

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

FRIESEN: OK. Welcome everyone to this afternoon's public hearing on Transportation and Telecommunications Committee. I'm Curt Friesen from Henderson, Chairperson of the committee. I represent District 34. A few procedural items. Please silence all your cell phones and other electronics devices. We will be hearing the bills listed in the order of the agenda. Those wishing to testify on a bill, move to the front of the room. There's a chair up here. You will be testifying-- if you'll be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required, but if you do have handouts, we need ten copies. One of the pages would assist you if you need it. When you start your testimony, be sure to clearly state and spell your first and last name slowly for the record. If you forget to do this, I will stop you and ask you to please continue on to spelling it. Please keep your testimony concise. Don't repeat things. We will use the light system, but we don't have a lot of people in the room today. When the light turns yellow, I ask that you-- you have one minute left and when the red light comes on, you need to wrap up your testimony. Those not wishing to testify may sign a sheet by the door that indicates their support or opposition to the bill. To my right is Mike Hybl, the committee counsel; and the committee clerk is Sally Schultz over here. Joe is our page sitting over there. So thank you, Joe, for coming and we'll start introductions to my right.

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

ALBRECHT: Joni Albrecht, District 17 in northeast Nebraska: Wayne, Thurston, Dakota, and a portion of Dixon.

GEIST: Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

MOSER: Mike Moser, District 22, Platte County and parts of Stanton County. All my friends are lost.

FRIESEN: So there will be senators probably joining us. They might be in other committees introducing bills or they may join us as we get underway. And with that, we'll open the hearing on LB822 and we welcome Senator Hansen.

M. HANSEN: Thank you and good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent

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Transportation and Telecommunications Committee January 25, 2022

District 26 in northeast Lincoln. I'm here today to introduce LB822, which would waive the reinstatement fee for any person whose license was suspended for nonpayment of fines. Currently, if a person fails to pay a fine for court costs or a traffic infraction, their driver's license can be suspended. Once they satisfy the fines and court costs, they can apply to have their license reinstated but must pay a reinstatement fee of \$50. LB822 would waive this reinstatement fee so that people can have their operator's license more readily reinstatement after the fines and court costs. For my reasoning in introducing this bill, we've been working on a lot of these issues about how court fines and fees and other infractions impact people. And one of the things we see is that having a clear and concise path in order to rectify and get-- rectify and kind of get back on the straight and narrow or otherwise get your charges settled is important. And we see sometimes with this where there's both the court fees and the DMV fees, it can sometimes be an unneeded burden and unduly burden or at minimum, a confusing burden on constit-- on constituents who are in an attempt to get into good standing with the court and pay their fees. The fiscal note is clear that about 10,000 Nebraskans are subject to this fee each year. To me, this seems unnecessary and burdensome, and I think we should consider waiving them. With that, I appreciate your attention to this matter and I'd be happy to answer any questions.

FRIESEN: Thank you, Senator Hansen. Are there any questions from the committee? Senator Geist.

GEIST: Senator Hansen, do you know how many people this would actually apply to?

M. HANSEN: Our best estimate is about 10,000 a year.

GEIST: OK, and you probably said that. OK, thank you. That's all.

M. HANSEN: Of course.

FRIESEN: Thank you, Senator Geist. Senator Hughes.

HUGHES: I'm, I'm sorry, was that 1,000 or 10,000?

M. HANSEN: Ten thousand.

HUGHES: Ten?

M. HANSEN: Yep.

HUGHES: OK.

M. HANSEN: Ten thousand one hundred seven is the estimate.

HUGHES: OK, I, I couldn't hear what you said.

M. HANSEN: No, I appreciate it.

FRIESEN: Thank you, Senator. Thank you, Senator Hughes. Senator Bostelman and Senator Cavanaugh have joined us now. Any other questions from the committee? Seeing none, thank you.

M. HANSEN: Thank you.

FRIESEN: Are you going to stick around for closing?

M. HANSEN: Yeah, I will.

FRIESEN: Proponents for LB822.

SPIKE EICKHOLT: Thank you, good afternoon, Chair Friesen and members of the committee. My name is Spike Eickholt. First name is S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I probably should have asked before, but I'm testifying on behalf of two organizations, but my testimony consists for both and if it's all right with the Chair if I could just testify once. I'm sure you'd appreciate that.

FRIESEN: That would be fine.

SPIKE EICKHOLT: All right, thank you. I'm testifying for the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in support of the bill and want to thank Senator Hansen for introducing this bill. What this bill would do, as Senator Matt Hansen explained, it would waive the reinstatement fee of \$50 that a person has to pay if their license is suspended because they fail to pay a fine or court costs or both for a traffic infraction. A person can have their license suspended for a variety of different reasons. They can have it suspended for nonpayment of child support, for too many points, for getting a DUI, or another type of more serious infraction. This would only target and impact those people who have lost their license because they've received a traffic infraction and have not satisfied the fines and the costs. The fiscal note that's generated by the Department of Motor Vehicles estimate that last calendar year, 10,107 people had this situation happen. And what happens in this situation, and we alluded to it yesterday, we'll give an example. Say if somebody gets a citation for improper registration, they've got a court date

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

where they got to pay or appear-- a fine, pay that fine or appear in court and explain why they want to have a trial or not pay the fine or need more time. And if they don't pay the fine or they don't appear in court, then the court after 30 days will notify the DMV that the person has not satisfied the fine, the DMV will then suspend the person's license and send notice to that person that their license is suspended. For them to get their license back, they have to go back to court and satisfy the sat-- the financial obligations of paying the fine and the court costs. And then they need to show proof that they paid that to the DMV and pay the \$50 reinstatement fee to get it back. That for poor people takes weeks and months. And unfortunately, what happens so many times, the practical reality is they are still driving. They don't have a license and then invariably they're going to probably get pulled over again for improper registration, now they got a driving under suspension. And what you see so often is just people caught in that cycle, if you will, where they have to drive. They can't afford sort of the, the expenses necessary to have that vehicle and the things that go with it. And they end up getting in just a world of financial obligations to the state and to the county and to the DMV to get their license back. This is a, a step, if you will, to maybe alleviate some of that pressure. This is not the first thing that this Legislature has done or at least looked at. Senator Matt Hansen did a bill a couple of years ago that changed the-- it used to be 20 days if you didn't pay a fine that the DMV would notify. We changed it to the 30 days, and we also have a statutory procedure that the Legislature passed in 2018 that let somebody go back to court, and the judge is encouraged to give that person more time to pay. So at least we've done that. But you still see a significant number of people who are caught in this cycle, if you will, of expenses that go along with having to drive they just can't afford to pay. And this is one way of doing that. As I said before, it would not apply to those reinstatements that somebody has to pay or somebody has to get, if you will, if their license is revoked or suspended for a driving under the influence charge or some other type of serious offense. This is simply for nonpayment of traffic infractions, and we encourage the committee to consider the bill.

FRIESEN: Thank you, Mr. Eickholt. Any questions from the committee?
Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you, Mr. Eickholt, for being here. I'm trying to find where in statute this \$50 fee is. Do you have any idea?

SPIKE EICKHOLT: If you look at-- I know it's in statute, I assumed it was in the statutes that are being amended, but maybe it doesn't.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

M. CAVANAUGH: Well, actually the statute that is being amended says that it is-- that they just shall-- oh, sorry, I found it. It's 60-4,101 [SIC--60-4,100.01].

SPIKE EICKHOLT: OK. I think it does mention then there's the \$50. And the, and the--

M. CAVANAUGH: Yeah.

SPIKE EICKHOLT: --Legislature set that fee.

M. CAVANAUGH: So that was set in 2001. And I can't see any information as to what that money goes towards, not that that's your responsibility, but.

SPIKE EICKHOLT: Well, I, I know, I know the committee has heard other sort of cash funds that the DMV has, and I suspect there's some sort of a cash fund that has statutory limiting language that they are to collect this fee and only sort of apply it toward the costs to do the paperwork to reinstate somebody.

M. CAVANAUGH: Right.

SPIKE EICKHOLT: It hasn't been changed in a while. I'm just speculating here, but I don't know if it actually costs the DMV \$50 per sort of--

M. CAVANAUGH: I don't know how it could possibly cost them \$50 if it costs-- if we charge \$24 to get the license in the first place and \$10 of that \$24 is not related to the cost. So--

SPIKE EICKHOLT: Yeah.

M. CAVANAUGH: --thank you.

FRIESEN: Thank you, Senator Cavanaugh. Senator DeBoer.

DeBOER: Thank you, Senator Friesen. So I'm actually looking at the same section. Well, because it's the only part that changes in this bill. This-- the 60-4,100.01, and I don't think we have that in what we have here. But I'm curious, why would we just waive it for any license reinstated following suspension under this section? What else is it being used for? Instead of just getting rid of the whole reinstatement fee, why are we doing it in a limited way-- waiving it in a limited way?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

SPIKE EICKHOLT: I think that that statute that's referenced is for paying a reinstatement if you lost-- if your license is suspended for nonpayment of a traffic fine. In other words, you might have your license suspended for other reasons besides not paying a traffic fine. For instance, you get a DUI,--

DeBOER: OK.

SPIKE EICKHOLT: --you're suspended for six months or you get behind on child support or you get too many points just from accumulation of traffic infractions. So I, I think that what Senator Matt Hansen was doing, he just wanted to sort of target what was arguably, and if not arguably, but likely people who are just unable to pay the fines and costs related to the traffic infractions they got that result in the suspension.

DeBOER: OK, so this is just we did it this way because we want to limit the reasons for which we don't have to pay the \$50 fine.

SPIKE EICKHOLT: Right.

DeBOER: OK. All right. Thank you.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? So the way I-- if someone doesn't pay their speeding ticket, whatever happens beside the, the-- so your license is suspended until you pay it. Is there any other penalties? Any other avenues of collection or what happens?

SPIKE EICKHOLT: Generally, if you-- it depends on how you don't pay your traffic tickets. Say you go to court, you plead guilty. The judge will say, well, pay \$100 plus court costs in 30 days. Many times the judge will do what they call a "pay or appear" entry where you have to pay by, say, March 1, 2022 or-- at 9:00 a.m. or appear in court that day to ask why you need more time or need more time. It happens because people have work schedules. It happens because people are young. It happens because people are irresponsible or they just live a chaotic life. They don't pay and they don't show up by March 1, the judge will then issue a warrant for failing to appear at that date. So one sanction is that person will be out in the community getting stopped perhaps by that Omaha officer that testified yesterday. They've got a warrant now, so they are going to be stopped for whatever other traffic infraction they're stopped for, they'll run their name, they'll see they got a warrant and they'll take them to jail for it. The ironic thing is many times when they go to jail, they

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

can opt to what they call "sit out" the fine, which they can satisfy their debt by sitting in jail for a couple days. But that money doesn't go to the school fund. It's not really very efficient because you've got warrants out, cops chauffeuring people around. And at the end of it all, they have to get out and pay the \$50 reinstatement fee.

FRIESEN: OK.

SPIKE EICKHOLT: At first glance, it looks like we're sort of rewarding or encouraging it, but the reality is the current system isn't working now. You've got 10,000 people a year that this-- fall into this trap, and presumably that's a lot of administrative time to handle that, a lot of police time, probably. And that's what I think Senator Matt Hansen is trying to address.

FRIESEN: So if the judge, if they do appear and make a good case that they can't afford it, is the fine sometimes waived or do they give them more time or--

SPIKE EICKHOLT: That's right. One of the things that the Legislature did in 2018 was allowed a judge either reduce that fine or allow them to pay it in installments or even in those jurisdictions where they have like a community corrections facility or a place where they can do volunteer service, they can do that in lieu of paying the fine.

FRIESEN: So what, what you're saying is that people have an alternative course and it's just they don't want to show up to court and, therefore, they get stuck with a \$50 fine.

SPIKE EICKHOLT: That's one way-- I may disagree with some of the, some of the verbiage. It's easy for us to understand it. We're looking at the statute. We get it. There are some people who are just marginalized, who have felt the business end of the system. And that's just, I mean, many times, many ways court is a, is a user-unfriendly thing, right? You just don't talk to the judge, you stand up when you walk-- when the judge walks in the room, is it that you just can't sort of phone it in and go when you want. It's just-- it's intimidating to many people. But you're right, that would be ideal that were to-- if people were to get ahead of these things. But unfortunately, due to poverty, substance abuse, whatever, chaotic home, whatever it may be, people just don't.

FRIESEN: But for 10,000 of these to happen, I mean, that means a lot of people paid their fine, a lot of people went through the process.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

Do you know how many of them actually end up in court getting it reduced or taken care of?

SPIKE EICKHOLT: Not many because the law changed just a couple of years ago.

FRIESEN: OK.

SPIKE EICKHOLT: Because it used to be just bam, bam, automatic and it'd would be nice to know. I don't know. We don't really keep very good statistics. It was kind of nice to see the DMV gave a number to it because I wasn't, when I talked to Senator Matt Hansen, I wasn't quite sure how many it affected. Anecdotally, I can tell you a lot, but that's just what I see sort of here and there.

FRIESEN: Because these, these could be any kind of traffic infraction at all.

SPIKE EICKHOLT: Right.

FRIESEN: It doesn't matter,--

SPIKE EICKHOLT: It could be the--

FRIESEN: --failure to signal.

SPIKE EICKHOLT: --registration. Yeah, it could be registration that we talked about yesterday. It could be speeding, failure to signal, whatever, but it's for unpaid traffic infractions.

FRIESEN: OK, thank you. Any other questions from the-- Senator Cavanaugh.

M. CAVANAUGH: Thank you. Mr. Eickholt, I think you mentioned that there are some opportunities if people can't afford the fees for them to be reduced or waived. Is that something that happens in the courts or who, who kind of leads that charge?

SPIKE EICKHOLT: They generally have to go to court and request either to be discharged completely because they can't afford to pay due to severe illness, whatever it may be. They can ask for more time to pay. You know, when you're charged with a traffic infraction, you don't have any right to have an attorney. So many people are sort of navigating it themselves. The ACLU and other groups have-- can provide self-help guides and self-help forms. And we do try to encourage many people to sort of take advantage of the options that are there. And I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

will tell you that, at least, Lancaster County judges are very accommodating if somebody comes in. Even if they are past the date and there's a warrant, the judges are generally just happy to see that person there just trying to get ahead of it. But just unfortunately a lot of people don't realize that and they just don't do it.

M. CAVANAUGH: And so are the judges the ones that make that decision?

SPIKE EICKHOLT: Yes.

M. CAVANAUGH: Do you feel like they're letting people know that's an option?

SPIKE EICKHOLT: Well, the ACLU is doing a court watching thing now for fines and court costs, and one of the things-- and bonds, excuse me, one of the things we're looking at to make sure that judges are advising or notifying people of their opportunity to come back and have that fine modified or give installment plans or whatever. Some judges are very good at complying with a relatively new law. Some, maybe not so much. A lot of it depends on volume, individual court personality, that sort of thing.

M. CAVANAUGH: Is there a typical amount that the fines are that they need to pay or an average?

SPIKE EICKHOLT: One hundred dollars seems to be a standard amount, right, \$49 is the standard court costs. Actually, it probably went up a little bit. No, it didn't go up, it's \$49 for criminal, for traffic infraction court costs in county court and usually \$100 fine. And incidentally, that's why the Legislature provided the sit out rate to be \$150 a day, to appeal to that, such a common figure. Now what happens, unfortunately, is you get the secondary counts, you got the improper registration [INAUDIBLE] fine and you got the fail to appear for your first date, which is a separate crime that will get you another fine or you've got the busted turn signal and you didn't have a seatbelt on when they're up there. So you get those sort of staggering of fines, but generally a common court cost amount is \$149. That's the typical amount that you see.

M. CAVANAUGH: But these fines aren't-- or the suspension of your license isn't entirely tied to moving violations, is it?

SPIKE EICKHOLT: This is, yes, it's for--

M. CAVANAUGH: It is?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

SPIKE EICKHOLT: --it's for unpaid-- well, moving violation, it's for-- it's not satisfying the financial obligation you owe for the traffic infraction you got.

M. CAVANAUGH: So I'm sorry because I, maybe I misheard. It's not with the-- child support was not part of that.

SPIKE EICKHOLT: Yeah, that's a separate, child support--

M. CAVANAUGH: OK. All right.

SPIKE EICKHOLT: --that's a separate license suspension system under Title IV-D of the feds or whatever that is.

M. CAVANAUGH: OK, thank you.

FRIESEN: Thank you, Senator Cavanaugh. Seeing no other questions, thank you--

SPIKE EICKHOLT: Thank you.

FRIESEN: --for your testimony. Any other proponents for LB822?

NATURE VILLEGAS: Hi, thanks for having me. My name is Nature Villegas. First name, N-a-t-u-r-e, last name Villegas, V-i-l-l-e-g-a-s. I just wanted to share something brief. And upon listening, I know that it kind of sounds like this might be an exit for people to not be accountable. But I, too, had the question of why the fee was the amount it was when that wasn't the amount to even get your license? But I also went through my own journey of getting caught up in that cycle with these fees, and I'm not saying here to get particular with each individual fee, but the one we're speaking of today was one that was a barrier for me, and it wasn't because I wasn't showing up for court. I was constantly getting in trouble for driving because I couldn't afford to get my license because of these multitude of fees, which aren't just the one we're talking about today. But this one particular stood in my way because you, you pay for all these things and then you get to the door and you're like, yay, and they're like, we'll also need \$50 and you're like, oh, my God, I barely scraped that. So then I leave to drive and it happened, literally, I got pulled over leaving trying to reinstate, and, and I was literally caught in a whirlwind. And so I don't want to drag this out. But these moments do exist, and there are some of us in that number that it's not that we didn't want to be accountable. And not to get my violin and cheese and stuff out, but I am an orphan. So when you live an orphan life, you know you can't call dad and say, hey, dad, I'm fifty

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

bucks short to get my license. Not that you should always be calling dad for \$50 to get your license, but it sure does come in nice in life to have those cushions that we go through whether we're young or just going through life. And so I just wanted to throw some of those out there to kind of not excuse because I don't think that we should be getting excuses in life when we've made the choices we made. But I also think we should be aware that there are other scenarios to these type-- these numbers and not just the people that didn't want to show up for court, you know, so that's really all I wanted to share, just to give a different spin on why this would affect people in a, a positive manner and not a let them get away with things kind of manner. Thank you for your time.

FRIESEN: Thank you, Miss Villegas. Any questions from the committee? Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thanks for being here and sharing your story. When you had to go to court for these fees, have you had to take time off of work?

NATURE VILLEGAS: Oh, yeah. I mean, I-- because of these type of fees, I lost, like, jobs where I was in an advisory position where I had to call and say, hey, I'm going to jail right now because of a fee I didn't know or something that got lost in the sauce. And I have a warrant out for my arrest that I didn't know about. [INAUDIBLE] warrant.

M. CAVANAUGH: For a traffic violation?

NATURE VILLEGAS: And then my car got towed. And so there's, like, even more fees and it is-- I won't even get on that. We don't have time enough and that button will definitely go off, but.

M. CAVANAUGH: Oh, no, we have all the time.

NATURE VILLEGAS: It goes on and-- oh, OK, let me tell you. So that adds on even more fees. And now you're not even talking about that \$50, you're talking about up to \$1,000 to get out of jail, get your car back. And that's probably on a good day.

M. CAVANAUGH: And you've lost your job?

NATURE VILLEGAS: Oh, yeah, yeah, more than-- on more than one occasion. And then you're, again, you're back in the-- and believe me, no one wants to be like, oh, my gosh, driving to work every day and, oh, I made it. Let's get this 8 hours in or maybe 12 and hoping--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

like, that's a horrible, I've been there. It's terrible when you don't have-- you have kids, they have to go to school, you have to go to work. And I'm not promoting people to say we have to go on in life and break laws to do it. It's that it's not like a spit in anyone's face kind of way. It's just that's our resource and how do we, how do we get through that, you know, and navigate through that? And it seems like it doesn't matter who you call and how nice you are and how many bullet-pointed notes you have. They just, you know, they hear 8,000 calls like that, it's just not a compassionate place to even get answers, you know, so.

M. CAVANAUGH: Well, thank you.

NATURE VILLEGAS: It's an uncomfortable whirlwind, for sure.

M. CAVANAUGH: I'm sorry. Thank you.

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

NATURE VILLEGAS: Thank you.

FRIESEN: Any other proponents for LB822? Seeing none, anyone wish to testify in opposition to LB822? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Hansen, do you wish to close?

M. HANSEN: Yes, I would. First, let me thank the testifiers we had today, including our last testifier for sharing her personal story. And I think that really shines a light on what I'm trying to solve here. So anybody who gets this fee waived or who will not pay this fee in the future is somebody who, whatever their initial failing or mistake was, they've gone to court, they've either paid the fee, done the community service, sat in jail. They've done whatever the judge has decided. And the judge is giving them, the court is giving them papers saying, you can get your license back and it's the you leave the courthouse, you go over to the DMV and you find out after you've saved up all your money to pay your court fees, your traffic tickets, there's an extra 50 bucks. And it's, it's can be a barrier, especially when you're talking about people who are, you know, had to save up to get the, you know, maybe their initial speeding ticket was \$150 plus \$49 in court costs. So they have a \$200 figure in their mind that they could borrow. They call family if they're able and they get there, and it's not always clear that there's this additional \$50. And it's kind been established I don't think the \$50 fee is tied to the extent that the DMV has to charge to reinstate, because, of course, it's more

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

expensive than just issuing a driver's license in the first place. And also, it's not a fee assigned by the court. You know, it's not the judge has looked at you and said, I'm going to prove a point and order you to pay an extra \$50. It's just something that always happens, and, and it's these kind of extra barriers and costs that we don't always have on the top of our mind when we're talking about kind of criminal justice. It is something that I think we need to start addressing. So with that, I'll close and be happy to answer any questions.

FRIESEN: Are there any questions? So I'll just--

M. HANSEN: Sure.

FRIESEN: --have one kind of-- I mean, so in, in our paper, even in Hamilton County, I go through the records there and you can see that there's just numerous driving without a license, driving without insurance, and it just goes down this long list. And, and this is one of the things. But how do we-- in the end when you don't have a license and you don't have insurance on your car because of something that's happened, how do we keep people from driving? Because now you've exposed someone else for not having insurance. I mean, you can be hurt, accidents. And yet you're on the road and this is a personal choice thing isn't it or what-- you have decisions to make.

M. HANSEN: You do and you do. And so honestly, one thing other states are considering is simply just never suspending a license for unpaid fines because under, usually under the theory of we'd rather have you have a license and insurance. And if we have to, you know, go send you to collections for money, we'll do that. But we don't want to get you in a situation where we stop you from driving. Some-- I think Nebraska is kind of an interesting spot because I mean, driving is just a necessity for most jobs, most places, it just simply is. And so, you know, I understand that people shouldn't be driving and I'm not encouraging anybody to drive when they have their license suspended. But it's also tough to say come up with, you know, several hundred dollars if you can't drive to your job and it's kind of this-- there's simply not a good answer. And that's, that's kind of the tough part a lot of people find in. So in this case, in this situation, simply trying to just make the overall cost less for people who are trying to do the right thing, they've had their initial speeding ticket, suspended registration, whatever, and they've gotten themselves square with the judge. They've paid their fee, they've done the community service. And here it's just can we make it \$50 cheaper, basically?

FRIESEN: OK. Thank you. Any other questions? Seeing none.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

M. HANSEN: Thank you.

FRIESEN: Thank you. We will close the hearing on LB822. OK, we will open the hearing on LB884. We welcome Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Chairman, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, representing District 6 in west-central Omaha, Douglas County. LB884 is in response to a constituent who was one of the unfortunate homeowners who had their sewer line damaged during the installation, installation of fiber optic cable. He depended on the current one-call law to provide him with a way to address the situation. However, it really did not. This legislation was borne out of his request to strengthen the enforcement of what we know as the one-call law and creates a recognition of a partner, partner left out of the equation in the original creation of the law, the homeowner. LB884 recognizes that private property owners sometimes bear the burden of repairing damages created while burying underground utilities and provide them with recourse. LB884 does not require a homeowner to be considered a locator, excavator, or operator. It define, defines "private residential owner" and "sewer plane" for the purposes of this act. LB884 assigns liability for damages that affect a private residential owner to the excavator and creates a reasonable time frame for discovery of such damages. The homeowner has little to no recourse when an excavator does not report or address the complaint. In addition, sewer backup is not something that a regular homeowner, homeowner insurance policies cover. According to homeinsurance.com, homeowners may add coverage onto the policy for an extra charge. When the damage is caused by an excavator during the installation of the utility, there should be a means for a homeowner to work with the excavator to remedy the situation at no cost to the homeowner. Through the discussions my office has had with a variety of stakeholders, there seems to be recognition of the frequent occurrence, but no consensus on who is responsible and how to seek resolution for private homeowners. In statute 76-2313, there is no recognition of private property owners. LB884 is one way to address the homeowner issue, but I am sure it is not the ultimate fix and I look forward to hearing from both the proponents and opponents today so that we may all gain a better understanding of the nuances of this problem. With that, I will take any questions.

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

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

ALBRECHT: Thank you very much. Well, thanks for bringing the bill. So the company that disturbed this person's property--

M. CAVANAUGH: And we're going to hear from them next.

ALBRECHT: OK, OK, but you know the person or--

M. CAVANAUGH: Yes.

ALBRECHT: --they talked to you about it?

M. CAVANAUGH: Yeah.

ALBRECHT: So if-- wouldn't they have had insurance to cover something that was damaged?

M. CAVANAUGH: The company?

ALBRECHT: Yeah.

M. CAVANAUGH: Well, they possibly would have had insurance to cover something that's damaged, but the way that the law is written right now, homeowners are-- have no recourse in this beyond suing. But one-call would, one-call would get involved if it were not a prop-- a homeowner, but the property owner if that makes sense, like a business.

ALBRECHT: So they, they, they went the full gamut to figure out through one-call that they had nothing coming, so--

M. CAVANAUGH: Well, Mr. Pflaum will be telling you his story, but--

ALBRECHT: OK.

M. CAVANAUGH: --he went through every avenue one could possibly think of.

ALBRECHT: Yeah, I'll ask him.

M. CAVANAUGH: Yeah.

ALBRECHT: OK, thank you.

FRIESEN: Thank you, Senator Albrecht. Seeing no other questions--
Senator Moser.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

MOSER: So typically, if you have your sewer line replaced to your house, that's your-- at your expense and you're hiring the contractor to do the job, right?

M. CAVANAUGH: Um-hum.

MOSER: So why wouldn't--

M. CAVANAUGH: Oh no, no, no, no. This isn't-- this is much like yesterday with the, the pole being put in somebody's--

MOSER: You're just talking about the right-of-way out in front, you're not talking about sewer lines--

M. CAVANAUGH: No.

MOSER: --through the house?

M. CAVANAUGH: I am talking about sewer lines. So if they are-- if a company is coming in and putting fiber in the ground and they've gotten the, the permit or the go-ahead with the city and they, they disrupt a sewer line and it's a private property residential, there's no recourse. It's a specific, like, not stated recourse. So if you look at--

MOSER: Well, if you damage somebody's property, you could be found liable for it.

M. CAVANAUGH: One would think you could be found liable. If you want to elevate it to going to court, then yes.

MOSER: Taking it to Small Claims Court?

M. CAVANAUGH: I mean, so then I guess the argument would-- the counter argument would be then why do we have this system for other types of property? Why don't they all just take them to Small Claims Court?

MOSER: Would the owner of the right-of-way, the city or the county or whomever, wouldn't they be the person to insist that the work is done properly and that they grade it properly and seed it and everything when it's done?

M. CAVANAUGH: As far as I know, that's not-- there's no requirements for this prop-- this type of, this type of work at this type of property.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

MOSER: This sentence in here, this is the statement of intent, I think. Bill summary it says. Anyway, the excavators who fail to provide notice of an excavation to a private residential owner shall be strictly liable for what-- it doesn't say--

M. CAVANAUGH: Well, so if you go to the bill itself, it outlines the things that they would be liable for. So it, it's kind of hard to-- I think if you hear Mr. Pflaum's story, it will shed quite a bit of light on it for you and I don't want to misrepresent what he's gone through.

MOSER: OK.

M. CAVANAUGH: He's talked to a lot of different-- one-call, the Attorney General, the PSC. He's talk-- if there's a person to talk to, he's talked to them all.

MOSER: OK.

M. CAVANAUGH: And it might be better--

MOSER: I'll wait to hear the testifier.

M. CAVANAUGH: OK.

FRIESEN: Thank you, Senator Moser. Seeing no other questions.

M. CAVANAUGH: I will stay for closing.

FRIESEN: You'll stick around. Proponents for LB884. Welcome.

STEPHEN PFLAUM: Hi. Good afternoon, thank you. I'm in-- testifying in favor of modifying the 811 statutes under LB884. In the spring of 2020--

FRIESEN: Could, could you--

STEPHEN PFLAUM: --an out-of-state contract--

FRIESEN: --please spell your name?

STEPHEN PFLAUM: Oh, I'm sorry. Stephen Pflaum, S-t-e-p-h-e-n, last name is Pflaum, P-f-l-a-u-m.

FRIESEN: Thank you.

STEPHEN PFLAUM: In the spring of 2020, an out-of-state contractor for Verizon drilled through my sewer lateral, causing sewage to back up in my basement during the height of the pandemic lockdown. The repairs required cutting into a brand new driveway eight feet deep to repair the damage. They refused to restore my driveway to the original state when I had it poured. I now have a patch in the driveway that would otherwise be one color with a single, continuous pour and no expansion joints. They claim this was an accident. It was not an accident. These companies are trained professionals who know sewer laterals exist at that depth. They do route planning and obstacle assessments. A 100-year-old tree does not sprout up overnight. They chose to drill down into the sewer plane depth and not locate private infrastructure. The Attorney General's Office kindly brought my attention to the statute for fines does not cover latently discovered damage. The statutes specifically state there is only a fine if damage is discovered before or during drilling and not reported. If damage is discovered after, there is no fine. They simply drill and don't check for sewer damage. There is no financial motive or penalty for them to avoid private sewers. They choose to break and repair instead of locate and avoid. They just leave it for the homeowner to discover later. I've walked miles of their spray-painted depth markings on the sidewalks of my neighborhood. I lost count of the possible sewer plane violations. I'm willing to wager there are hundreds of punctured sewer lines in Omaha right now that homeowners are unaware of. These companies can afford to put next-generation infrastructure in correctly, but instead they have levied a substantial and invasive burden on the citizens of Omaha for the sake of corporate profit. I had a phone conversation that year with a 811 board representative who represents trenchless drillers. He told me busted sewer lines happen all the time and are the result of bids going to the lowest bidding out-of-state contractors. This is due to the Electrical Code and National Fiber Association depth recommendations, which are around two to four feet deep. He told me they are guidelines, they are not codified law. Again, the obvious loophole to this is simply drill where you want and don't check for sewer damage. Their fiber conduit is threaded above and below the sewer laterals on my block in violation of the 18-inch horizontal tolerance zones, where they would be required to use hand tools to uncover and avoid a private sewer. I attached a photo of the sewer damage which happened to me. You can see a different existing conduit, which is installed correctly at two to four feet. Verizon's fiber is at eight feet deep and it currently sits lower than that, what you see the picture. They don't do anything to correct it to the recommended depth. The picture on the next page is the hole in my driveway. The next picture is the sewer lateral of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

Amateur Coffee at 3913 Cuming Street in Omaha, Nebraska. That is the current condition of their sewer. They have to call a plumber when it backs up. Repairs will require shutting down a lane on Cuming Street and cutting into the street. Most likely, this will block their front door. They have the added surprise that there is no permit on file for their address when this was installed. They must front the cost of repairs and loss of business in order to mitigate this damage and get reimbursed. You have to understand the scale of drilling for 5G. Every one of the 5G microcell towers is connected by fiber underground. They are placed every few blocks. That equals multiple thousands of towers being installed in Omaha alone. I've heard more than 2,000 towers are being installed in Omaha. There's over 1,000 miles of fiber being drilled in Omaha for Verizon alone. That is multiple orders of magnitude more than anything before 5G. At that scale, it is cheaper for them to break and repair their way through Omaha to meet their timetables and be the first to 5G. They're kicking the cost they would otherwise incur down the line and make it inconvenient for the homeowner when they discover and report it. It allows them to achieve their cheap and fast contracts at the expense of the Nebraska homeowner. Private communication lines have no business being within the tolerance zone of private sewer lines. Many sewer lines are older clay pipes in older neighborhoods where there are significant obstacles such as large trees. Again, I'm willing to wager there's hundreds of punctured sewer lines in Omaha right now that homeowners are unaware of. Both of my plumbers have told me these sewer lateral punctures happen all the time and you can imagine the spaghetti mess this fiber conduit is creating under our neighborhoods. Future installations and excavators will have to deal with this mess. Nebraskans deserve better infrastructure, so-- what makes an incident not qualify for a fine because it was discovered latently? If damaging a private sewer line escapes penalty because it is discovered after the incident, what is the corporation's financial motive to exercise duty of care? Latently discovered damage should not escape a fine. All incidents, including latently discovered damage, must be reported to 811 under penalty of fine. So why do utilities get to enjoy 18 inches of horizontal tolerance zone safety precautions and not private homeowners? Why is there no bottom plane to the right-of-way for private utilities such as Verizon? Why isn't the right-of-way defined as a three-dimensional space and not two vertical horizontal planes? They certainly don't have the right-of-way through my sewer lateral. Why isn't there someone on the board who represents private property owners? A sewer plane definition within LB884 creates a delineation and a no-drill zone. They could face a fine if they hit a private sewer. It would be beneficial to have a statute requiring public

reporting of every private infrastructure incident, along with standard interval depth reporting of the installed fiber conduit. This will create a database revealing the skill or ineptitude, ineptitude of these excavators. It will create depth data, which will assist locators and excavators during future excavations. Thank you for listening.

FRIESEN: Thank you for your testimony. Any questions from the committee? Senator Albrecht.

ALBRECHT: Thank you, Chair Friesen, and thank you for your testimony. This-- OK, so they actually did have it sprayed as to where they wanted to go?

STEPHEN PFLAUM: They--

ALBRECHT: Had they called in to find out what was underneath there?

STEPHEN PFLAUM: Private homeowners don't participate in the utility--

ALBRECHT: No, not you, but them. They would have had to call--

STEPHEN PFLAUM: They--

ALBRECHT: --if they're going to dig a hole, whether it's in your yard or anywhere else.

STEPHEN PFLAUM: Correct.

ALBRECHT: So did they do that?

STEPHEN PFLAUM: They did that. They did that and they marked all of the utilities that participate in the 811 notification system--

ALBRECHT: OK.

STEPHEN PFLAUM: --which is sewer-- water, gas and electric--

ALBRECHT: Um-hum.

STEPHEN PFLAUM: --and any telecommunications lines. Those are all marked. They come through. They use a vacuum truck and a-- and high pressure to expose those lines so they don't hit them.

ALBRECHT: Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

STEPHEN PFLAUM: On my block, there was a 100-year-old tree where their equipment sat. They decided to go under it. You know, the sewer plane definition is important because the water runs downhill. You can basically say all your sewer infrastructure is going to be below the lowest point of the house and the top of the sewer line. They chose to go under this tree and not locate and avoid those, just break their way through, so.

ALBRECHT: So, so let's get to who you've called to try to help you again.

STEPHEN PFLAUM: I, I called them and I would like my driveway to be replaced the way it was when I poured it. They only think that they have to replace just that area, so.

ALBRECHT: So they fixed your sewer line or somebody did?

STEPHEN PFLAUM: I had a plumber fix it and the plumber was reimbursed.

ALBRECHT: So you, you took on those costs of this-- to fix the sewer and then they came back and just--

STEPHEN PFLAUM: Initially, right.

ALBRECHT: --fixed the driveway?

STEPHEN PFLAUM: Right, and then I had to file a claim to the excavating company, which I-- you can't talk to them. It's either through email or letters, so.

ALBRECHT: So you're not getting anywhere with--

STEPHEN PFLAUM: Yeah, it took me a long time.

ALBRECHT: --the company that actually dug the hole--

STEPHEN PFLAUM: Right--

ALBRECHT: --in it.

STEPHEN PFLAUM: --so.

ALBRECHT: And whose tower is it?

STEPHEN PFLAUM: The, the line is owned by Verizon. Operated by Verizon.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

ALBRECHT: Did you call them?

STEPHEN PFLAUM: I, I did. I worked for Verizon. I work for Yahoo.

ALBRECHT: Um-hum.

STEPHEN PFLAUM: Not, not currently, not, not with them anymore, so.

ALBRECHT: Sorry to hear that.

STEPHEN PFLAUM: Yeah, so.

ALBRECHT: So-- but did you get anywhere with Verizon since they're the people that are paying the contractors to go do their work?

STEPHEN PFLAUM: No, they, they, they recommended that I pursue outside legal counsel--

ALBRECHT: Really?

STEPHEN PFLAUM: --so.

ALBRECHT: Well, thank you.

STEPHEN PFLAUM: So and then the-- it's the-- their, their lawyers will just-- you know, rather than trying to do discovery and find out where-- how they came to the decision that they're going to go down to that level--

ALBRECHT: Um-hum.

STEPHEN PFLAUM: --and, and avoid it, they're just going to litigate on the damages in my driveway and just, well, here's this area of your concrete driveway we're going to, we're going to replace, so.

ALBRECHT: Thank you very much.

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

STEPHEN PFLAUM: Thank you.

FRIESEN: Any other proponents to LB884? Seeing none, anyone wish to testify in opposition to LB884? Welcome.

BJ WOehler: Senator Friesen and fellow members of the Transportation and Telecommunications Committee, my name is BJ Woehler, B-J

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

W-o-e-h-l-e-r. I am an owner of Robert Woehler and Sons Construction Inc. in Wayne, Nebraska, and president of the National Utility Contractors Association of Nebraska, NUCA of Nebraska. I am testifying on behalf of NUCA Nebraska's membership in opposition to LB884. NUCA of Nebraska members build Nebraska's sewers, water mains, highways, bridges, electrical systems, and broadband for you and your constituents across our state. Many of us are excavators. We use the state's one-call notification system daily to request locates before we install and repair water, sewer, electrical, and other underground utilities across Nebraska. LB884 raises an issue that does need to be addressed for private residential owners to know where their utilities are located. However, the one-call notification system is not the solution. It is not realistic for the private residential owners to know where their water and sewer services are located on their property and from-- that-- and for them to be able to mark them for every excavator before work can be done. That would mean private residential owners would need to be held to the same standards as excavators and facility owners. As wise-- as well as the financial components of mislocates, there's a strong potential to overburden the one-call system with locates and the Fire Marshal's Office with oversight should this become effective. One option would be for the one-call board to establish a working group with private business owners, private residential owners, and other stakeholders to identify the challenges they're experiencing, experiencing. If a workgroup is developed, they might consider ideas such as the League of Municipalities-- and all my water and sewer guys aren't going to like this, but have the municipalities locate the private water and sewer lines that connect to their systems to the building/meter, or at least in the right-of-way. That's the-- water and sewer have become not as much located as electric. That's-- you can ask me more about that later. Require directional drilling contractors/operators to be licensed like well drillers and others in the state. Insurance companies would provide coverage for sewer backup and water leaks that occur on private residential owners' property and damage caused by them and then they investigate who and what caused it. Require the right-of-way agency to implement a process that notifies property owners. This is one spot where I'll give the DOT props because you don't do anything in their right-of-way without them knowing what you're doing and proper plans and everything else, so. A lot of our municipalities and cities and counties should follow their lead on that.

FRIESEN: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

BJ WOehler: Set rules and regulations to eliminate blind and deep boring by requiring potholes and expose all utilities to be crossed. This is what unfortunately happened here. They decided to avoid everything and they went deep and they got his sewer, is what I took from his testimony, so. Thanks for your consideration of our comments and suggestions. As always, I'd love to answer questions.

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

ALBRECHT: Thank you for being here. I know you drove a long way. You're from my neck of the woods. But my question is if your company did that, what would you do?

BJ WOehler: First off, I'm a-- I don't bore because it is a high-risk business. I sub that out, but I represent and hire a lot of those guys. If my company was the general, I would still take care of his-- I'd make it right with him.

ALBRECHT: I mean, I mean, that's what I'm saying.

BJ WOehler: I would notify them that I'm coming through their front yard and to best of their ability, to tell me where their services are. I've got an example here that one of our contractors and ALLO uses. They went in front of my property in Wayne with their new service and it's a little handout, told me what's going to happen, who to contact. This is something that should be in the right-of-way permit. The city of Wayne, I don't know if they required it, but ALLO presented that is, is going to happen, so everybody knew somebody was going to be in their front yard, why the flags are going to show up, and if they had something, contact it.

ALBRECHT: Because, I mean, sitting here on this committee, a lot of times they just want us to fix it by making it a law. But a lot of it is person to person, you've got to do the right thing.

BJ WOehler: Yeah.

ALBRECHT: You know? I can't imagine this gentleman having to go through all he has. I mean, I would not be happy if my basement was filled up with something that shouldn't be there. So, I mean, who's responsible? That's where-- what I want to get to on this particular bill is-- we're talking about one individual and we're going to change the law for all of it, but somebody needs to step up; whoever dug that hole or whoever they were working for or-- but you're saying though, too-- because you deal with the 811 system, right? I mean, don't you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

all have a committee that if there's a problem like that, the, the consumer is supposed to come to you and say, hey, help me out, what do I do?

BJ WOehler: Yeah, and they must have come to the Fire Marshal or the state-- or the Attorney General. They didn't come to the actual board. We would've give them more insight. The, the unfortunate thing is private utilities that get into the right of way, water and sewer are the big ones, are becoming a loophole.

ALBRECHT: OK.

BJ WOehler: The electric service you own out of the box, but when they-- we request to locate, they locate all the way to your mood-- meter. The problem is water and sewer is not that easy to locate and people don't have all the best records, so they're trying to get out of it.

ALBRECHT: I am certain that this is probably an older, more established neighborhood that--

BJ WOehler: Yeah.

ALBRECHT: --who knows--

BJ WOehler: It happens in new ones, too.

ALBRECHT: But the whole point is that they damaged that person's property and I think somebody should be able to-- I mean, if he needs to come to your 811 commission and, and-- because that's your job too, the 811 commission to, to pull those contractors in and say, hey, you know, we've got a problem here, who's going to take care of it?

BJ WOehler: Yeah, unfortunately the 811 board doesn't deal with that.

ALBRECHT: But don't they-- if they have to [INAUDIBLE]--

BJ WOehler: We-- even if it's a contractor against an operator, those boards-- we don't get-- we don't go to the 811 board to get a resolution, to get money from them. The only thing the 811 board and the AG does is a violation of the law, which means you didn't call in. In this case, the contractor called in. The only part they maybe didn't do is they didn't know notify the homeowner, but that's a gray area in the law.

ALBRECHT: And that's why they want to make it part of the--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

BJ WOehler: Well, they want to add a lot more though to it. They want to add that there's, there's damages can be assessed and stuff like that, which we don't have right now between operators--

ALBRECHT: But someone in this case, I believe, is responsible.

BJ WOehler: Absolutely. It's the drilling contractor and his insurance company. And that's why my insurance company will not let me directional drill because it is a very high-risk venture.

ALBRECHT: OK so let me ask you this: does your insurance company say that you have to make sure whoever you are subbing with has insurance?

BJ WOehler: Yes.

ALBRECHT: So I think that's another key issue that we have to make sure that--

BJ WOehler: Well, the state makes that, and that was getting to my licensure part. To be a licensed contractor in the state, you have to have the state contractor license and you have to be-- show them your proof of insurance and workmen's comp.

ALBRECHT: OK.

BJ WOehler: Now I could go on about that. That-- it's a very bad system, but--

ALBRECHT: But I mean, it, it is your line of work--

BJ WOehler: Yes.

ALBRECHT: --and I, I appreciate all of your answers because I mean, I want to know. But the-- he should not be--

BJ WOehler: No, he should not be liable for that. But now here's the case that I'd, I'd ask him is if they would have come up and knocked on his door or notified him, would he be able to locate the line? Most homeowners, I would say 90 percent of them, couldn't.

ALBRECHT: Well, whether he could or couldn't, couldn't, the fact of the matter is it's al-- it's done. I mean, they drilled the wrong place and I get that he's-- I mean, I don't know if his insurance company ended up paying for it or not. I don't know that either. But it is a gray area and it's hard to write something in law that's going to cover every situation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

BJ WOEHLER: I deal with a couple of these a year and sometimes we can go back through the city if it was a city project, they were putting it in. They'll pay for it. I've had that. I've had just recently a couple of water lines hit and we worked with the contractor doing it. He bored the new line into the house so that gave-- they had an old line anyway. It was an inch and a half steel line and then unfortunately had a lead surface, which as soon as the city saw that, said you have to replace the line. So then all the sudden, a homeowner is looking at a \$5,000 bill and he did nothing.

ALBRECHT: Yeah.

BJ WOEHLER: You know, the contractor that was working out front hit it. So it, it, it's an unfortunate thing. I would recommend getting the additional insurance if you're in the older part of town.

ALBRECHT: Um-hum.

BJ WOEHLER: We, we started covering those cases in Wayne and they're working really well. So it, it-- \$28 a month or \$30 a month is nothing compared to the bill that--

ALBRECHT: Correct.

BJ WOEHLER: --you know.

ALBRECHT: Thank you.

FRIESEN: Thank you, Senator Albrecht. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. Thank you for being here today. Explain to me, so I better-- have a better understanding. I see a picture, picture, which you don't have, but the picture he has there-- my question is-- and maybe it's, you know, construction dates, you know, older stuff is different, but there should be elevations or depths that certain water lines, sewer lines, fiber, electrical, whatever it is, there's a, there's, there, there's reg-- there's something out there that says here's the depths that this stuff is supposed to be at, right?

BJ WOEHLER: There should be.

BOSTELMAN: So-- there should be. That-- and right, right, it should be at that depth.

BJ WOEHLER: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

BOSTELMAN: I understand.

BJ WOehler: But there should be requirements, too. We're not even--

BOSTELMAN: But--

BJ WOehler: --to that point.

BOSTELMAN: Well, that's my question. My question is coming down to was is there something out there that says that if there's a-- if you have a sewer line from a, from a road to a house, it's at this depth? And the reason I'm asking that because if there is something out there that says that and there's someone boring in an area that they shouldn't be in at all, one, I think, you know-- one, that we, we've got a problems, which is-- needs to get addressed. But the other one is, is how is it that, you know, they're drilling in this area that, that they're not supposed to be in at all? That's, that's why I take this as-- from the explanation, as where they bore, they shouldn't have been in that area because that's the depth of where sewer lines run, so they should have been six inches above or, or whatever it is. Is that-- am I understanding this right or not?

BJ WOehler: Yeah, you're understanding it right, but there is no set state standards of gas should be at this depth, electrical should be at this depth, fiber should be at this depth, and water here. There's general federal guidelines of where they should be, but I think they can always go lower, especially in the telecommunications. And that's what we see is that, and that's what I call deep boring. They just, well, we're going to go deep and hope, hope we miss everything. That, that's the fast way to do it. That's the unfortunate side effect of broadband expansion. We're trying to all get it done fast, so versus staying in that three-foot line, two- to three-foot line where I'd like to see telecoms, where then they're all of a sudden dealing with gas lines, electrical lines. They should be above water. Water should be four to six feet. You know, up in my area, it should be deep--

BOSTELMAN: Sure.

BJ WOehler: --more towards the six-foot range. The unfortunate thing of sewer is it's on grades so whatever it's coming out and wherever that main is, it's got to, it's got to stay there. It can't go up and down. You know, they can check that by checking the manholes, checking his basement. You know, they could have done some due diligence. But again, when they're trying to get-- did you say 1,000 miles done, they're just trying to get speed and they just-- it's, it's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

unfortunate, so. That's-- sitting on the 811 board, and I'm not talking for them, but we are working on some of this. I just started a committee a couple of meetings ago to address defining private utilities and getting a-- because every community has a different version of what you own and what they're willing to locate. So we're working on that first and that's going to be a bear to get done in a couple of years even because I have to figure out how to-- you know, the city of Lincoln has a standard city. MUD, Omaha does. Wayne has one. I know Pender's is completely different than Wayne's. I mean, so from a contractor standpoint, we'd at least like to know when we're coming into a community what we're dealing with, so.

BOSTELMAN: OK.

BJ WOehler: It, it's-- it'd be great if everybody stayed in their, their lanes, but--

BOSTELMAN: Sure.

BJ WOehler: --it's like an interstate out there and it's a mess and--

BOSTELMAN: OK, thank you.

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

MOSER: Is there a statute of limitations that you know of if a fiber company drills a hole right through your sewer line and you don't realize it because it continues to work for a while and eventually it clogs up and then you dig it up and you find out that they went right through the sewer line?

BJ WOehler: I'm not as versed in the laws, I don't know on statute of limitations. I know I've gone back to the city of Wayne five, ten years later and proved that their electrical line was dented and they paid. You know, most of your good companies that are out there doing stuff, if you can prove-- it's, it's pretty easy because their line's still there and it's sticking-- I think I've kind of saw the photos-- it's sticking through the-- you know, it's not hard to prove.

MOSER: Yeah, I've, I've--

BJ WOehler: It--

MOSER: --seen it. I've seen it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

BJ WOEHLER: It's unfortunate. It happens a lot. I mean, and I'm sure there are a lot of unknown, but the real scary one is when gas goes through a storm sewer or a sanitary sewer and they don't know it and it sits there and they can break years later. Those are the real dangerous ones. So part of that 811 board I'm on, we've, we've started to define guidelines for boring, but they're very complicated and we kind of got bogged down. And with us losing [INAUDIBLE], we kind of lost--

MOSER: There are regulations for gas companies and other utilities to put a tracer line or tracer wire in the trench with the conductor or pipe, but there is no requirement for that for sewer.

BJ WOEHLER: No, there is now. You guys passed a bill a year or two. Everything's built to be locatable. That can--

MOSER: So you have to put a wire--

BJ WOEHLER: You have to put a wire--

MOSER: --alongside the sewer line?

BJ WOEHLER: Yep, or you have to be able to map it, GPS it, something like that. It has to be on plan. So there's a little loophole there that got slid in, but hopefully most people putting in the 15 cents a foot tracer wire because then we can locate them. But they're, you know--

MOSER: You just took a tone--

BJ WOEHLER: Yep.

MOSER: --generator on it and then you can go out and sniff for it.

BJ WOEHLER: And that's where the problem with water and sewer become, right, because the old ones don't have them. So the municipalities can't go back and just locate them.

MOSER: Well, you can put a snake in the sewer line--

BJ WOEHLER: Yep.

MOSER: --and put the tone on that and then--

BJ WOEHLER: And the city of Wayne did that for a while for me until they got in trouble and mislocated one and then they-- they're in a bad deal, situation where we-- it wasn't supposed to be there and we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

put in a bunch of storm, storm sewer pipe and then it ended up coming out through, so. It, it all comes down to liabilities and municipalities are trying to get-- back out of that, so they don't locate as much. But like I say, they're the ones that have the records, they have the resources, they have the knowledge.

MOSER: The cities--

BJ WOEHLER: Yeah, the municipalities that own the--

MOSER: --or the counties.

BJ WOEHLER: --water and sewer.

MOSER: Yeah.

BJ WOEHLER: And they're the ones making revenue, they're their customers, you know? That, that's what I don't understand. They don't want to locate for their own customers, so.

MOSER: Yeah, we had a real nasty accident, or whatever you want to call it, in Columbus. When I was in office, we had a water contractor that was putting in some utilities and he struck a water line and then the water got into the, the sanitary sewer and backed up in several houses and filled their basements full of sewage about a foot and a half high or so. And one of them was \$100,000, one was \$200,000. Your objection to the bill is the change of liability?

BJ WOEHLER: My objection to the bill is putting it into the, the one-call bill. The liability side should already be decided within the courts. I mean, if, if he knows who did it, you should just be able to take action against--

MOSER: He should just take it to Small Claims Court or--

BJ WOEHLER: Yeah. No, I get that, I get that that's not an easy resolution, but we can't even get one-call bills-- you know, violations resolved in the, in the state. We're-- and the Attorney General is two and a half years behind on violating the law for guys that don't even call the 811 system. If we bog it down with every hit and miss, it'll just grind to a halt. So there's, there's remedies out there to do what he needs to do and not through the 811 bill.

MOSER: And what's that remedy?

BJ WOEHLER: To sue them.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

MOSER: Thank you.

BJ WOehler: Yep.

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

BJ WOehler: Well, and I should state before he sues them, he should send them a bill.

MOSER: Well, you should try to negotiate--

BJ WOehler: Yeah.

MOSER: --with them first.

FRIESEN: Any other questions from the committee? Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. I see your five suggestions, recommendations here. I mean, you've been in front of the committee, we've talked a lot about arcing utilities and--

BJ WOehler: Yep.

BOSTELMAN: --one-call, those areas along there. I-- I'm just, I'm just-- I'm not sure that this-- this fixes one-- in a sense, this bill fixes one thing, but it doesn't fix if my water line gets broken. It doesn't fix it if my gas lines gets-- it doesn't fix anything else. Is there anything in this bill that you see that maybe needs to address all, if, if any, because this is, this is going to address one situation, which I understand it, it is happening. And there needs to be some liability there somewhere, but we're leaving out a lot of other opp-- other, you know, connections from the home or the business to, to the right-of-way to the street. There's a lot of other things that are going on in there. You know, you may have fiber, you may have cable, you may have--

BJ WOehler: There's even gas.

BOSTELMAN: Yeah.

BJ WOehler: At Central Nebraska, I know that one of the guys that was on our committee-- or in NUCA with me knows of gas lines that run for several miles to pivots that are private so they don't get marked, they're not part of the one-call system. You know, the typical thing is the pivot irrig-- the electric line that comes down the pole, sits

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

on the meter, then it's private under the road. Those don't get marked, so.

BOSTELMAN: Right. I know that very well.

BJ WOEHLE: It, it-- private lines are the biggest issue that needs to be addressed in this that I see, but this is just not the way to do it.

BOSTELMAN: Well, part one of your things is having it licensed. How is that going to help?

BJ WOEHLE: You know, I'm not a fan of state licensures, but I have several of them. And it's just keeping the, the Wild, Wild West and the cowboys from coming in from God knows where. I know we're chasing one that hit a gas line on a job site I was on, came up out of Texas, was misusing somebody's locate number. They ran it-- they ran him out of Lincoln. Then he was up in Tekamah, where I was at, and he left the state. So if they at least had a license, we'd have some tracking, some-- somebody, you know? But when the guy just throws a sticker on the side of the door and says I'm a direction driller and shows up, causes somebody \$100,000 worth of damage, I, I--

BOSTELMAN: So the-- a registration if not a license, perhaps?

BJ WOEHLE: Registration would be fine too.

BOSTELMAN: Registration, then that registration would require a liability or some other type of things in there. And to me, it's-- you can register and due all you want, but that's still not going to, that's still not going to say whether that person is-- that business coming knows what they're doing so that doesn't--

BJ WOEHLE: And that's where the, that's where the licensures come in. Like for me, it's the septic tank installer's license I have to take. So I have to, I have to have a-- I have to take a test. And then every year, I have to do-- every two years, I got continuing ed. Like I just got done with them, 12 hours. So they'd have to learn about, hey, you should probably go talk to that, that homeowner. They would know more of the ins and outs of-- and that's the other issue this brings up is blind and super-deep boring. To me anything below five foot, if they're boring in telecommunications, is just-- they're trying to avoid the problem and but-- there again, they get-- they started getting into that sewer plane and they cause bigger problems.

BOSTELMAN: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

FRIESEN: Thank you, Senator Bostelman. Any other questions from the committee? So you said if you're doing a job and your subcontractor would hit something, you're going to make sure it gets fixed.

BJ WOehler: Yep.

FRIESEN: Think most contractors do that?

BJ WOehler: No.

FRIESEN: And the only remedy you're saying basically is you go to court.

BJ WOehler: Yep. That's a part of the risk I take when I started excavation.

FRIESEN: Right.

BJ WOehler: You know, it, it-- dad always put it real simple when he'd have to tear up somebody's yard: you're going to end up with a scar. You don't go to the doctor and get your appendix out and not get a scar. Now, nowadays they do everything microscopically, just like directional drilling.

FRIESEN: Do you feel that if-- you know, I-- again, I know that cities, generally they own the water line up to the curb stop. And so the water line is yours to the house and sewer is the same way, and you own the sewer until it crosses a property line, is that--

BJ WOehler: That's unfortunately not true. Every community is-- takes it a little bit differently. In the city of Wayne, you own everything on the water and even the hole in the main, as I tell them. If that core-- anything on the main, even the hole that you drill in it, causes a problem, city of Wayne makes the homeowner responsible now.

FRIESEN: But you, you know that when you're a service customer of theirs, you know--

BJ WOehler: Yep.

FRIESEN: --your responsibility.

BJ WOehler: Yep.

FRIESEN: And so after that, it's kind of your deal. I mean, a lot of people don't realize what their responsibilities are, but it goes back

to if the city would have owned it, they would have been very interested in locating it for you.

BJ WOehler: That's why my first--

FRIESEN: Now they don't care.

BJ WOehler: That's why my first number one item is the municipalities need to take responsibility of those lines again, at least to the right-of-way.

FRIESEN: Because they have the equipment, they have the knowledge. The homeowner, again, rarely knows or remembers where that went or how deep it was.

BJ WOehler: I always say I'd like to be the person that goes and asks Warren Buffett to locate his sewer line.

ALBRECHT: But he can pay for it.

BJ WOehler: But, you know, I mean, that's, that's what we're asking every homeowner or business in the-- to do that these municipalities that they're not locating it. And to me, they're the customers. The municipalities need to just figure that in and I get it. They don't all know where they are, but they-- they're the ones that are going to give the best advice. And if they don't know, at least be honest with us contractors and say, we don't know, but there should be a service somewhere in here.

FRIESEN: So these, these contractors, they're-- all of this happened in the public right of way.

BJ WOehler: That's my understanding.

FRIESEN: So I know that a lot of companies are charged pretty big money to access the city right of way and yet the city has no responsibility it seems. Did I say that correctly? I mean all these--

BJ WOehler: It's interesting when--

FRIESEN: All these companies that locate fiber in the city right of way pay either occupation taxes or franchise fees to be there.

BJ WOehler: Yep.

FRIESEN: And so they're paying to be in that right of way. They are told kind of where to go by the city because it's their right of way

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

and you're-- are you saying then the city is not taking very much responsibility when it comes to how that actor is using the right of way?

BJ WOEHLER: Every community is different. I know Lincoln had to learn a process and figured it out through the ALLO project. When ALLO came to Wayne, they did a great job. That's who handed out-- you know, they worked with the city. Now I had also prewarned our city and let them know that these type of projects are going to come and you don't want it to be the Wild, Wild West. So they worked with ALLO. ALLO had the plan, showed them where they're going, they adjusted, they-- you know, great company, did what they were supposed to do. They still had hits.

FRIESEN: But if they hit something, they fixed it.

BJ WOEHLER: They fixed it. That's the ones I worked through last summer. They, they fixed them and we worked through them. Omaha, there's a lot more players. I don't know if that happens as much. But again, it all-- the right-of-way agencies need to make-- it's their right-of-way. And that's why I said the Department of Transportation, you don't go and just put anything willy-nilly in their location-- in their right of way. They're going to want to know where it's at and they know where their stuff is and you better not be in their way, so.

FRIESEN: OK, thank you for your testimony.

BJ WOEHLER: Thanks for your time.

FRIESEN: Any other testimony in opposition to LB884?

ED JARRETT: Welcome, Senator Friesen. Ed Jarrett, E-d J-a-r-r-e-t-t. I'm representing ALLO Communications, a telecommunications company, and I just heard some interesting questions and I'd like to be able to have the opportunity to answer. Coming from the telecommunications standpoint and as a contractor, there are some National Electric Safety Code guidelines for depths on electrical, on electrical lines. And then sewer lines, it varies by grade, as BJ was referring to, so there's some kind of space that's kind of null and you have to use the space that's available. But as far as the contractors that-- we have a general contractor that takes responsibility of all the subs so that we're-- we have, one, a line of sight and we-- and liability on those contractors when they're doing the work and they are responsible for all utility locating and damages. And, and so we hold them liable for that in the beginning. And then in each community, like BJ was referring to, is a-- it's, it's kind of unique in the right-of-way

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

management. So you have to get a franchise agreement, get that signed, get a right-of-way management committee, get the statutes for their requests to build, their depths that were required. Like in the city of Lincoln, we were requested to go six to-- or four to six feet in the right-of-way in a certain path that was designed and agreed upon. But as far as the statute of limitations, we as a new utility company, if there's proven fault that we are responsible for that damage, no matter when, when it's discovered. So I think it-- that's the-- the, the need is to have the liability on the contractor or the utility company doing the work in the right of way or easements. Other than that, I think that's really all. I just-- I, I heard some questions that I think that I could answer for as far as the telecommunication company. And that was kind of what my, my opponent was.

FRIESEN: Thank you, Mr. Jarrett. Questions from the committee? Senator Albrecht.

ALBRECHT: Thank you. OK, so I'm going to ask you some other quick questions about if I'm, if I'm a homeowner, as this gentleman is, and I have bought that house and there's been six other people that had lived there before, I mean myself, I wouldn't have a clue where, where that line would be. So because nobody did knock on his door to even ask him the question, he couldn't offer it up, but if the city is in-- I mean, the city would, I would think would-- I mean, wouldn't the contractor want to just kind of contact them and ask where that runs at or--

ED JARRETT: There are city tap records in certain cities.

ALBRECHT: Um-hum.

ED JARRETT: And it's-- Lincoln is big enough, they're-- it does have tap records, but sometimes they're not accurate. We found that out firsthand with some sewer damages here in Lincoln.

ALBRECHT: So you, you do take on the responsibility if you damage something?

ED JARRETT: Yes.

ALBRECHT: Just-- I would think it would be a no-brainer. That's why--

ED JARRETT: Yeah, yep.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

ALBRECHT: --I can't imagine why we would, would have to put this in law. But certainly if it's not happening, then maybe speaking to this and those that--

ED JARRETT: Yeah.

ALBRECHT: --aren't doing the job.

ED JARRETT: Yeah, we take all responsibility for any, any proven damages--

ALBRECHT: OK.

ED JARRETT: --no matter what the time frame is. If it's a conduit going through your sewer and we locate it and that's where our line match, matches up, then we're going to be responsible for that and the restoration of the, of the, the home, so.

ALBRECHT: Thank you.

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

MOSER: What about taking those telecommunications-- telecommunication cables and just knifing them in six or ten inches deep? There shouldn't be anything in that shallow of a space. Would that be a better place to put those--

ED JARRETT: In the right-of-way, no, because the, the city mandates you to go a certain depth. And then there are some other telecommunications companies that are in that space as well, just varying on when they put them in and, and who was the last provider to put them in. There's a lot of different depths that other telecommunications and electrical companies-- sometimes the grade changes over time or, you know, somebody did some yard work, didn't call any locates, and the-- and then the grade of the, of the utility lines change depth as well.

MOSER: Do you, do you put in a conduit or you just--

ED JARRETT: Yes.

MOSER: --put the lines in?

ED JARRETT: No, we do-- all of our ALLO network is in conduit for that extra--

MOSER: So you can go back and repair it later--

ED JARRETT: Yep.

MOSER: --if you need to?

ED JARRETT: Yep, preferably we can repair the conduit and then pull in a new fiber if need be.

MOSER: Do you dig a hole or use a Jet-Vac or something every so far to see if you are at the depth that you think you are with your horizontal boring?

ED JARRETT: Yeah, we have bore records. You can provide the records from the comp-- the contractor, we request them to be so, so deep in that-- especially in the right of way where it's mandated by the right-of-way management. And then they provide those bore records. And then also line of sight, any time that they cross a utility that's known, is marked and known to be there, they have to pothole down to get a line of sight before they drill through. And we stay, we try to stay about a foot above or below any other utilities that are marked, just to keep that separation. So if an electric line has a, has a fault on it and they're above us, we try to stay a foot below so that they can dig safely to repair their line or vice versa.

MOSER: So if you drill a hole in somebody's sewer, do you fix it?

ED JARRETT: Well, we have a contractor to fix it, yeah, the sewer company, yep. We don't have anybody that's licensed and that's probably a good idea to have a contractor that has a license, but they have a, a sewer license through a company.

MOSER: You're talking about the boring companies?

ED JARRETT: Yeah. They're not licensed plumbers, but they have plumbers online and--

MOSER: Oh.

ED JARRETT: --and usually contracted to, to [INAUDIBLE]--

MOSER: --you're not talking about insurance, you're talking about--

ED JARRETT: No, we, we--

MOSER: --being able to repair what they broke. They may not be--

ED JARRETT: Yeah.

MOSEER: --legal at fixing--

ED JARRETT: Yeah, so then that's when we employ or the contractor employs a licensed plumber in that market.

MOSEER: All right, thank you.

ED JARRETT: You're welcome.

FRIESEN: Thank you, Senator Moser. Any other questions from the committee? So when you're overbuilding a community and you're getting pretty experienced at it, do communities generally tell you exactly what height they want, their depth they want their cables buried?

ED JARRETT: Generally, yes, in the right-of-way.

FRIESEN: So do you ever vary from that in order to dodge things?

ED JARRETT: We do if it's approved on by the city. So if we come across where the-- say the power is at five feet, there's other telecommunications or fiber of four feet, a gas line at three feet, well, they don't want us to go any shallower and we don't want to go any shallower for protection of that fiber. And then below that, maybe there's a storm drain that's noted to be at six feet to-- say it's 24 inches to eight, to eight feet. So then we'll go underneath of that and then come back up in that situation. But we have to-- we-- our contractor has to bring it to our attention first and then our attention-- our field engineering goes to the city representation to get that approval.

FRIESEN: And so then if you're, if you're boring down there and you do hit something, you fix it.

ED JARRETT: Yep.

FRIESEN: OK.

ED JARRETT: Yep, it gets a little costlier, but we'll fix it.

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

ED JARRETT: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 25, 2022

FRIESEN: Anyone else wish to testify in opposition to LB884? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Cavanaugh, wish to close?

M. CAVANAUGH: Thank you, Chairman Friesen and members of the committee. Thank you for all those great questions and I appreciate all three of our testifiers today. I think that there's a lot of interesting nuances to this situation and I have a feeling that this won't be the first and last time that we talk about this. So I enjoy the opportunity to continue the conversation with all of you moving forward. So I-- there's just so many things to, to address and I'm not even sure how to begin, so I'm not going to attempt it. I will attempt to answer any of your questions and we can talk about it moving forward.

FRIESEN: Thank you, Senator Cavanaugh. Are there any questions from the committee? Senator Albrecht.

ALBRECHT: Can I just ask a quick question? And he-- and your gentleman behind you maybe said this, but did his insurance company cover any of the damage?

M. CAVANAUGH: I don't believe so.

ALBRECHT: No.

M. CAVANAUGH: Yeah, no, because that's a special insurance.

STEPHEN PFLAUM: [INAUDIBLE].

M. CAVANAUGH: --that you would have--

STEPHEN PFLAUM: [INAUDIBLE].

M. CAVANAUGH: --to take out. Yeah, you have to take out-- you would have to take that--

ALBRECHT: It would be a separate policy--

M. CAVANAUGH: Yes.

ALBRECHT: --for sewer.

M. CAVANAUGH: That is not typical in a--

ALBRECHT: OK.

M. CAVANAUGH: --homeowner insurance policy.

ALBRECHT: OK, OK.

M. CAVANAUGH: So no, that wouldn't be.

ALBRECHT: OK. Thank you.

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

M. CAVANAUGH: Oh, I would add there were some questions from Senator Moser about pursuing a lawsuit. And I did check with Mr. Pflaum and he did pursue a lawsuit, but was told that they were going to litigate to the point where he could not-- it would not be affordable to him to pursue and so basically was "big lawyered" out of a lawsuit. So really, the intention here is to not create more lawsuits, but to create a-- outside of the justice system, an avenue for people to just get this resolved. And I do believe that Senator Albrecht mentioned about this is one instance. Mr. Pflaum has been a great asset in bringing this forward and going through all of these different steps to try and get resolved, but he really does represent several people in the community in Omaha. Oh and yes, the, the affidavit that's passed out, that is from the lawsuit that he mentioned that OPPD has against the company.

ALBRECHT: OK.

M. CAVANAUGH: But that is, I believe, an ongoing lawsuit so you can look at what some of the complaints are from that.

FRIESEN: This, this has nothing to do with what you're talking about today.

M. CAVANAUGH: Well, the company, Nextel--

FRIESEN: Yeah.

M. CAVANAUGH: --yeah is the company, so it's just additional information, so-- sorry, that was it.

FRIESEN: OK, seeing no other questions and we will close the hearing. Oh, we did have-- do we have any letters? I think we had one letter in neutral capacity. With that, we'll close the hearing on LB884 and we will be going into Exec Session.