects, which not only frustrate drivers who are fed up with length-- lengthy road closures, but increased cost to the highway contractor in the form of time and money because of idle equipment and having workers on a job site with no work to do. So LB339 is a simple bill that requires project owners to have a utility coordination plan up-front in the bid documents. If they don't and the contractor is damaged as a result, then the contractor will be appropriately compensated. Many projects already have such plans, so this is not asking for the impossible. It is time for the excuse making to stop and for this problem to get resolved. I appreciate your time today. If you have any questions, I'll try to answer, but I do have a few others following me that have a lot more experience and stories to tell, so.

FRIESEN: Thank you. Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen, and thanks for being here today. How-- I mean, how often this is happening--

KATIE WILSON: Hard to tell.

ALBRECHT: --and what kind-- what kind of money?

KATIE WILSON: So, you know, when you have a project, it's usually more as they work through, you know, the delays pop up or a utility pops up or whatever it is. So there is a bid item associated with the delays or anything like that. It's usually more of a time issue, so contractors get additional time; there's just no compensation for, you know, remobilization or anything like that, so-- so it's hard to say.

ALBRECHT: Um-hum, um-hum. And--

KATIE WILSON: I mean, it's not happening on every job. I'm not going to say that, but--

ALBRECHT: So-- so the state could be the lead. A county could be the lead. So who actually has the utility coordinator? Who-- just whoever that lead person is?

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KATIE WILSON: It would be the owner of that project.

ALBRECHT: OK, so each entity would have to employ someone or would-- would they already have somebody--

KATIE WILSON: They'd-- in their project development--

ALBRECHT: --within their departments that would be--

KATIE WILSON: --and their design processes, yeah.

ALBRECHT: OK.

KATIE WILSON: I mean, they do some, there's no doubt. They-- they absolutely do coordination. It's just, you know, a lot of times the-- the communication breaks down and then it's "let's just put it in the bid documents," and then it falls on the contractor to coordinate it during construction most of the time.

ALBRECHT: OK. Very good. Thanks.

FRIESEN: Thank you, Senator Albrecht. Senator Hughes.

HUGHES: Thank you, Chairman Friesen. Thank you, Ms. Wilson, for coming. So I thought I heard you say that some contracts have this already and this--

KATIE WILSON: There are.

HUGHES: Pardon?

KATIE WILSON: There are some-- some jobs that have--

HUGHES: But it's not-- not a requirement.

KATIE WILSON: I would say it's not a requirement, but--

HUGHES: So are there--

KATIE WILSON: --some do their due diligence, yes.

HUGHES: So are there some cities or counties that do this as a matter of course and you-- you want to see it implemented--

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KATIE WILSON: I would say yes.

HUGHES: --on all construction.

KATIE WILSON: Um-hum.

HUGHES: So is-- the-- the people that are doing it now, why are they doing it? They just want to see the project completed faster?

KATIE WILSON: To get it done on time.

HUGHES: And they're doing it at their own expense?

KATIE WILSON: Well, it's part of the development part-- and the design part of the job. So as you go through that, there are-- there are utilities in the right-of-way. And, I mean, that's part of their steps. You're going to hear that from various owners behind me, but-- so they-- they do try to do a really good job of at least letting you know who's there in their right-of-way, so they own the right-of-way, utilities, and-- you know, you've heard all this, so-- but, yeah, I mean, it just-- it takes time, takes coordination, and it takes people, so I can't really speak on their processes because there's a lot of owners out there that we work with. But-- but, you know, there's many projects that have it in there. The vertical industry includes it.

HUGHES: OK.

KATIE WILSON: There's other states, you know, you've heard Senator Bostelman say, so, yeah.

HUGHES: Very good. Thank you.

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

MOSER: I have a question about why not just require them to call One-Call when they're seeking bids on a project twice, do it once beforehand to make sure what utilities are there and then again just before you start construction?

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KATIE WILSON: Well, the One-Call system is for excavators and for excavation, so digging. It-- it's not required. The locators are not required to come out when-- for design. Now anytime you dig or put something in the ground, you should call locate. I mean, everybody should. That's, again, part of the-- I can't speak on what their process is, designers. It's a totally different world than us, but I don't know if that's state law. I do [INAUDIBLE]

MOSER: Who's liable if you-- if somebody files a plan and then they find utilities that were not identified in the plan, then who's responsible?

KATIE WILSON: That's part of the coordination of it, and right now in our bid documents, if-- if something is found, then you stop and you, you know, you recoordinate and refigure the schedule on what to do with that utility.

MOSER: That's currently in your bids, you mean.

KATIE WILSON: Well, no, because we don't know what's down there, so that-- that's part of our issue is what happens when an unknown utility is uncovered. So as you're doing construction, as you're opening up the ground, you find something underground and stop, you know, now you've got to get the utility company involved, the owner involved, to find out what's the best-case scenario to move forward.

MOSER: But how do you know what's unknown before you find it?

KATIE WILSON: Well, there is ways. I mean, the-- the owners have a right-of-way and agreements to the utilities when they are installed, so there are documents out there that show what should be there.

MOSER: Don't they provide those to you now though?

KATIE WILSON: Not as part of the bid documents, no.

MOSER: I know we had a lot of projects where we found things that were a surprise.

KATIE WILSON: Oh, absolutely.

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MOSER: We found oil tanks. We found bundles of cables that we didn't know where they went. We found a gas line in one case that was a service line that was still connected. But I don't know how looking for those before you start is going to change. You're going to have to dig a hole and hit them or find them.

KATIE WILSON: And that happens. And we know it's not going to be a perfect process. It can't be a perfect process because there's abandoned-- there's abandoned utilities underground. So it's just they know, a lot of them, in-- in their coordination process and their development. And they do get some of these on the plans. I'm not saying they aren't all on the plans, but it-- it needs to be done better and earlier, so when the contractor goes to bid that job, they know what risk they're undertaking. So if-- you know-- you know, you-- and normally it's on a-- a larger scale project, you know, a widening of some kind, but you'll hear that it happens on-- on smaller jobs, too, but--

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? So do you anticipate construction bids would drop a little bit if everybody knew that there weren't going to be these delays?

KATIE WILSON: Risk is bid into projects all the time. I don't bid them, but from what I am hearing, yes, the-- the risk is being included in these bids.

FRIESEN: OK. Thank you. Seeing no other questions, anyone else wish to testify in favor of LB639-- or LB339?

TOM CROCKETT: Good afternoon. My name is Tom Crockett. I'm with Hawkins Construction Company in Omaha, and I'm the current-- or immediate past president of AGC.

FRIESEN: Spell your name.

TOM CROCKETT: T-o-m C-r-o-c-k-e-t-t. You heard from Katie outlining problems facing the contracting industry as it relates to utilities. I wanted to share with you a few examples of outlining what Katie discussed. The first problem happens when a project owner indicates us there will be u-- utility relocation or abandonment required, then

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does not provide us a schedule of when this will happen. We're currently doing a project. In the-- within the specification there is a element called the status of utilities. This specification indicated that rehabilitation work to be performed prior to or concurrent with roadway construction, conflicts occur at county road intersections. This doesn't give us a lot of detail. We did not know what the utility conflicts with and it doesn't give us a timeframe associated with completion of the conflicted work. So how can a contractor schedule their work around an un-- unidentified timeframe? We can't. We're guessing. It is important that we understand what the conflict is and what the schedule is to alleviate the conflict. How do we get around it currently? Senator Friesen, you just asked Katie if contractors add dollars to their bid for these type of things. Her answer is correct. There's risk associated with things and an unquantifiable risk can be met with an unquantifiable cost, so we have to evaluate those things. I think the point of this is I think we can get to a point where we can avoid this. Currently, every contractor does their own thing, but I would guess, if there's risk associated with it, it evolves around some sort of dollar amount being added to the bid, which ultimately our taxpayers pay for. The second problem is more detail about what is going-- is more detailed within the status of utilities. For example, a utility may be-- have a outline of the work they are to perform with the scheduled time timeframe in which that performance of work will occur. That is very helpful to a contractor. The issue we're running into at times is, and I'll use an example on an LPA project in Omaha. On this project, the language in the contract stated that no claims shall be made against utility X by the city or its contractor if it fails to meet any part of the enclosed schedule. The problem here is that we have no legal authority to force the utilities to adhere to their schedule. That ability lies with the owner of the project, not us. We can coordinate, we can work with utilities on what our work schedule is, but ultimately their schedule of work and how they proceed with their work is there-- is-- is up to them. In this particular contract, again, there was days laid out they were supposed-- supposed to perform their work. Had this schedule not been met, we have no recourse for delays we have incurred. To sum it all up, inaccurate or incomplete information within the status of utilities creates unnecessary risk and adds unnecessary cost to projects. Developing a utility coordination plan during the design phase of a project should be standard protocol. This will help

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utilities too. In order for them to plan, they also need an accurate picture of projects in DOT or other owners intend to design, bid, and build, and when those projects will occur. We need something to change; otherwise, project costs are con-- going to continue to increase and delays are going to keep happening. The-- the DOT most likely will come to us later and tell us that they are currently working on a-- some sort of internal utility protocol revision. We heard from DOT personnel last week on this and they indicated that this document would be available for industry comment in July of '22. That isn't time sensitive, in my opinion, and that's why I'm here to support LB339. We need some change and I think the taxpayers will benefit from this change, so be happy to take any questions.

FRIESEN: Thank you, Mr. Crockett. Thank you, Senator DeBoer, for joining us. Any questions from the committee? Senator Geist.

GEIST: Thank you for your testimony. And I'm just curious. You-- you talked about what kind of recourse or that you would have-- if this is established, you would have some kind of recourse if lines aren't moved in the-- in a timely manner. What would recourse look like under this, or is that established?

TOM CROCKETT: if this protocol was established in which we have a known timeframe-- excuse me-- for the-- a utility relocation, we can schedule around that. OK? And we currently do the schedule around that when those timeframes are known. What happens is, is when the frame-- timeframes are known or if a time frame is stated but it's not met, at that point in time, we either leave the project or try to proceed with other work on the project, but that's not in the most cost-effective and time-sensitive manner. Consequently, that costs the contractor a lot of money. So recourse would be compensation for our lost time.

GEIST: OK. Thank you.

FRIESEN: Thank you, Senator Geist. Senator Albrecht.

ALBRECHT: Thank you, Chairman Friesen. And thanks for being here to discuss this. It appears to me that even if you had this utility coordinator, OK, that coordinates when it should be done and ready for you to come on site, the bigger problem is the utility company doing

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it when they're-- when it's convenient for them. Would that be a correct state-- statement?

TOM CROCKETT: I can't speak to the utility companies, I mean, that should be-- when a project is designed and going-- going to be let to contract, I would think that that communication should occur.

ALBRECHT: Correct.

TOM CROCKETT: Therefore, if a job is going to start in June, you know, we know the util-- the utility-- there should be some sort of communication as to when the-- there should be some anticipated start point for a utility to go to work.

ALBRECHT: So that's what I'm saying. So even though you have that coordinator and he's trying to coordinate it with the utility company, if the utility company drags their feet, somebody is going to have to pay, right? So you're either going to be paid more for going out on site and nothing's ready or-- and they're going to have to expect that. But I think the triangle has to have the utility company in here, too, because if-- if I'm the city or I'm a county or I'm the state and that utility contractor isn't getting on site when they need to--

TOM CROCKETT: Um-hum, yep.

ALBRECHT: --you're-- you're going to be asking for money, but they're going to be saying to the utility company, you're costing us money.

TOM CROCKETT: That's correct.

ALBRECHT: So in that triangle, somebody needs to be figuring out who's got to pay who, when and why. But if somebody is going to be held not responsible at all--

TOM CROCKETT: From the--

ALBRECHT: --that's not-- that's not fair, either, so.

TOM CROCKETT: Yes, that is accurate. So the contractor-- we-- our contract is with the owner and the owner only.

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ALBRECHT: Correct, yeah.

TOM CROCKETT: OK? So we will seek recourse from the owner. It will be up to the owner to determine what recourse they may have with a utility company. And I--

ALBRECHT: Yeah, and then--

TOM CROCKETT: I can't speak to how their agreements are-- work. I-- I--

ALBRECHT: Yeah.

TOM CROCKETT: I don't have that knowledge.

ALBRECHT: But I'm just trying to-- to look at--

TOM CROCKETT: Yes.

ALBRECHT: --the whole picture. And then--

TOM CROCKETT: But you-- you are-- that-- your-- your triangle is correct.

ALBRECHT: Um-hum. So-- so in line 13 on the-- on the bill, it talks about being compensated by the Department of Transportation or the city or county.

TOM CROCKETT: Um-hum.

ALBRECHT: Again, I think that the utility company has to become a part of it because you're here-- here to defend yourself. But at the same time, how does the city and county become whole when the utilities are going to do it when it's convenient for them? Like you say, that coordinator should be lining all that up and you shouldn't even be asked to come to the site until it's ready, you know? So I-- I hear and I see what we're doing. I just want to-- want you to know that that utility has a part in it too.

TOM CROCKETT: Yeah, and that-- that-- that agree-- that agreement would have to be with those two parties--

ALBRECHT: Right.

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TOM CROCKETT: --because we're-- we just-- we're--

ALBRECHT: You just want to get--

TOM CROCKETT: --we don't have any contractual rights or authority with the--

ALBRECHT: What the--

TOM CROCKETT: Yeah, that's correct.

ALBRECHT: Yeah, gotcha.

TOM CROCKETT: Yep.

ALBRECHT: Thank you.

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

MOSER: Currently, if you call for a diggers hotline call and they come out and locate the utilities, and if they're not where they've marked them, then you have some protection against liability for hitting them? Is that true?

TOM CROCKETT: Yes, but to get-- yes, that is true. So they have a tolerance-- if they come out and mark utility, that-- that-- that--

MOSER: It's got to be within 18 inches or something?

TOM CROCKETT: Eighteen inches, that is correct. They don't give us a depth. They give us a-- a-- a lateral-- a lateral movement and it's got to be within that 18 inches. It's not within that 18 inches and we would have a hit, we're not liable [INAUDIBLE]

MOSER: What would you expect this utility plan to include that's not included in the diggers hotline inspection?

TOM CROCKETT: Well, the-- the-- the diggers hotline is-- is-- is separate and distinct from what we're talking about here. The diggers hotline is specifically for anybody that excavates. Even if you want to plant a tree in your backyard, technically, you should be calling the diggers hotline to make sure there's nothing there. All it is, is

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a specific telling you there's something there. What we're talking about is utilities that are known to be there and in conflict with the proposed work being let by the owner. And if those conflicts are indeed there, they need to be resolved, and we're looking for a timeframe in which they are to be resolved because we're building our schedule around a suggested timeframe. If that timeframe doesn't occur and they are two weeks late relocating the utilities and I have a crew on that project that can't do what we and-- what our planned, scheduled work showed, we're delayed two weeks. We've got to pay for that equipment and we've got to pay for those people on the project.

MOSER: So who would pay for this two-week delay if they missed a utility?

TOM CROCKETT: The owner, then the own-- then it would be up to the owner and the utility company to have some sort of-- I don't know. I can't speak to how the owner would-- would-- would work with the utility. I'm sure there's people behind me that can though.

MOSER: Have you gotten any push back on this bill?

TOM CROCKETT: I think there's been some interest in this bill, yeah. I think there's a lot of recognition, proponents and those that may oppose it. I think everybody in this room probably realizes there's an issue and there's work to be done here. But the work needs to be done now and it's been--

MOSER: But the-- the diggers hotline--

TOM CROCKETT: --it's been kicked down the road.

MOSER: --inspection includes water, sewer, telecommunications lines--

TOM CROCKETT: Sure.

MOSER: --power lines--

TOM CROCKETT: Yes.

MOSER: --service lines to homes.

TOM CROCKETT: To some degree.

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MOSER: Yeah, anything that's in the right-of-way.

TOM CROCKETT: Yes. But that's simply a location service. That doesn't tell you if it's in conf-- in conflict with what we're intending to build. That has to come in the design phase when designers are working with utility personnel as to specific locations of utilities versus we're going to lay a sewer pipe across this road and there's a fiberoptic cable there. Where do we need to put the sewer line so it misses the fiberoptic cable? Does that make sense? Whereas the diggers hotline is when we get on site, we just want a confirmation of where this line is. We're required to do that by law.

MOSER: So the owner of the property would have to come out with a jetter or something and--

TOM CROCKETT: He would have to have either from existing plans on where to-- where-- as-built plans as to where it was installed. They may have to do what we call "potholing," go out and use a vacuum truck to determine an exact location. You know, there's-- there's various means to locate.

MOSER: Yeah, I kind of see the problem. I just don't know the solution kind of causes me to wonder whether it's going to fix the problem or not, I guess.

TOM CROCKETT: It requires a lot of people to come to the table and work together.

MOSER: Yeah.

TOM CROCKETT: But in the interim, you know, this cost contractors a lot of money and it's reflected in bid prices.

MOSER: Thank you.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? So if you're going to describe the perfect construction project to me, how would-- what would you say, old utilities were moved before you show up?

TOM CROCKETT: Oh, yeah, that would be ideal, but I don't think that's realistic. But the perfect project would be one with little change or,

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when there is change, you know, the parties are all bought in and they all agree to what the changes are to be and the-- the most beneficial. Ideally, on a project where utilities exist, anything that can be relocated, it doesn't have a lot of-- that's-- that's outside of the roadway. The ideal-- the perfect project, and I think I would get concurrence with opponents to this bill, would be relocated prior to a project starting. There's certainly utilities underneath the roadway, there's certain things that can't be relocated prior to the start of a project. That's what the contractor-- we want to know what those utilities are and how long will it take a utility owner to relocate those utilities so we can build our schedule around that. That's what we're asking up-front.

FRIESEN: So--

TOM CROCKETT: Currently, we're not getting that as often as we should. It's costing us money, it's causing delay, and doesn't need to be that way.

FRIESEN: So sometimes you come in there and you start a project, you'll remove some roadway or something--

TOM CROCKETT: Correct.

FRIESEN: --and then you know there's going to be a break while somebody else comes in and does some relocation.

TOM CROCKETT: Absolutely.

FRIESEN: But you know what that is--

TOM CROCKETT: We know what it is.

FRIESEN: --and that timeline is set.

TOM CROCKETT: That's correct.

FRIESEN: But there's other projects where you were expecting the utilities to be moved, you get there, and they have not started.

TOM CROCKETT: Correct.

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FRIESEN: OK. Seeing no other questions, thank you for your testimony--

TOM CROCKETT: Thankyou-- thank you for your time.

FRIESEN: --Mr. Crockett. Proponents for LB339?

GREGG PERRETT: Good afternoon. My name is Gregg Perrett, G-r-e-g-g P-e-r-r-e-t-t. I'm president of Perrett Construction, from Valentine, and also a past president of the Nebraska Associated General Contractors. I've been in the highway grading and bridge construction business since the early '80s, and I'm here to support the LB339. I've got three projects that I'd like to just briefly touch on that have affected the-- the cost of the project and the schedule. Keep in mind, when a contractor is awarded a project, he has to provide a critical path schedule, and so I'm just going to read a-- a little language. I'll start with the Alliance South project. It was part of a continuation of the Heartland Express. Project got delayed, from bid date, almost a complete construction season in the Sandhills. So the project was allowed to start in the late fall, the grading and keeping erosion down all winter, as you can imagine in the Sandhills, was quite a challenge. But there was four different utilities that in the project specifications-- the "proposal" is what we call it-- says, and this is what we bid on, by the way, that they have existing communication lines that are within the project; no reply response has been received back from them regarding their location or facility contact with this project, so four different utilities that didn't respond to the department's request to locate and figure out what they have for utilities. One of them was a power line that had to be moved. Another one would be-- these are other groups, not-- not some of the original four. One had a fiber optic line that couldn't be relocated until the power line was moved. So then, at the very bottom of these comments, NDOT which many cities and villages, towns use their specifications, has a clause: all utility rehabilitation will be accomplished prior to or concurrent with construction. So that's their little catch-all. It says, well, when you come to go to-- when you bring your equipment, you know, we're talking about a 11-mile, four-lane grading project. We're ready to go and, you know, four utilities haven't even indicated that they're going to do anything, anything. They don't even come and tell you where their land is until you do the One-Call. And then-- then you-- everyone finds that, wow, we-- we can't start. What are we going to do? Another project just

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about 30 miles east of here, we called it Alvo North on N-62, done in two phases. The north phase was just a short stretch done in the fall. That winter, the power line was supposed to move. They were in the way the entire distance on the east side of the highway. We come back to next spring. In that-- in that contract language: prior to beginning highway construction, the district will construct a new water line and facilities. That was another problem. That wasn't done. But the power line-- let's see, I'm going to read about the power line-- has conflicts between its overhead power lines and the highway project. Prior to beginning project construction, power company will relocate its power lines to the new locations outside the limits of construction. We come to work the spring of that year and nothing had happened, nothing. The grading should have started from north to south. That's the way the quantities worked out. The culvert contractor had all his material scheduled to be built, the rebar for the box culverts, the steel culverts to be delivered north to south. We had to go to the south end and kind of hit and miss, jump around and do what we could, so huge delay on that project. I don't want to keep boring you with this, but one more and then I'll go on to something else here a little bit. This is a project east of Valentine called Niobrara Scenic River, kind of a small grading project. It was a project, I believe, the-- the department got federal funding, a federal grant almost 20 years ago to-- to work on this. So there's been a little time involved to maybe do some planning. Two different utility issues: I just had finished doing this Alvo project. I got delayed most of a year in this comes out for bid and the language says-- it tells you about the two-- companies and that they plan to have their lines moved and this-- so this proceeding information is for the contractor's information only. It's the contractor's responsibility to verify the accuracy of the information. All utility rehab will be accomplished prior to or concurrent with construction. It is the responsibility of the contractor, quote, to cooperate and coordinate his or her work with any utility work to be done concurrent with construction in an effort to complete both promptly. The contractor shall determine to his or her satisfaction the extent of utility occupancy and utility to conflict fac-- facilities located within the construction areas, including determining impacts and timeframes for construction. I read that after I had printed off the project documents and threw them in the trash. Am I going to be able to-- how can I verify time? I don't-- I'm not the owner. They're not

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on my land. They did not get any bids, so maybe it did affect the cost of the project. It dang sure affected the timeline. The second time, there was one bidder.

FRIESEN: Let's wrap up real quickly.

GREGG PERRETT: OK. I'm sorry. The department does have a utility agreement-- agreement. It's dated 2001. It's up to the district office to determine if there's any performance guarantee. The utility-- the permit allows the utility the privilege of placing their utilities on the highway right-of-way, and they shall be removed promptly by the owner at no cost to NDOT. That's already in their policy. They just-- there's no penalty if they don't, if the utilities don't move their lines.

FRIESEN: OK. Somebody--

GREGG PERRETT: I'll take questions. Thank you.

FRIESEN: Somebody may have some questions for you. Are there any questions from the committee? So in-- in some of these projects, I mean, obviously, there's unforeseen things that pop up, but this was not unforeseen.

GREGG PERRETT: Correct.

FRIESEN: You had four utilities that totally ignored the request to move them. So would it be-- again, in the case of most utilities, can they be moved before you even show up?

GREGG PERRETT: Yes.

FRIESEN: And so would it-- would it be safe to say that, you know, before you're going re-- be required to show up on the scene to start construction, utility work just needs to be done?

GREGG PERRETT: Yes.

FRIESEN: OK.

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GREGG PERRETT: You know, these utilities have budgets, they have plans also, and they need to know ahead of time when these projects are coming, and, you know, it--

FRIESEN: This-- this isn't a question for you, but sometimes these-- the owners of a project, they know a year ahead of time that they're going to do the project.

FRIESEN: Oh. Yeah, it's like the-- the projects east of Valentine that got a grant from-- federal grant, what, 20 years ago to do the project, so they've known for a while they're going to do the project, yeah.

FRIESEN: OK. Thank you. Are there any other questions? Senator Moser.

MOSER: So you feel like the contractors are having to assume too much responsibility for where the utilities are--

GREGG PERRETT: Yeah.

FRIESEN: --and moving them?

FRIESEN: Yes.

MOSER: And some of the examples you gave, the utilities were known to be there, but people just didn't get them moved.

FRIESEN: Or they didn't even show up to talk, you know, to talk about it.

MOSER: Yeah. So this bill really isn't going to help that.

FRIESEN: Well, it'll make them have a plan, and if it-- you know, they have-- their policy now, I read that sentence that says they will-- utility will move their line, pipe, whatever it is, promptly. Well, that's already-- the NDOT already has--

MOSER: Well, typ-- typically, if you're digging and you find an oil tank or, you know, something that you weren't planning on, isn't the owner usually responsible for those? They don't make the contractor pay for that.

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FRIESEN: No, they usually-- if it's something like that, usually there is a change where you have to remove an underground tank or something like-- something that's unforeseen that they find.

MOSER: Yeah, because there could be a lot of problems.

FRIESEN: But the department in the past has always said, as long as you-- there is any work that can be done on a project. So if-- if-- if I was there to put that tree in your yard and someone else was supposed to be on the same project, was supposed to put up the swing set, well, he didn't show up, so they-- they'll say, well, if that-- you cannot ask for standby time or any damages until the swingset's up, the grass, everything on that project is done. Well, that doesn't do much for a grading fellow with, you know, 20 or 30 employees and all the equipment sitting there waiting for various aspects of the project to get done.

MOSER: OK, thank you.

GREGG PERRETT: Thank you very much.

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

FRIESEN: Thank you.

BRAD WEGNER: Well, good afternoon. Appreciate your time, Senators and Senator Friesen. My name is Brad Wegner, B-r-a-d W-e-g-n-e-r. I'm the vice president and one of the owners of Midlands Contracting in Kearney. I have been a past board member of AGC and also the past president of NUCA of Nebraska, which is the underground utility contractors association in our state. I've been heavily involved in legislation to improve the 811 system, and I think many of you have seen my face up here before, so we can get to those questions if you have anything specifically how this relates to that. But I can tell you it does not relate to it in any way. And I know it's very confusing. We're using the terminology of relocating utilities versus locating utilities. This is about relocating utilities that are there, that we believe the owners, since they know about them, should deal with it ahead of the time before the bid happens, so I'll get into a

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little bit more of that. But I-- my company's involved in doing heavy highway projects, moving the pipe or putting in pipe and culvert-type things for Department of Roads or Department of Transportation. I also do sewer and water projects for municipalities and small towns all across Nebraska, so I've dealt with a little bit of both entities, not just Nebraska DOT. You've heard from my fellow contractors. We all have war stories. You know, the thing we're missing here, too, is the impact on the public, the-- the-- the traveling public, the taxpaying public, of the delays of these projects. Too many times they're being delayed, but nobody hears about it unless the news gets involved, and then guess who always gets blamed? The contractor. We never get to stand up there and say, hold on a minute, this is due to this utility or that. One of the things that happened with me, and this is a-- a recent project that happened this fall, it was on our project south of Franklin on Highway 10. We were there to extend pipe and concrete box culverts along the highway and-- because they were going to road-- widen the roadway. So we showed up and knew from the bid documents that there was a problem with Frontier having a cable running down the west ditch, the bottom of the west, ditch. It was on our plans. It-- there was quite a bit of verbiage that we got during the process. But I'll give you the timeline for what that-- that was. So on July 9, it said a letter to relo the cable-- relocate the cable was issued after NDOT contacted Frontier. That's July 9. September 15, two months later, DOT met with Frontier's representative and he stated at the time this is his first trip to the job and it would take him two more trips before he could come up with a relocation plan for that cable. About a week later, the project's bid. So, again, there's no contractor attached to this during those two earlier interactions. So now we've bid the project and the bid documents, like I said, showed that Frontier is in conflict in two locations. And they mentioned this letter of July 9, the letter had been issued to relocate. September 30, about a week later, the Frontier representative emails DOT with a plan for relocation. He then is highly proactive because two days later, on October 2, he calls DOT and says, did you get my plan? At that point he's told by the Department of Transportation representative that there will be a utility preconstruction meeting for this project in mid-October. Nothing is being done to relocate it. OK, July 9, we're now into October. So on October 13, there is a meeting and they do the-- the utility pre-- preconstruction meeting and they talk about everything that's been talked about today.

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Nothing's been done. So then comes November 10. That's the actual construction preconstruction meeting. That's where the contractors all show up and we discuss how we're going to prosecute the job, schedules, and the utility companies are there. And at that time, Frontier's gentleman says that they have a contractor to move the cable and it'll take him a week to week and a half. November 23 comes and my-- my company shows up on the job. At this time, we have to-- we do a few of the pipe extensions. We get to the largest box culvert extension and we're told the cable hasn't been moved yet, so we have to jump over it. So this is the end of November, first part of December-- good weather to pour concrete. That was our plan all along. But instead, we jump over. Late December, the cable gets moved and we end up getting the privilege of building a box culvert at the first part of January. So that point, we had to wait for days that were warm enough pour the concrete. I had to heat my forms. I had to use extra concrete blankets, and obviously I lost money. Our estimate is around \$12,000. Now how do I recoup that? I don't on that job, but I can guarantee you I do on the next job. I don't-- I bid that money in. And that's always the question for us when we see that utility status of you have a Frontier cable in your way, but we don't know when they're going to move it. Now here's my point. NDOT had six interactions with utilities, OK? One in July, two in September, two in October, and one in November, and they didn't get it moved till December because they think-- their culture is it's our responsibility as contractors once we show up on the job. See what we're missing here? Why do you-- why would it not save everybody money if you preplan and it gets done ahead of time? Because this cable was not under the roadway. It was just simply down the ditch. It could-- all it needed to be moved was ten feet and it got done too late, after we were on the job.

FRIESEN: Thank you, Mr. Wegner. Any questions from the committee? Senator Albrecht.

ALBRECHT: OK, so I appreciate you being here and that example was great. So why wouldn't you submit that \$12,000 change order to the folks that asked you to jump?

BRAD WEGNER: Because I'm required-- the documents say I'm required to coordinate that, so that's considered coordination.

ALBRECHT: But it--

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BRAD WEGNER: You define coordination.

ALBRECHT: OK, but--

BRAD WEGNER: I-- we can't plan--

ALBRECHT: --but that's what I'm saying. When we're talking about these utilities not coming to the table, I mean, to me, again, it's that triangle. If-- if they-- if it takes them that many meetings to determine whether they can or can't accommodate you-- and they've got to understand. They work with the weather elements and stuff, too, but I would just think that that utility company has to be a part of this. So if somebody is going to pay up, whether it be half them and-- I mean, you're waiting for them to fix it--

BRAD WEGNER: Right.

ALBRECHT: --or all of them. You know, if they have to pay once or twice, like you've all had to pay, that's how you're going to get their attention. But they should be a part of the-- the program, the [INAUDIBLE]

BRAD WEGNER: If-- OK, so one thing I'd tell you is that it's not a triangle you're talking about. It's actually an upside-down V because there is no contractual relationship between me and the utility.

ALBRECHT: You-- right.

BRAD WEGNER: It's simply the owner of the top, me over here, utility over here. There is no-- so I have no way to go to the utility and say anything, so I go to the owner. The owner will reject my change order. I guarantee it. It's already happened.

ALBRECHT: So-- so you-- you believe that this bill will make them take care of it for you.

BRAD WEGNER: Right. We're trying to make the owner responsible for getting the utilities that they've allowed to be on their right-of-way through a contractual right-of-way agreement with the utility. So they have an agreement and every one of them's got different agreements, but they have to take responsibility for whatever they let the utility

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do when they let them on the-- their right-of-way. I mean, they own the project.

ALBRECHT: And to drag their feet from allowing you to do what you need to?

BRAD WEGNER: Well, again, there's this argument that it's cheaper to let the contractor just do it during construction. Well, that's ridiculous. Preplanning is always cheaper and getting it out of our way, you know, when we don't have to deal with it and slow down or have these unknowns and try to quantify it in a bid.

ALBRECHT: Right.

BRAD WEGNER: It's always better for the owner to just have them move the ones they can. And there will have to be utilities that we have to tear concrete out or get-- get things out of the way for the utility to do it, but at least make the owners come up with a utility relocation plan. I'm talking a literal plan that shows this utility is here and it needs to move over here. That's not hard to do. That's what engineers get paid to do. I used to be an engineer. I used to actually do some of this kind of stuff, not specifically this, but my job was to take risk away from contractors. That way, the bid was lower.

ALBRECHT: Thank you.

FRIESEN: Thank you, Senator Albrecht. Senator Hughes.

HUGHES: Thank you, Chairman Friesen. So during the preplanning meetings, the-- the bids have already been let. You know, I mean, you've already got the contract. Is that-- is that correct, the timeline?

BRAD WEGNER: Not all of them. No, in this case, DOT had-- they had had the initial meeting to tell Frontier they're in the way back in July. September 15th, they met with him on site, and then we did the job September 24, so another week later. So DOT was doing-- and they-- and you got to give them credit. They-- this is about the best I've seen them precoordinate. It's just they never follow through with telling utilities to move. They wait--

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HUGHES: So--

BRAD WEGNER: --with no impetus to get it done.

HUGHES: And this probably may be a question that you can't answer and somebody behind you may be able to. But do they pay the utilities to come in and move or that's their expense, the-- the utility's expense, not the owner's?

BRAD WEGNER: That-- that depends on that right-of-way agreement that they have with the utilities. I-- I know a little bit about it, and it's-- it's case by case. Some util-- some owners of the right-of-way typically get the utilities to do it at their expense. That's the typical arrangement, I'd say, most of the time.

HUGHES: So if you have a-- a-- a smaller county or smaller, say, a city of the first class, they don't know if they've got the money to complete a project until the bids are let, because there's a lot of times that, you know, the bids are let and they come in, you know, \$200,000, \$400,000 over the estimate, so they don't do it, so how can they-- how can they require the utilities to go in and move things first before the-- before they know what the bid's going to be, whether they're going to even be able to do the project?

BRAD WEGNER: Well, again, yeah, that's always a risk. But the-- the point is that the owner has an agreement with the utility, a right-of-way agreement that allowed them to be on there, and that agreement spells out what the utility has to do when the owner tells them to move. OK? So that-- that can be established way before the project's bid. Right?

HUGHES: Can-- can the-- and this is probably not a question--

BRAD WEGNER: It's not part of the contract cost.

HUGHES: Yeah. Can they-- can a right-of-way move? So like, you know, if-- if I-- I have a-- you know, I'll grant you the right-of-way, you know, 100 feet from the center of the road and now your line needs to be moved 110 feet, so can the owner of the project move the right-of-way 10 feet with-- just at their own discretion?

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BRAD WEGNER: No, they'd have to buy that right-of-way from the adjacent landowners.

HUGHES: But so it's not their-- they can't force the utility to move--

BRAD WEGNER: And--

HUGHES: --to a new right-of-way?

BRAD WEGNER: No, and I'm not asking-- they're not being asked to move off the right-of-way. They're trying to be moved to a different part of the right-of-way. Again--

HUGHES: OK, but it depends on what the right-of-way agreement was when the cable or pipe or whatever was what it--

BRAD WEGNER: Right, yeah, what's the agreement at that point.

HUGHES: OK, very good. Thank you for coming in today.

BRAD WEGNER: Yep.

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

BRAD WEGNER: Thank you.

FRIESEN: --thank you. Any other proponents, LB339? Seeing none, opponents to LB339?

MOE JAMSHIDI: Thank you, Senator Friesen. Members of the committee, my name is Moe Jamshidi, spelled M-o-e J-a-m-s-h-i-d-i. I am the deputy director of operations and currently acting director for Nebraska Department of Transportation. I'm here in opposition to LB339. My testimony is actually based on the amendment-- amended bill. NDOT has worked very hard through the years to coordinate the balance-- I'd like you all to real-- to-- to key on the word "balance"-- to balance the competing interests of NDOT, the highway construction companies, and the utility companies that provide essential services to the public through the utility facilities in the public right-of-way. LB339 would dramatically shift a balance that has been developed over many years between these three interested parties to the detriment of

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the DOT and of the utility companies. LB336 does not look for a common interest solution. Instead, it create-- it creates new duties, new cost, and new risks for DOT. This adds risk. This added risk would cost the taxpayers millions of dollars in additional cost each year. Even as amended, LB339 would substantially increase the cost for NDOT to design and construct highway projects without providing any offsetting benefits to the contracting community to justify these added costs. This bill requires that every project over \$50,000 include a utility coordination plan. This plan has two parts: first, a plan depicting the exact location of the existing facility and its new location; and second, a schedule on which the utility operators will relocate their facilities. So here's the problem. Unlike the couple of DOTs that Senator Bostelman had mentioned, NDOT has no authority whatsoever to require the utility operators locate their facilities on our plans, to prepare a relocation plan, or to require the utility to set and abide by a schedule for relocation. The amendment-- the amended bill would leave NDOT with a substantial problem in precisely locating utility lo-- facilities. The One-Call Notification System Act requires only that the utility operators locate their facilities when there is an excavation nearby; therefore, utility operators typically do not locate their facilities for power plant planning purposes. NDOT would have to hire consultants to do this work. We estimate the annual cost of doing these surveys to be \$50-- to be \$5 million annually. In addition, the facility would need to be relocated to the exact location shown in the-- the relocation plans. As noted above, any deviations from utility coordination plan could cost DOT more change orders. LB339 would also require a precise utility relocation schedule as a part of the utility coordination plan. The bill would be-- if-- the bill would be read that if the utility companies' facilities do not relocate by the exact date stated in the utility coordination plan, NDOT might be obligated to pay additional compensations for the contractors' work. NDOT does not currently dictate, and we don't plan to, dictate the contractors, how they are to build a project and where they should begin the construction activities. Given the contract-- giving the contractors the latitude to determine their schedule, including being able to start early, allowing them best utilize their resources, resulting in lower bids. However, placing a rigid schedule for utility relocation in the bid proposal eliminates the ability of the contractors to start early and eliminate their flexibility, thereby reducing the amount of work they will be able to accomplish in

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the-- in a construction year. Also, LB336-- LB339 requires NDOT to create the utility coordination plan for a great number of pavement res-- restoration-only projects. These are the projects that we're only doing asphalt work on top of the-- the pavement. It is completely unnecessary to require a utility coordination plan on projects where there will be no utility complements. This is a waste of time, resources, and taxpayers' money. Please note that we have also handed out some additional facts about this issue, and I'll be happy to answer any of your questions at this time.

FRIESEN: Thank you, Director Jamshidi. Any questions from the-- Senator Moser.

MOSER: Well, we heard the contractor complaining before that they were building a roads-- or excavating for a roads project and that the utility didn't get the utilities moved. And I'm-- I'm wondering-- or I suppose that you have somebody who manages each project. Correct?

MOE JAMSHIDI: Yes, sir.

MOSER: And is it their job to kind of try to keep things organized so they keep moving?

MOE JAMSHIDI: Yes. So just to give you an exam-- a-- a feel for what we do, first of all, we don't think it's-- it's appropriate to pass a law for those few examples that you heard. Great majority, over 90 percent of our project-- projects we've done for years and years and years, we really never had an issue where we couldn't do a good coordination. Once in a while, things go wrong. In our schedule of work, we start utility coordination almost three or four years before the project is let. We're dealing with all these utility companies. We're asking them to do the right things. They want to do the right things. And once in a while, something will go wrong as we thought they were going to move it and they didn't move it and on time, because of their own scheduling, their own challenges, their own budgets, if you-- if-- if you will, or our project was supposed to be let early and it got let late, or we asked the contractor to build this project starting in August, the contractor requested can I start in May, and we said sure, and now, all of a sudden, we have a problem with utilities haven't been moved, so there are those bad examples. And I assure you, we hired a consultant three years ago, gave us a

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number of recommendations: What can we do to minimize these issues? And we're working with AGC to-- to work on some of those things, to-- to reduce those-- those type of delays. Is it going to be perfect? Of course not. But to sit here and say in a perfect world, we would remove all the utilities ahead of a job so contractors can come in and start working, that's so unpractical. Can you imagine telling your constituents that I'm going to close your road for six months to remove the utility, you have to detour or you have to go someplace else, and then the contractors are going to start six months later, close the road for another two years to build this. So we want them to coordinate. We want it to be concurrent and at the least amount of inconvenience to the drivers.

MOSER: So the right-of-way belongs to the state or the city or the county, depending on who owns the-- the road, correct?

MOE JAMSHIDI: Yes, sir.

MOSER: All right. So phone company wants to put a line in the right-of-way, so then you write an agreement with them, or-- or do you have a standard agreement?

MOE JAMSHIDI: We do. In fact, the agreement that the gentleman before me said that's going to be ready for 2022, it has nothing to do with this bill. That has to do with that agreement that we're writing with these utility companies that if I let you be in the-- in the public right-of-way, here are your obligations, one of which is that if we have to work on the road, you got to get out of the way at your own cost.

MOSER: Because those lines, I assume, would belong to the utility, right?

MOE JAMSHIDI: Yes.

MOSER: But they're on your property--

MOE JAMSHIDI: Yes.

MOSER: --or-- or the county's or the city's property. And right now, it's not clear who has to pay to move them, or does the utility always have to pay to move them?

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MOE JAMSHIDI: Good question. If a pro-- if they are in our right-of-way currently and we have to go widen that road or do whatever, it is their responsibility to move it with coordination with our plans at the right time. Sometimes when we widen the road, we have to acquire additional right-of-way, so we have to work with the utility companies to give them new location on the new right-of-way, so we have to wait until we purchase the right-of-way, until they can provide their plans and they can move it to the new location, but it is at their cost.

MOSER: So if they're in your way, they have to move at their cost.

MOE JAMSHIDI: Yes, sir.

MOSER: What do you do when you have utilities that are financially strapped and can barely keep their doors open anyway--

MOE JAMSHIDI: Such a good question.

MOSER: --and then you want them to move utilities? Because I know that happened in Columbus, not when I was in office, just lately. They wanted to widen the road and one of the phone companies has lines in the way and they-- they know they're there because they're hanging from poles, some of them are buried, but they're in-- a particular company, I believe, is in bankruptcy, and so they're having a little trouble getting things done. Do you have any solution for those kinds of problems or what do you do when [INAUDIBLE]

MOE JAMSHIDI: Well, OK, so that goes back to our amount of authority we have over dozens and dozens of utility companies. Remember, a lot of these utility companies, they buy each other out. They-- some of them don't even know what they have underground until we get started with our projects. So if they are in-- in-- in financial problems where they cannot budget, they don't even have to be in financial trouble. Sometimes they budget annually so much for these relocations and they just can't fit one of our projects within their budget. We have to work with them to accelerate it in however we can. But, yeah, those are-- those are the challenges we have all the time. We have to work case by case, company by company, and most of the time we come up with some good, reasonable process. But again, this bill basically puts everything on-- on the DOT and utility companies and it never

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says that, what if the contractor changes their mind, they're going to work here on their schedule and utility is ready to go on June 25 if they do, and then all of a sudden contractor starts from the other end, it doesn't say what-- who-- who's responsible to pay the utility companies if they are, you know, forced to change their schedule. So I just-- I just find this bill to not be a bill that allows people to continue to work together to solve a really complex problem.

MOSER: Are utility companies are required to post any kind of bond or anything when they go in your right-of-way?

MOE JAMSHIDI: No. The only bond that they used to put, and we took that away from them, is that when they come in the right-of-way, they have to leave it as good as they left it. Sometimes utility companies will come in and destroy things and we don't have that requirement anymore because, by and large, they're doing a good job. Remember, as a DOT, county, cities, we're required to allow the utility companies to be on our right-of-way as long as they abide by the--

MOSER: Can you tell them where to-- I mean, how to do their business? I mean, can you say, gee, we would like that line closer to the property line and not in the middle of the ditch or--

MOE JAMSHIDI: Yes, that-- those-- those are all requirements of the-- of the-- the-- the agreement. So, for example, we just had one-- I just signed one of the agreements not too long ago. They wanted to be really close to the edge of the road. We said, no, there are just too many risks; every time we do something, we're going to have to come and relocate.

MOSER: You put up a sign or something and you hit it?

MOE JAMSHIDI: We-- we told them go by the right-of-way line, and they did, so we have-- we put our stipulations in there and-- and we work with them to make sure it works for both of us.

MOSER: You can see the contractors' problem though?

MOE JAMSHIDI: Absolutely. And in fact, we've had meetings and they know, the people behind me. In fact, this is probably the first time we've ever been on two sides of one issue. We work everything very well together. But this is the one that I think it's a very simple

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solution to a very complicated problem that could lead to higher utility bills across the state. If the utility companies have to do all of these things that we cannot make them do, they're going to charge somebody if they have to do all this work.

MOSEER: But there are more and more utilities all the time. There's more fiberoptics. There's still copper lines. There's coaxial cable. There's AC power.

MOE JAMSHIDI: Exactly. It's a-- it's a complicated situation.

MOSEER: Do you see any solution to help their cause, I mean, say this bill, you know, for whatever reason doesn't proceed?

MOE JAMSHIDI: We are working, Senator, on a number of solutions. There are some cases, and I think a gentleman just before me point to it, that we need to find a way to compensate the contractors when the things are really out of their control, out of our control, and it makes, really, sense. I think there's some language we can work out. The-- the question was, what if we went to start a project over here that we didn't know there was this line even there? We always change order and pay extra for the surprises where we didn't know. Is there room to do more of that? Absolutely. We-- we want contractors to be profitable. We want as many contractors to bid on a job as possible, so it's really counterintuitive to think that we want to put a lot of risk on them. But it-- but when--

MOSEER: Because they're going to charge more for that risk.

MOE JAMSHIDI: They do. Risk is equal to money. But the-- the-- the problem becomes is, if-- if I-- so if this bill passes tomorrow, I lit-- we-- we literally have to guess at when do we think the utility companies are going to come and relocate. We've got to pick a date right literally out of the air. So I say June of 2020, June 15, they're going to come out there because they will not commit to anything, because by law they don't have to commit to anything, because they know if they commit to any date, then they'll be
[INAUDIBLE]

MOSEER: If they don't do it, then it creates liability for them.

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MOE JAMSHIDI: Right. So they will say, we will work with you, we will create our plans, because, remember, many of these utility companies have to hire a third-party contractor to do their work. Most of them do their own work, so they have to go let their own projects, have their own plans, so they need to have our plans in advance. It's really a three-legged stool where DOT contractors and utility companies have to work together to make this work. So if I'm guessing as a-- at-- at a date and if that date doesn't happen, taxpayers just end up paying for my guess to the contractor that says, it's June 20 and they're not here, even if they don't need to be there, even if they-- they're working someplace else, even if there is no cost to them, but they can theoretically come after the DOT, say, you said this line is going to move and it hasn't moved, pay up, and I just don't think that's a good risk to pass to the taxpayers.

MOSER: OK, thank you.

MOE JAMSHIDI: You're welcome.

FRIESEN: Thank you, Senator Moser. Any questions? Senator Hughes.

HUGHES: Thank you, Chairman Friesen. Thank you, Mr. Jamshidi, for coming. So you just said you can't lock the utilities into any kind of a date, but yet your contracts that you let to the contractors, there are dates in those, aren't there, start date, completion date?

MOE JAMSHIDI: No, actually, we gave the-- we give the con-- here's the-- here's the biggest problem. At the time of letting, we don't require the contractors to tell us exactly how and what their schedule is going to be. They're supposed to, after they [INAUDIBLE] bid, get the project, give us their schedule, saying I'm going to start from north, go south or I'm going to do-- you know, build this thing, second thing, and that schedule is subject to change many times. So for us to come up with a guess as to when the utility company is going to be there to concurrently remove this, without having the contractors scheduled prior to bidding, we won't even know when the contractor is going to be ready for the utility company to be there, so it's really asking us to do the impossible.

HUGHES: Is-- is it a fact that there's a certain amount of contractor work has to be done before the utility can relocate?

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MOE JAMSHIDI: We try to do as much contractor work in advance. No, what-- some contractor work, it depends on the project, Senator. It depends. For example, I said earlier sometimes we-- we say the contractor, your starting date is June 1. But contractors come in and ask us, hey, I got people, equipment available, I want to start in May, starting driving some piling for the bridge and what have you, can we do that? We put in there, you know, if you got to be around any utilities, these guys aren't coming-- they told us they're not going to be there until June, and-- and things like that. That's what we coordinate. We work those kinds of things in advance, so they could do some construction work prior to utility being moved in those cases.

HUGHES: OK, thank you.

FRIESEN: Thank you, Senator Hughes. Senator Albrecht,

ALBRECHT: Thank you, Chairman Friesen. But, OK, so you're telling me, though, that-- that you have no authority as a state to require these utility companies to do what you want them to do or in a timely fashion?

MOE JAMSHIDI: That's correct.

ALBRECHT: But yet you are the ones that write the agreement with those utility companies to allow them to come in, in the first place, right?

MOE JAMSHIDI: That's correct.

ALBRECHT: So is there any reason why that you couldn't-- you've got-- you've got an amendment right here. I mean, you-- and you're saying their facilities-- you can't require those operators to locate their facilities for-- for our plans or for the plan that you have to prepare and relocate the plan or to require the utilities to set and abide by a schedule for relocation. If you just have-- have that in your agreement, you would think they would have to do it in a timely fashion to-- to take care of your needs so that you don't have to have a problem when it comes to construction. If you give them timely dates and--

MOE JAMSHIDI: Right.

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ALBRECHT: --reasons why certain things have to be done at a certain time, I mean, I would think that that in itself would bring them to the table to be able to work and coordinate that three-legged triangle that we're talking about.

MOE JAMSHIDI: Right. I think in-- in a perfect world, when they sign a contract or sign an agreement with us and say, let us be on your right-of-way, and if you move-- you need us to move, we will move at your schedule and when you tell me. In a perfect world, I-- I think that would happen. And most of the utility companies are very responsible. They work with us to make that happen. But in reality is we get to them-- and let me just give you an example. A-- a project is let, is scheduled, say, for two years from now. Right? And we start giving them plans: Here's what we're going to do, start designing your plans, where do you want to go? And then we need to buy some right-of-way for them to move into. All of a sudden, we hit a snag and we can't buy that right-of-way. We have to go to condemnation and in the courts we get. So now they're-- they're ready and we're not. So we ask them to work with us. We delay the project six months. They have to stop what they were doing, go work on something else, and they come. So it-- there has to be a lot of give-and-take, and the same with us. We say, I really mean it, I want this project-- this stuff moved next June of 2021. And they say, you know, that last project I moved all of my stuff over there, I really can't be there in June because my budget is out and I have to go get more money and I have to hire a different contractor, so it's really a give-and-take between us and we do the best we can.

ALBRECHT: Do you-- do you think the state has an excessive amount of change orders because of this?

MOE JAMSHIDI: I don't-- no. No, we don't. Perhaps maybe we should have a few more. That-- that's the part that I'm working with the ACG to find fine line in the law, in our specifications that right now it's pretty clear. Certain change orders would automatically not be approved for consistency purposes but because we have-- we signed a contract. I think there are some other cases we can loosen that up a lit-- a little bit to reduce a little less risk for them, for the contractors. Remember, you-- you-- you don't see anybody from utility companies here. Contractors have their own challenges> When they come to a major project, I'd like to believe they have a perfect schedule

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that they know when they're going to start, when they're going to go. But there's also a lot of horror stories when the utilities show up, hurry up and wait, because contractors or their subs are not ready. So it-- it's really a give-and-take process, and I just wanted to address some of the-- some of the things that Senator Bostelman said. There are a few states, like Wisconsin, where the-- the utility law is-- is a lot stronger than here, where the DOTs can tell them when to do, what to do, and how to do it; and if they don't, the-- you-- DOTs, the owners, the counties, the cities can go after the utility company. We do not have that here in Nebraska.

ALBRECHT: Thank you.

FRIESEN: Thank you, Senator Albrecht. Any other questions from the committee? So do any of the utilities pay to be in the right-of-way? You can't charge a franchise fee or an occupation tax?

MOE JAMSHIDI: No, we-- we don't--

FRIESEN: Do they-- do you charge anything for being in the right-of-way?

MOE JAMSHIDI: No. We are required to allow them to be in the public right-of-way if they meet the requirements of the agreement.

FRIESEN: And you-- you tell them where to locate in the right-of-way?

MOE JAMSHIDI: Exactly. We-- we tell them to be there, to put it 3 feet below the ground or 48 inch below any kind of drainage pipes and things, and they hire their contractors to place it. And-- and to be honest with you, we have to sometimes go survey it ourselves because they might be three feet, there might be two feet, they might be four feet.

FRIESEN: So what kind of-- what kind of authority do you have? Do you have any authority to make them move whatsoever?

MOE JAMSHIDI: We do have authority because the-- our-- our agreement says that we-- they have to move and we don't want to get into litigation with them. But we do have an agreement that if they are in our right-of-way, they have to move if we ask them to move, if they are in conflict,

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FRIESEN: Does there need to be legislation passed that sets a date from when they're notified to when it does get moved?

MOE JAMSHIDI: I think if you put a legislation for that, it will be a lot like this legislation, unfortunately, that then-- then then the owners are going to then be exactly perfect too. We-- we can delay our projects. We-- when we say we need to remove it, they have to remove it, and I think there's-- we can talk about that. You know, I've-- I've suggested-- and in your write-up, you probably read that I'd really like to get a task force together with us, the utility companies, AGCs, and identify some of the things that we might come to you later and say, you know what, we're ready for something that forces all three parties to do something more coordinated. I just don't know, Senator, at this point what that would look like.

FRIESEN: Well, it-- it looks to me like we need consistency, because if I'm a contractor and I'm going to move \$2 million worth of equipment and a bunch of people into a project and they're going to sit there for two months, I'm not going to be happy and it costs me money, so-- and again, not knowing when I'm going to have that happen, you say most projects just move smoothly, but if all of a sudden it does happen, somebody should make things right with them. I mean, I-- you bid on good faith, and yet you're saying nobody has the authority to make sure this all happens, we just all work together. Well, seems like everybody's working together except the contractor.

MOE JAMSHIDI: I totally agree with you. I-- I totally agree with our contractors that we need to minimize the risk for them. This is not about disagreeing on what the problem is. Every national conference that I go, the most complicated thing about building a highway project is utilities. Everybody will tell you that. It's because there are so many competing interests and utility companies want to manage their rates based on the-- based on the amount of resources they have and DOTs want to have flexibility in their schedules. And un-- unfortunately, once in a while, a project will go south and everybody loses. So we need to find a solution, but I don't think we're going to make it perfect, but we have to make it better.

FRIESEN: Have you ever forced a utility to relocate and then before the project was done, they had to relocate again because--

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MOE JAMSHIDI: Yes, we have.

FRIESEN: --they made a mistake?

MOE JAMSHIDI: Yes, we have. And-- and those kinds of things happens and we end up paying for it. If the utility companies are not in our current right-of-way, sometimes they're-- they're out there and they're not in our right-of-way. And now we want to-- we've bought the land because we want to widen the road and we're going to say, well, you have to move, they will say, oh, I'm not in your right-of-way yet, so limited we can do there until we actually acquire the land, acquire the easements. So those kinds of complicated things can happen that really needs to be dealt with individually. So I'm not here to tell you we don't have a problem in our industry when it comes to utility. I'm here to tell you this legislation will make it more difficult, even worse than it made people think may-- may-- already is, is just going to be a risk to the-- to the-- to the taxpayers on things that are not necessarily-- need to be-- need to be done. That's-- I would have to-- like I said in my testimony, about half of our projects, of 150 projects a year we do, Senator, it-- in half of them don't even-- we don't dig-- we don't have to have anything underground. We just mill two inches of asphalt and put TNT. And this requires me to go do all of this survey ahead of time for-- for what?

FRIESEN: OK. Thank you. Any other questions? Seeing none, thank you for your testimony.

MOE JAMSHIDI: Thank you so much.

PAM DINGMAN: Oh, the familiar smell of disinfectant. Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee, my favorite committee. My name is Pam Dingman, P-a-m D-i-n-g-m-a-n. I'm a licensed professional engineer in the great state of Nebraska and the current Lancaster County engineer. Today I'm testifying in opposition of LB339. As a licensed civil engineer in the state of Nebraska, over the last 25 years I have constructed thousands of projects in areas of more than 25,000 people that cost more than \$50,000. Existing utilities have been a constant challenge during this time. Over the years, the projects I have been involved with have required the relocation of what communication lines, high-pressure jet fuel lines, overhead transmission lines. The

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average civil engineering project has somewhere around 400 steps. If you do not miss or skip a step, your project generally goes very smoothly. The exception is utility relocation. Honestly, on the surface, it seems like such an easy challenge to overcome with prior planning. The Lancaster County Engineering Department takes the following steps when preliminary planning, engineering and constructing in a right-of-way. We host monthly utility meetings for telecommunication-- for the telecommunications industry to communicate relocation needs on current projects. Lancaster County creates the agenda and keeps the minutes for these meetings. We create maps a year in advance that are shared at utility meetings and with utilities in advance. We notify utilities and request information on their existing location. This is an attempt to determine the horizontal and vertical location of existing utilities. We conduct topographic surveys with utility locates to ensure-- ensure that we have the correct existing information on the plans to the best of our ability. This gives the horizontal location of existing utilities. We send construction plans, once we have completed them, to utility companies so that new-- new utilities can be relocated to an area that does not conflict with construction. In addition, we state the limits of construction if the utilities request. We invite the utilities to our project preconstruction meeting and we continue to coordinate with them to ensure that the relocation takes place as promised. These are standard steps that are mostly about communication. During my tenure as county engineer, I've strived to improve the notice given to utilities to reduce delays that are costly to the public and to the contractors who construct our many projects. I will humbly tell you that Lancaster County on average has eight pipe culverts and two bridges a year that fail. For these projects, the process I outlined may become compressed. I would like to share with you a story of one of our projects, Bridge F-88, located on North 14th Street, about three miles outside of the Lincoln city limits. We completed these plans seven years ago. Approximately five years ago, a fiber communications line was permitted in the right-of-way by the bridge that we planned to reconstruct. We conveyed those plans to utilities so that the line could be installed outside of the limits of construction so that we would not conflict in the future. In March of 2020, we notified the utility that we were going to replace the bridge. We notified them again in April of 2020. In mid-July, they requested plans. We forwarded the plans to them again, I might add. The end of July, they

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requested plans a third time. We sent the plans to them again. In August, we began to meet with them monthly to talk about the relocation. And in September and in November, they insisted they would be done by the end of the year. However, in December, they didn't complete their job. We're still waiting for them. The job is bid and it's supposed to start March 1. We actually completed the restoration of saline wetlands and an endangered habitat in a shorter period of time than we could get this line relocated. This happens many times. In fact, it's happened-- I-- I probably have ten similar stories. In addition to the many util-- many times utilities do not know exactly how deep their lines are or they have not stalled-- installed their lines per the requirements of the county. Many communication lines and fiber are bored into the ground, so it's difficult to determine their exact depth later. I believe as county engineer that it is best practice to coordinate with utilities early in the design process to ensure the success of a project. It continues to be disappointing that many utilities do not respond or promise relocations that are delayed four to six months. However, I also believe that counties can simply not be required to take responsibility for utilities and the delays they cause. There is a problem with utility relocation. If the-- if the utility has been notified, they need to relocate without delay. Delays of four to six months from the original scheduled relocation can cause our projects costly delays, are damaging to many small businesses that support our organization, the traveling public, farm-to-market routes and school routes. As an elected official, I understand how truly valuable your time is, and I would like to thank you for your time today.

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

HUGHES: Thank you, Chairman Friesen. Thank you, Ms. Dingman, for coming. So what percentage of the projects that you work on do you feel are delayed because of the utilities failing to do their part? Just a-- just an-- a guesstimate,

PAM DINGMAN: You know, as an engineer, we always want to have an exact number, I would probably say at this point it's probably 40 percent, but I'll also say that it's probably 75 percent of our larger projects. So if it's simply a pipe culvert in a county right-of-way that's, you know, 24, 36 inches in diameter, there's typically not too

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big of a delay. But in the last year, nearly all of my bridge-length box culverts and bridges have been dis-- have been delayed by utility relocation. And my frustration is, is we have notified them oftentimes more than a year in advance.

HUGHES: Thank you.

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

PAM DINGMAN: Thank you for your time.

ELIZABETH ELLIOTT: Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee. My name is Elizabeth Elliott, E-l-i-z-a-b-e-t-h E-l-l-i-o-t-t, and I am the director of Lincoln Transportation and Utilities Department. I'm here today to testify on behalf of the city of Lincoln in opposition of LB339. Although we oppose LB339, we would be open to discussing a bill that would be beneficial for all parties involved. That was-- was testified earlier by both the state and the county. This is something that has been a frustrating problem for all of us, and so we do believe that there is room and need for further discussion. However, as the bill is currently drafted, it places all responsibility and liability on the municipality or the owners, the states and the counties, for all damages or delays, regardless of what caused or who caused the damage or the delay and whether or not that was even within this city or the owner's control. This will result in extending the time it takes to complete projects and create significant cost increases for municipalities and other owners. First, not all utilities are controlled or maintained by municipalities. As such, municipalities must rely on information provided to them from the private utilities such as gas and telecommunications. This bill requires that the utility plan include the date or date-- dates such facilities will be relocated or removed. Because these utilities are not under the control of this city, we cannot force the utility company to do work on a certain day. All a city can do is tell the utility company the timelines and ask that they provide us information or relocate their assets by a certain date. There are many times the utility companies do not relocate their assets by the given dates. As Ms. Dingman had just testified, we've also experienced similar issues on a number of projects. However, under this bill, the city would be liable for this

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delay, even though the city has acted reasonably and did absolutely everything we could to get the-- the utilities moved on schedule and provide accurate information. Second, Mr. Wegner earlier testified that this bill comes-- only covers relocation. However, as written, that is not my interpretation of this bill. This bill specifies that we must state location, the specific location, and the elevation; and whether or not there's any relocation, we must provide the dates. So I do believe, as written, this bill is broader than just the relocation services. And because of that, we are dependent on the private utility companies to provide accurate and timely information about the location of their assets. Utility companies often don't know exactly where their assets are. They know the area, but they may not know the elevation. There are many assets that have been underground-- underground for decades going back to the early 1900s. And although we have some records, we do not have specific records even for our water lines and our private service mains, so although we know the general area, we may not know the exact depth or elevation. Underground utility locations cannot be fully and completely determined without complete uncovering of the entire utility within that project area. This is economically unreasonable and essentially impossible. As a result, often the information from the utility companies does not include those specific details. Therefore, to determine the specific location of the utility, the city would have to conduct subsurface utility engineering, or SUE, activities during the design process, which will likely result in longer periods between the start of project design and when the project is ready for construction bidding. The additional time could add as much as a year to design phase. The city of Lincoln, like the rest of the nation, experiences-- experiences approximately 5 percent increase in construction costs each year. By adding additional time to the design, the cost of the projects will be higher. Additionally, the cost of SUE activities will also increase the costs of projects because a municipality will be required to hire a firm to complete an investigation to determine the exact location and elevation of utilities. This concept can be great for owners, engineering companies, utilities and contractors when we're all working in partnership. However, this bill, as written, does not foster a partnership; instead, it pushes the entirety of the liability and responsibility onto one partner, the owners, and ultimately the taxpayers. So with that, I would be open to any questions you may have.

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FRIESEN: Thank you, Ms. Elliott. Any questions from the committee?
Seeing none--

ELIZABETH ELLIOTT: All right. Thank you.

FRIESEN: --thank you for your testimony.

ELIZABETH ELLIOTT: Thank you.

LASH CHAFFIN: Good afternoon, members of the Telecom-- the Transportation and Telecommunications Committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I represent the League of Nebraska municipalities. Cities are a bit of-- in a bit of a unique situation when it comes to these issues in that we're all of the affected parties. Cities own things under the ground. They own water and sewer pipes, electric lines, things like this. They're also-- sometimes cities do their own construction, so they do excavations, they do those sort of things. And thirdly, and possibly there's-- there might be a fourth issue also. But thirdly, we also let street projects as-- as anticipated in this bill. And trying to balance those is something that city officials do every day. And by and large, this-- this particular bill has heated up my phone a lot over the last few weeks and I-- and there's a couple of things. One, everybody acknowledges this is a problem, and thank you for bringing this forward. This-- this is a huge issue, particularly cities that do a lot of their own construction. They show up all the time, and particularly big out-of-state utilities that have been bought and sold 15 times have no idea that they were supposed to move them, even identify their underground facilities, let alone move them. And so this-- this is an issue. This is a frustrating issue and this is something that there's probab-- there's probably merit in finding a solution to this issue. Unfortunately, this bill just doesn't-- doesn't get very far. And the answer of, well, right-of-way agreements should cover all this, that-- that-- that really doesn't work. Most of this data is not in the city's hands. I assume it's not in the county's hands. I assume it's not in the state's hands either. Some of those right-of-way agreements go back 100 years. And, you know, this is just-- they didn't really anticipate the year 2021 and they're-- that data is just not in place to-- for a city to work up a utility coordination plan short of spending an awful lot of money to get it done, then I'm not entirely sure it would even be successful at that point. So I-- I-- I guess

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this is a big issue. I'd like to see it fixed. I'm not sure this is the solution to-- to fix it, but I would-- I would work hard. I would certainly pledge our support to try to work with people to try to find a solution to this-- this issue, and it's a frustrating issue, so, certainly answer any questions.

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

LASH CHAFFIN: Awesome. Thank you.

FRIESEN: Welcome.

LUCAS BILLESBACH: Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Lucas Billesbach; that is L-u-c-a-s B-i-l-l-e-s-b-a-c-h. I am a licensed professional engineer and I'm a principal with JEO Consulting Group. Today I am here representing the American Council of Engineering Companies of Nebraska as legislative committee chair to deliver comments on LB339. We are the ones who develop the utility coordination plans that are being developed today. While we agree that there are long-standing significant issues with the process of utility coordination, we are opposed to LB339. This bill does not address the problem, which is the need for utilities to accurately locate their buried utilities early in the project lifecycle so that the cost and delays of utility conflicts found during construction can be avoided. The most important issue we have with LB339 is it shifts the liability of accurately locating utilities to the project owners and will create a wide range of unintended consequences. The idea of a utility coordination plan is not a bad one, but there is no language in this bill, nor any further incentive for utility owners to provide any more accurate data during design than they are at present. Currently, when our members request utility location from utilities during the design process, utility companies do not mark their utilities in the field. We are often provided very basic maps that do not provide the level of detail to properly plan for avoidance or mitigation. One quick example. We did a water main project for an entire community. The telecommunications community that existed provided a map for that entire town that showed just a single line down the street with no information even on what side of the street that utility was located. Without accurate information that can only be provided by utilities,

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utility coordination plan mandated in LB339 would be impossible to produce without significant expense and liability by project owners to locate those utilities through exploratory methods. The implications of this bill are great. Utilities are located throughout public rights-of-ways controlled by the state, counties and municipalities, and in both urban and rural areas. Unattended--unintended consequences of this bill will be significant project delays, increased project costs, and a misuse of public taxpayer money to protect utility companies and contractors from liability. ACEC Nebraska has a strong relationship with the stakeholders who have an interest in this issue. Our members are eager to work with an industry group to address this topic and arrive at a solution that will work for everyone. But it cannot be done in a vacuum. All stakeholders must come to the table: utility owners and contractors, project owners from the state, cities and counties, along with engineering consultants. We believe our industry can play a larger role in utility coordination, but only if the risk of doing so is still properly owned by the correct parties. ACEC Nebraska represents 50 engineering firms doing business in Nebraska. ACEC Nebraska initiatives create an enhanced business climate for our members. Members are engaged in engineering construction projects that propel Nebraska's and the nation's economy and enhance and safeguard America's quality of life. Thank you for the opportunity to appear before you today. I'm happy to answer any questions that you may have.

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

LUCAS BILLESBACH: Thank you.

FRIESEN: Welcome.

JACK CHELOHA: Good afternoon, Senator Friesen and members of the committee. My name is Jack Cheloha. That's spelled J-a-c-k; last name C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha and I want to testify in opposition to LB339 this afternoon. First and foremost, whenever the city of Omaha puts out an RFP or lets contracts, we don't want any delays and we don't want any cost overruns because we have to be mindful that that's being paid for by the taxpayers. And so with that, we tried to do, you know, utility coordination and put those within the bid specs in advance of the

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project, even, you know, incubating and starting out. But we understand that there's still a problem and sometimes you run into, you know, utilities that aren't dia-- diagramed or within the plans or whatever. And so we need to be-- be cognizant of that, but yet, at the same time, we don't think LB339 is the answer because it puts all of the liability back on the city of Omaha or the state of Nebraska or whoever the owner of the project may be. I wanted to maybe give you a couple of comments. As-- as I sent this bill out to my public works department, you know, I get some feedback. They typically say we already coordinate with utilities relative in making sure the utilities are identified as part of the construction drawings. I don't believe that cities should compensate a contractor for mistakes made by utility companies. Conflicts with utility-- utilities should be between the contractor and the utility company. That was our public works director's comments. And then regarding the amendment that was filed, we did take a look at that, too, but we didn't-- we didn't think that that offered enough relief. Anyway, in terms of the new inserted section, the amendment allows for an exception to the need for a utility plan if the Nebraska Department of Transportation has an emergency on the state highway. It does not allow that same exception for any other road type, so that does not help municipalities or counties at all. It seems like, there-- you know, there may be an exception offered there, but as you heard from testimony from the department, it-- it's not enough for-- for them even to be satisfied. So I just don't think LB339 is the answer to the problem. It--it seems to me that, you know, the contractors are looking for protection and reimbursement to handle, you know, their needs and concerns. We get-- that still leaves us in the lurch. One last thing I want to point out, in Omaha, in particular, we've set up-- or I'm sorry, the-- excuse me. The state of Nebraska has set up a number of political subdivisions that manage some of our utilities. For instance, the city of Omaha, we may be responsible for the streets, but we-- our only utility that I'm aware of is our sewer system. Water and gas is provided by the municipal utility district, which is a separate political subdivision. The electricity is provided by Omaha Public Power District. And then when you get into broadband and-- and fiber and telephone and things like that, it's a number of private companies well within the right-of-way. So that's a lot of coordination that needs to take place. You know, we'd be-- we'd like to be involved if there's a

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negotiation going on, but we don't think LB339 is the answer and we oppose it. I'll try to answer any questions

FRIESEN: Thank you, Mr. Cheloha. Any questions from the committee? So are-- are you concerned at all on, when you get bids, that contractors are padding their bids because they never know when they'll run into one of these projects that's delayed?

JACK CHELOHA: Well, I would think that that is the concern, and so better coordination would-- would help us if that's a possibility. So in the end, it seemed like somebody has to pay for it. I'm just here to say I don't want the city to be the only one responsible.

FRIESEN: I-- I-- I mean, I think I understand that. I agree with that portion of it. But again, how do you-- you know, agreements have been reached with utilities long ago. Contracts have been signed, and so do you have a solution to how this could be, I guess, made better?

JACK CHELOHA: Sure. I thought about that. And as I sat there and listened through the hearing, it-- it seems to me, you know, like with anything, communication is going to be the key. In advance of a project, you need to try to get all the relevant parties together or at least get their input and know-- know who's there and what utility or lines they do own. And I don't know a lot about contract law, but it seems like we also have project managers, and it's typically their assignment to, you know, deal with the next step within the contract. If it's time to move this utility, then they usually handle that and coordinate it and-- and not only a project manager for the owner, but also the general contractor who won the bid. So, I mean, I think that's the key to it, I really do.

FRIESEN: Do you ever have utilities that just constantly always fight you on the timeline or--

JACK CHELOHA: I don't necessarily want to say they fight us on it, but they-- but they run into problems whether-- whether they have to hire independent contractors to do the movement or if they have their own contractors they-- they're trying to juggle various projects at the same time. And-- and once again, it's-- it's coordination and the communication, just like a general contractor can have more than one

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project let at the same time, too, and they have to be able to get their staff in the right place at the right time, so.

FRIESEN: OK. Seeing no further questions, thank you for your testimony.

JACK CHELOHA: Thank you.

FRIESEN: Any other opponents wish to testify on LB339? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Bostelman, we do have in lieu of person testimony or-- support from Russ Westerhold, National Utility Contractors of Nebraska; support from Sean Kelley, Nebraska Internet and Television Association; opposed from Tip O'Neill, Nebraska Telecommunications Association; opposition from Jon Cannon, NACO. We have position letters of support from Nebraska Building Chapter AGC; opposition from MUD; opposition from city of Grand Island; opposition from the city of Grand Island Public Works--of them is the city administrator and opposition from United Cities of Sarpy County.

BOSTELMAN: Thank you, Chairman Friesen. It's a-- thank you for everybody to come in and testify today, appreciate the conversation, those here. I take this a couple of different ways. One way sounds like we've got a lot of work, we've got a lot of-- a lot of bills to drop to give some people some authority to do things that need to do, to make people accountable for what they're doing. Having said that, for four years, we've heard about One-Call; think Senator Friesen, Senator Hughes, probably six-plus years we've heard about contractors, utilities, One-Call, talking about claims, AG. In fact, I think we have at least one bill in the committee right now that talks about this situation with utilities being cut by contractors. So this is another opportunity to take a look at how we do construction on our roadways. A couple of things were brought up during some testimony. It was on page 2 of the bill, line 11 and 12. It says in here the project conducted under such contract and the date or date such facilities will be relocated or removed. It is not precontract, preconstruction; it just identifies-- part of the plan is, is communication identifying where those utilities are and when you're going to move them. I have plans. Here's Wisconsin. Here's Minnesota. I have New Hampshire. They deal with all the arguments, I think, that were made here today and why we can't do it. It's too hard. We can't do it. It's going to cost

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us too much money. It's being done in a lot of other states. It's being done in other cities. Owner liability: Not being the lawyer here in the room, however, my understanding is, is that on a project the owner is-- owner is the responsible person for that work being done. So if there's any claims to be made, i.e., u-- against the utility, that has come to the owner first, then the owner decides on that claim, then the owner goes against-- say it's the contractor or the utility. That's how that works. So there is a liability avenue that this makes. Is that something that we need change in statute? I don't know. Is that a question we need to address? Perhaps. So when someone comes up and says it's-- I understand when they say, we don't want to be liable, but if you're not liable, who-- you're not responsible, who is? If the owner of the project isn't the one that's responsible, who is responsible? If nobody is responsible, then no wonder we're not getting our highways built. So we do have some cities that do-- have done this and done this very well. We have some that may be doing a portion of it and doing it pretty good. But overall, what we're talking about is planning. It's a planning process. If you have project management, that's part of the plan-- planning process. As we talk about, we're talking about two different functions. One-Call is one thing when we're actually out there constructing, digging, when you dig, when I dig, when they dig, right? This is about planning so that people know, so the contractor, the person who's bidding on the project, knows what's out there. Elevations are out. They're not part of the bill anymore. That's amended out, so elevations don't play. OK, it's just identifying where they're at. Seems to me that that's a reasonable request to have. 23 C.F.R. 645, I believe, already identifies if you have federal funding for your project, you got to do this. Are we? I think I want to read and to end up it's really what we're trying to do with the bill, and-- and I think everybody up here that's testified says we got a problem. And I think we all know on this committee we've got a problem. I'm not so sure-- there is a task force already that's working on similar-type stuff. Another task force? More time? Don't know. What's the right answer? That's what this committee's got to decide. Let me read you something maybe-- when I read this, maybe puts this a little bit better in perspective. This comes out of the Minnesota Department of Transportation. This is their utility coordination plan in general. Experience shows that proactive utility coordination early in the design of a project will minimize the amount of effort needed later in the design-- design life or

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during the construction of a project and help avoid costly, unexpected issues. The Minnesota DOT has developed a utility-- utility coordination process to facilitate effective coordination. The process emphasizes communication among all those who work-- whose work impacts utility coordination in transportation projects. The process encourages communications within DOT and among DOT and utility owners to accurately identify and resolve issues with utility facilities that are affected by transportation proj-- projects as early as possible in the design of a project, step by step, how they affect that. If something comes up during the project that's a-- that we need to move a date, there's a process to move that date. So it is possible. It can be worked. The challenge is, the question is, is this the right bill? Is it written the right way? Do we continue to let our contractors deal with it as they work on the roads? Is that why Highway 30 is not done? Is that why Highway 275 is not done? Is that why highways out in your area is not done, because we don't tell them how to do their work, we just let them do it when they want to do it, how they want to do it? Maybe we need to have a better model then on how we're going to manage our projects to include how we include our utilities so we reduce the amount of time it takes to complete a project, saving the state money, saving the contractors money, saving our utilities and replacing them and-- and fixing things that have been dug up, things that have been broken, saving our cities. I was in Schuyler this year and a Highway 30 contractor accidentally dug up the fiber that went to town, thought it was the old fiber. Oops. Nope, it wasn't. Phone services were down for days. So I think this is, as we've all said, this is an important issue. What are we going to do? That's up to the committee. Are there changes that can be made to this, make this a better bill? Sure. I'm all-- I'm all ears. We can talk about it, but I do think it's an important thing. It's a good discussion we've had today. It is an important issue for the state. We need to make things happen. So with that, I thank you and ask you to vote this out of committee and let's get it on the floor. Take any questions.

FRIESEN: Thank you, Senator Bostelman. Any questions from the committee? Seeing none, I close the hearing on LB339 and we'll close the hearings for the day. We'll take about a five-minute break and we'll Exec.