

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Transportation and Telecommunications Committee February 14, 2022

**FRIESEN:** OK. Welcome to this afternoon's public hearing of the Transportation and Telecommunications Committee. I'm Curt Friesen from Henderson, Chairperson of the committee. I represent District 34. I'll begin with a few procedural items. Please silence all cell phones and other electronic devices. We'll be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should move to the front of the room and be ready to testify. We have set aside some chairs in the front row that you can use so that you're ready to go when it's your turn. If you will be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required, but if you do have handouts, we do need ten copies. One of the pages can assist you if you need help. When you begin your testimony, it's very important that you clearly state and spell your first and last name slowly for the record. If you happen to forget to do this, I will stop your testimony and ask you to do so. Please keep your testimony concise. Try not to repeat what has already been covered. The acoustics in this room are challenging and everyone must speak directly and clearly into the microphone. We use the light system in this committee. Beginning with the five minutes, you have the green light and the yellow light indicates there is one minute left. When the red light comes on, time is up. You need to wrap up your testimony. My right is a committee counsel, Mike Hybl and the committee clerk, Sally Schultz. And with that, I will-- the pages are Sophia and Thomas so thank you for helping us today and we'll start on my right with introductions.

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

**BOSTELMAN:** Bruce Bostelman, District 23: Saunders, Butler, Colfax Counties.

**ALBRECHT:** Joni Albrecht, District 17: Wayne, Thurston, Dakota, and portions of Dixon County.

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

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

**FRIESEN:** OK. With that, we'll open the hearing on LB1266. Welcome, Senator Halloran.

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**HALLORAN:** Thank you. Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. For the record, my name is Senator Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, and I represent the 33rd Legislative District. I'm here today to introduce LB1266 to the committee for your consideration. Last year, when the Public Service Commission reviewed their common carrier policies, they discovered that many were giving discounts such as senior citizen discounts. However, there's no authority in statute for them to do so. The loss of that discount makes it more difficult for senior citizens who rely on those services. A constituent of Speaker Hilgers reached out to look to the Legislature to remedy this change made by the PSC and put into statute that our common carriers explicitly have the right to offer a senior citizen discount. This simple fix helps support our Nebraska seniors. I would like to add that it's purely coincidental that a senior citizen is offering this bill. Thank you for your consideration and I will be happy to answer your questions.

**FRIESEN:** Thank you, Senator Halloran. Any questions from the committee? Seeing none, will you stick around?

**HALLORAN:** Sure.

**FRIESEN:** Proponents for LB1266. Anyone wish to testify in favor?

**DAN WATERMEIER:** Good afternoon, Chairman Friesen, Committee of-- Transportation Committee. I am Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, and I represent the commission's first district and the current chair of the Nebraska Public Service Commission. I'm here today to testify in support of LB1266. The commission regulates the rates and charges of common carriers, including those providing interstate passenger transportation services. Common carriers must provide their services at the rates approved by the commission and can provide their services for free at a reduced price only under certain circumstances. Commission Docket MR-1025, opened in June of 2021, reviewed all common carrier transportation rates to ensure statutory compliance. After that review, the commission ordered any common carriers to stop offering any discounts that weren't allowed by the statute if they were doing so, including discounts for seniors. LB1266 would make clear that carriers would be able to provide free or discounted transportation services to those 65 years of age or older. Such a discount would provide much-needed relief to those seniors who may have limited or fixed incomes. This concludes my testimony and I'd be glad to answer any questions.

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**FRIESEN:** Thank you, Commissioner Watermeier. Any questions from the committee? Senator Moser.

**MOSER:** So what's an example of a common carrier that would offer a discount?

**DAN WATERMEIER:** Well, especially in the medical field, there's an awful lot of calls that come in and a common carrier would be not the TNCs, but the taxicabs and the common carriers that are licensed to carry to HHS.

**MOSER:** So it's not common carrier freight, it's people--

**DAN WATERMEIER:** Correct, yeah.

**MOSER:** --unless they want to give senior citizens discounts on their freight?

**DAN WATERMEIER:** That wouldn't apply to this statute change.

**MOSER:** Thank you.

**DAN WATERMEIER:** Yeah.

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

**DAN WATERMEIER:** Thank you, Chairman.

**FRIESEN:** Any other proponents for LB1266? Seeing none, anyone wish to testify in opposition to LB1266? Seeing none, anyone wish to testify in a neutral capacity? Neutral?

**JULIE BANKS:** You'll have to pardon me, people. I'm deaf as a doorknob. I do not hear-- I have not heard anything that has been said in this room today. I've been using this, but it doesn't always work. I originally found out about this particular thing through a-- another cab driver that they were no longer going to offer discounts to senior citizens. They were just going to go to one particular format of, of charging. And the problem is my mother is 87. She's blind and she can't really take most traditional forms of transportation that most people do. She relies on the cab services and those discounted services are very important to her. She has not handled this very well because she's been only going to her medical appointments. Cab services are very expensive. I took a cab down here. I don't drive either. It costs me \$14 to come here one way. A lot of the medical

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transportation services that go down are mostly in the south and we live up in north-- off of Folkways, up North 27th, so it's usually a \$50 round at least. So that's a big expense for my mother. If she could get just a little bit of a discount, it would be nice. I don't know why this was ever even thought-- brought up to, to not give discounts to seniors because they are-- you know, we pay for them so that they don't have to do this. I don't mind paying the full price, but my mother shouldn't have to pay full price. It would be really nice if we could get this straightened out so that we can give the discount back to those very elderly people who desperately need it. The other thing I've been told-- a lot of people tell me, well, get a family member. I don't have any family members that are here in this state. Most of my family members live in California. I don't drive so I can't take her. So it's really-- we're really dependent upon these public service institutions to help us out; cabs, bus services. If she could take the bus, she would, but she can't right now. She can't see. But, you know, so the cabs are very important for that-- for her for that reason. And I can't think of anything you could do that would be better than to give the senior citizens back their discount. That would be a great thing. It would certainly make my mother very happy because maybe she could actually go to an antique store instead of going to a medical facility for a change. Thank you very much for listening to me. I appreciate it. I'm sorry I can't hear you guys.

**FRIESEN:** I'm going to try and ask you a question. I mean, would you just state whether you were in support?

**JULIE BANKS:** Try it again.

**FRIESEN:** State whether or not you're in support or in opposition for the record.

**JULIE BANKS:** What competition?

**FRIESEN:** Opposition or support?

**JULIE BANKS:** Oh, well, I'm not sure what that was.

**FRIESEN:** I think--

**JULIE BANKS:** Try it again.

**HUGHES:** Do you support the bill or are you in opposition to it?

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**JULIE BANKS:** Well, I'm not sure how that goes. I'm supporting the bill to make-- give senior citizen discounts back. Is that what your question was?

**FRIESEN:** Yes.

**JULIE BANKS:** OK.

**FRIESEN:** Just say that you support the bill.

**JULIE BANKS:** Oh, I didn't know. I don't know any of these words. You tell me where-- this one, OK. There we go. Thank you. I'll give you back your pen, thank you.

**FRIESEN:** Thank you.

**JULIE BANKS:** Any other questions?

**FRIESEN:** Seeing none, thank you.

**JULIE BANKS:** Thank you, guys. Thank you for dealing with a deaf woman.

**FRIESEN:** OK. We had no other testifiers in a neutral capacity. With that, Senator Halloran, do you wish to close?

**HALLORAN:** If there are no questions, I'll waive close. If there are any questions, I'll try to answer them, but.

**FRIESEN:** No.

**HALLORAN:** If this advances, could be consent calendar option maybe.

**FRIESEN:** OK, we'll keep that in mind.

**HALLORAN:** OK.

**FRIESEN:** We have no online comments and with that, we'll close the hearing on LB1266. And Senator DeBoer has arrived and joined us. OK, now we'll open the hearing on LB1166. Welcome, Senator Sanders.

**SANDERS:** Good afternoon, Chairman Friesen, committee members. For the record, my name is Rita Sanders, R-i-t-a S-a-n-d-e-r-s, and I represent District 45, which includes much of Bellevue-Offutt community is eastern Sarpy County. Today I'm introducing LB1166 to continue a discussion about improperly buried utility lines. I'd like to thank Build Omaha for bringing us this bill. I also want to recognize all the telecommunication lobbyists that I have worked with

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us ever since LB619 last year. While we are still seeking a solution, they have been willing to come together to the table to discuss. Last year, I introduced LB619, which would have required all utility companies to bury their utility lines at a certain minimum depth. Based on feedback from the hearing and from numerous conversations with stakeholders, I am taking a different approach this year. Before you today is LB1166 and it would provide that an excavator who damages a residential communications line that is buried less than 10 inches into the ground and more than 12 inches from a house is not strictly liable for such damage. The reason LB1166 remains the same, our home builders are frustrated with the haphazard installation of utilities, mainly telecommunication lines, on their work sites. Frequently, the builders encounter these telecommunication lines outside the easement or casually dropped on the topsoil of the lot. This delays projects and causes conflicts between the contractors and the utilities. Rather than mandating that utility bury their lines at a certain depth, I suggest a different approach, that utilities do not wish to bury lines at the industry standard and at a safe depth will not receive the full protection of the One-Call Act. This approach is both safe and narrow. It all-- only applies to telecommunication lines and only applies to residential property. This bill also does not guarantee liability to either party. It simply states that excavators who stumble upon these pure-- poorly buried lines are not strictly liable. The One-Call Act represents an important balance between the interests of excavators and utilities. It should not be one-sided that it gives full financial protection to a utility no matter how, how it buries its lines. I know that there are many questions about how this statute is enforced and I am happy to have that conversation about the best way to protect homeowners and contractors. Additionally, you will hear testimony from the president of Build Omaha, who can add more context to the need of this bill. Thank you for your time and I'm happy to answer any questions you may have.

**FRIESEN:** Thank you, Senator Sanders. Any questions from the committee? Senator DeBoer.

**DeBOER:** Just a quick one. Why did you decide to limit it to residential properties?

**SANDERS:** This bill was given to me and so this was the subject of the bill.

**DeBOER:** OK, I'll just ask-- thank you.

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**SANDERS:** And to keep it, I think it's way too broad if we added commercial as well to the bill.

**DeBOER:** OK, thank you.

**FRIESEN:** Thank you, Senator DeBoer. Senator Moser.

**MOSER:** Would a utility be normally able to collect if their wires are cut and they're on the builder's or owner's property? Wouldn't normally they only be able to charge for the repairs if they're in the easement?

**SANDERS:** I'm going to leave the details of this bill up to those that are following me in this conversation.

**MOSER:** OK.

**SANDERS:** They should have the answer for you.

**MOSER:** All right, thank you.

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

**SANDERS:** Thank you.

**FRIESEN:** Proponents for LB1166. Welcome.

**ERIC LAKEMAN:** Good afternoon. My name is Eric Lakeman, E-r-i-c L-a-k-e-m-a-n. My company is L&L Custom Builders. I've been around for about 25 years. I also happened to be the president of Build Omaha right now. The reason that we're-- that I'm here today representing not just Build Omaha, but I'm actually also representing the other building groups in Omaha, Nebraska, is the consistent and constant problems that we encounter all the time. I'm actually-- the kind lady is handing that picture around. The question gets asked about-- your particular question, Senator Moser, was regarding the dropped lines. That's on a job site. I took that picture Friday. That's me in the shadow that you see right there. And so this is the constant practice that occurs on all of our job sites. And so it's not just the, the line as you see as the-- in the easement, it's the line that's the cable line that's just dropped on the ground. The problem that we constantly incur is not only is this line usually in-- again, in the wintertime, not buried correctly, but it's creating an unsafe work environment for the gentlemen that are working there. If you actually see around the house, there's a line there and I've constantly tripped

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on that line myself multiple times. We're trying to bury it, put some soil over the top of it so that if we drop a tool or something else on that, that we don't cut that line because if we damage that line as the contractor, we're liable for that damage to that line. But just to kind of-- just to give you a little bit different explanation, what typically happens as a contractor-- and again, my job is the builders. I have multiple contractors that may work on that property that encounter the one-call, one-stop ticket. What typically happens is any time we require excavation on the site, I'm required to call in. That's my protection. And what happens is it's real simple. They send someone out there. He's got a little-- nice little electronic beepy deal, a can of spray paint, and some flags. He finds and locates the line by the-- indicating the beeps. He gets his can out. He sprays about in the area where that beep occurred and he sticks a flag in the ground. It's a dash line, you know, wherever. That is my indication of where a utility line is to be marked. My job at that point is to try to find that line before we do any work on that. And let me tell you what's happened personally to us in this last year. So twice this last year, I've gotten phone calls from my landscaper. Twice they've brought their equipment out there to try to find the line and twice just using a sod cutter to remove the sod nicely so that we can actually replace the sod nicely back on someone's yard, we've cut the line. I don't know what the individual tickets were, but the total of those two tickets was over \$1,600. So it's an expensive application and this was sticking-- strictly the sod cutter that cut that line. Again, last year, I got a call from my sprinkler guy. Again, he had the line indicated, he had the spot marked. He went to put his spade in the ground. Strike number three, lucky strike, he cuts the line. Again, all he's trying to do is locate the line, but what's happening is, as you can see in that picture, nine times out of ten-- because again, in our climate zone, the cable lines, the phone lines get dropped on top of the surface. Very likely in the spring what happens is they come back and they try to cover those lines. Well, typically speaking, the sod has already been placed over there or they do a minimum effort to try to bury that line, typically a few inches underground. Well, my job again as the contractor for all the individuals that work for us are trying to do a nice job of unlocating that line. But what happens is there is no indicated depth on those. And so again, one spade into our hard Nebraska ground so many times has severed the line. And it doesn't happen just once; it's again and again and again. And so what happens is that one individual who's trying hard to work for us is finding himself in jeopardy because these lines are at no buried minimums. If we had a simple, buried minimum, that would be easier, but we don't. So what happens is we're



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simply in jeopardy by trying to locate these lines. And again, it's not that these lines are randomly not located or in this case-- and in particular in my scenarios with our job sites, these lines have been located. Our guys are doing their best due diligence to try to uncover those lines safely. But unfortunately, because there is no minimum of where these lines get placed, a lot of the damage is occurring in simply uncovering them. And so let me even share with you another explanation. So again, there's a situation that just happened again this February. The line was dropped. The equipment was being brought to the job site. Again, the line was dropped, just like what you see on that picture. What happened was is that the gentleman was coming to work on another property. He drove his equipment over that ground. Well unfortunately, the ground is frozen. He drove his equipment on top of that ground, line was severed. Again, that gentleman is responsible. Now, he didn't call in a one ticket because, again, he wasn't digging on that site. I'm required to call in when I'm excavating or digging or using some sort of a digging equipment. My third example is even worse. The developer-- another part of what we do with the building sites was actually mowing the weeds in April when they-- again, we had an early spring. The grass was growing up. He mows the weeds. Guess what? That line was dropped on the ground, hadn't been buried yet. The mower comes over and cuts the line. Now he's liable again and he-- again, his response was, well, I wasn't digging, I never called in a one ticket, and I had no idea that that line was growing in those weeds and when I mowed that, I cut the line. He is again responsible for that. And again, his response is well, I'm not paying that. So he's now using an attorney to fight that claim, which has actually been sent to collections. So this has real implications. It has real problems and it's creating real problems on our job sites. Again, that's my job site. That was Friday. That's the line that we have to work with.

**FRIESEN:** Wrap up.

**ERIC LAKEMAN:** I'm sorry. But all we're asking for is just some latitude in trying to help set this up so we can make a better environment for all the people that are working on it or at least some minimums. But at least if there's not a minimum, so that we are not liable for just trying to uncover a line and doing our best.

**FRIESEN:** OK.

**ERIC LAKEMAN:** Questions?

**FRIESEN:** Thank you, Mr. Lakeman. Questions? Senator Moser.

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**MOSER:** So are you liable even if the line is not in the, the easement if it's on your property or the homeowner's property that you're working for?

**ERIC LAKEMAN:** That is correct. We are getting those-- we are receiving the bills to make any repair anywhere.

**MOSER:** Well, you're receiving a bill, but is it legal?

**ERIC LAKEMAN:** Well, apparently--

**MOSER:** Are you legally required to pay it, do you think?

**ERIC LAKEMAN:** You know what? To be perfectly honest with you, I'm not an attorney, I'm a builder. So I guess I don't know that-- I truly don't know that, but based on the citations that the builders that I know or the subcontractors that I know, they're paying those.

**MOSER:** Well, it probably would be cheaper to pay them in a lot of cases than to fight them, but.

**ERIC LAKEMAN:** Right. And again, these are-- and the hard part is this has put us in a bad position because utility providers are our partners. We need these services brought to these homes. We want these for our clients. I mean, we build these relationships. We want to continue to have a great relationship. The last thing I want to do is cut your, your cable tonight or last night when you're trying to watch the game.

**MOSER:** Well, I could see if the homeowner would come after you because you cut the line to their house because that's on their property.

**ERIC LAKEMAN:** Right and they get-- what we're finding-- and so many times, you guys, it's not the fact that we're not trying to uncover these lines, it's just in the discovery process of uncovering these, that the depth is right below the sod. I mean, try digging in July when this ground is hard. You've got to use a big old shovel and push hard to get through it and--

**MOSER:** Are these lines marked?

**ERIC LAKEMAN:** They are marked, but here's what happens. So if I can stand up, there's a dashed line on here, looks like this.

**FRIESEN:** You'll have to stay sitting.

**ERIC LAKEMAN:** I apologize. I was trying to use that as an example. I have-- they have a latitude 18 inches on each side of that. So I'm basically digging a 36-inch hole. And again, there's no indicated depth marked on that. So when I go and start to dig that, I use-- basically we start with shovels is basically what our application is.

**MOSER:** You're, you're, you're going to excavate deeper than what they say the line is at and so you want to find out where it is so you don't cut it?

**ERIC LAKEMAN:** Almost every single application is someone's coming up that with a shovel or a spade trying to indicate where that line is. But there is no depth. And to answer specifically, I've had situations where we've had to dig as deep as six feet where they bore shot a line in and again, now I'm in a situation where I'm really in trouble with OSHA because now I've got basically a four-foot hole and I'm trying to dig as-- deep we find it because it's been indicated and we go down six feet deep. So there is no-- when they locate that line, there is no indication of whatever depth is that line at, even though on their equipment, it does state where that line is. So when that gentleman is locating that line, he can tell, but there's no indication left for us, the builder or the contractor, working on there.

**MOSER:** Would there be any sense to having those utilities make those connections, you know, on pole up in the air, overhead?

**ERIC LAKEMAN:** Well, I think in our-- again, in our state of Nebraska, we don't have any problem with them being in the ground because it's probably safer for everyone involved. We don't have the wind or the snow or everything else to-- that would affect those utilities. So it's not the fact that it's not in the ground. We think that's probably a good thing. It's just a simple fact that they are at usually such minimum depths, that's where the problem would get-- occurs.

**MOSER:** Can't they usually-- I mean, even if the ground is frozen, can you knife it in like they do with sprinklers?

**ERIC LAKEMAN:** Yes, they can. And quite frankly, as the contractor, I'm required to do that all the time to get my lines buried.

**MOSER:** Because they can pull in a conduit with the knife and just pull that up to the house.

**ERIC LAKEMAN:** And I do that as a contractor. I'm required now to put in my main utilities with, with, with conduits. And quite frankly, I

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do that a lot of times and I can tell you what happened this summer to me. I had a separate conduit that I-- at my own expense that I buried. When the cable guys were there, we were-- made sure we were there to notify them that we had set up a conduit. And their response was, that's not my job. I can't bury that in that conduit. Would have made their job a lot easier because I already had provided the cab-- the conduit at my expense.

**MOSER:** They refused to use your connection?

**ERIC LAKEMAN:** They did.

**MOSER:** And what was the reason?

**ERIC LAKEMAN:** I, I honestly can't, I can't tell you what's in the-- within the-- in their mind.

**MOSER:** Thank you. Appreciate it.

**FRIESEN:** Thank you, Senator Moser. Senator DeBoer.

**DeBOER:** I will--

**FRIESEN:** Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Friesen and thanks for being here.

**ERIC LAKEMAN:** Certainly.

**ALBRECHT:** OK, so this is new construction, right?

**ERIC LAKEMAN:** New construction or remodeling. In fact, the job site that I showed you in that picture is a remodel project as we speak.

**ALBRECHT:** OK, so-- I mean, is this just now happening that-- something that's just come up in the last year or so because-- I mean, when, when did all this start to happen would you say?

**ERIC LAKEMAN:** To give you a history, I've done this long enough, you know, for 25 years. I would say that it used to be better. I would say in the last ten years, it's gotten way worse.

**ALBRECHT:** So who comes out to check on when they connect it from the pole at the end of the yard to the house? Who, whose responsibility is that?

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**ERIC LAKEMAN:** So again-- and I don't have the specific time frames because I really wasn't prepared to address that particular question, but what used to happen is the cable used to be dropped with the power in the same trench at the same time and typically that cable depth was 36 inches. That was the good old days. Well, when that quit happening now, the cable companies basically said, we're going to run our own trench and our own line. And again, you can debate the reasons.

**ALBRECHT:** But do you work with the city? You know, like, does anybody come out to check their work? I can't even imagine that they just lay a line across like this.

**ERIC LAKEMAN:** They lay a line. There's no-- there-- as far as I know, there's no inspection that occurs on a drop cable or phone line.

**ALBRECHT:** Well, I sure hope there's people behind you to help us understand why they wouldn't put it in the ground. Because what if you had eight inches of snow on top of this? What if you have-- I mean, you have to go in there and, and level off the yards and stuff like that. I mean, I've--

**ERIC LAKEMAN:** Or when I'm clearing the snow to make it a safe work site for my guys and we encounter that cable--

**ALBRECHT:** Correct.

**ERIC LAKEMAN:** --that's laid across the line because--

**ALBRECHT:** So this--

**ERIC LAKEMAN:** --that exactly happened on the last snow. It's why I tried to throw a little dirt on top of that to make it safer.

**ALBRECHT:** This doesn't make a lot of sense to me that these are exposed lines like this, regardless of weather conditions or you just don't go out until you're ready to, to bury--

**ERIC LAKEMAN:** And that is in the state of Nebraska for basically from fall to spring.

**ALBRECHT:** At at the same-- if they're that close to the surface, if somebody goes out to, to do yard work and they decide to, to do some, you know, you know-- I mean, they're going to, they're going to hit them just as easily as you are. So I just can't even imagine that a cable company of any kind is just going to lay them on top of the ground, but I'll, I'll be excited to hear a little bit more.

**FRIESEN:** Thank you, Senator.

**ALBRECHT:** Yeah, thanks.

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

**MOSER:** Does this bill protect you or the homeowner?

**ERIC LAKEMAN:** Well, with the hope of this bill is that we're going to protect anyone that's basically working in what we would call the minimums. And so there's minimums that are set and that we're asking for in this bill and we're asking for is the protection underneath of that minimum. So let's just say you are going out to where you investigate that hole or you're the homeowner digging their flower garden in and you hit this with your hand trowel, which is exactly what can happen. All we're asking is, is that you protect us at that depth to whatever that minimum is required. In residential, we're asking for 12 inches. And so we're saying between 0 and 12, that if we do hit this trying to find the line, that we are not financially responsible for that. That's all we're asking.

**MOSER:** But you say we, you're talking about contractors.

**ERIC LAKEMAN:** Contractors, homeowners, everyone. Again, it affects the contractors.

**MOSER:** So if you got a cable-- so you get your-- it's winter. They don't-- or maybe they're really busy and they just don't want to mess with knifing it in right.

**ERIC LAKEMAN:** Yep.

**MOSER:** So they strain across the ground to get you hooked up right now--

**ERIC LAKEMAN:** Yeah.

**MOSER:** --because the guy is going to move in and they're in a hurry to get in so you cut it. And you say it's not my fault, the homeowner says it's not their fault and so they have no phone, no cable, or whatever it is. And then we say, well, cable company, you have to put it back in. And what if they don't come put it back in?

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**ERIC LAKEMAN:** Well, so again, this, this pertains a little bit more particularly to when I make a phone call and get that location service in. So when I'm-- basically when--

**MOSER:** But you're only looking for limited liability when you use one-call.

**ERIC LAKEMAN:** That is correct because again, any time you dig on your property, you're supposed to use a one-call. So whether you're the gardener or the homeowner or whatever--

**MOSER:** But if it's not in the area where they market within 18 inches, you're not liable anywhere, right?

**ERIC LAKEMAN:** Well, again, in that scenario-- I told you about the gentleman mowing the lot next door or in this case in February with another gentleman, it was Keystone Landscaping.

**MOSER:** Well, I don't, I don't think they should be liable if it-- if one-call is not correct or if it's not buried right.

**ERIC LAKEMAN:** But we're still receiving the bills and having to fight those in court. And so that's the problem is that we again-- I mean, this isn't just a small problem. This is a bigger problem. That's why we're here bringing this to your attention right now. And that's why we're so adamant about it because it's become our problem and the scenarios are expensive.

**MOSER:** You would think that's something that you could work out. I mean--

**ERIC LAKEMAN:** We are hoping that this at least starts a conversation.

**MOSER:** I've been on a lot of construction sites and I've seen a lot of temporary power strug-- strung across the backyard and cable, phone lines and we've even put in lines temporarily where we couldn't-- you know, if we were putting a satellite dish up and it was away from the house, then we couldn't dig it in, same thing. But the utilities won't bury the cable and phone with the power anymore?

**ERIC LAKEMAN:** Apparently, that's not the case. Apparently, there's a liability issue there that that's no longer-- I've heard lots of different things. I'm just going to talk about what I specifically can testify about myself. I can't tell you why that's not the case, but in the old days, that was how it used to be done--

**MOSER:** Yeah, it was--

**ERIC LAKEMAN:** --all the time.

**MOSER:** --three or four different houses.

**ERIC LAKEMAN:** And that, that depth, that was always brought in at 36 inches. And then back to your question, typically speaking, when it was an OPPD deal or, or the public utility is involved and there was an inspection of the ground site, there was at least some uniformity in that application. But now, typically speaking, it's a contractor that has no oversight whatsoever that-- quite frankly, we see it all the time.

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

**ALBRECHT:** Sorry, just bounce right back. Can you tell me the cable that's laid here? Is this a Internet or was it a phone? What is it?

**ERIC LAKEMAN:** That's actually, I believe-- a TV cable is what that application that you see right there.

**ALBRECHT:** OK, TV. Do you know the company, at liberty to say? And I only ask that because if they're new to, to the area and everybody's rushing around and if you're having somebody from out of state that hasn't taken the time to figure it out, is it on all the construction sites around you or was it on just this particular--

**ERIC LAKEMAN:** That's the one that I can show you. I experienced this problem all the time and I have for many, many years.

**ALBRECHT:** With this same company?

**ERIC LAKEMAN:** With-- actually, not just that company, but all the companies. Their reasoning behind it is the ground is hard, we can't put it in. Well, I'm sorry. As you see that application--

**ALBRECHT:** There's a lot of equipment out there that--

**ERIC LAKEMAN:** --in that development, you see that there's a red flag. I just buried a, a power line into that house just the day-- a couple of days before. And so again, that's not the problem. The technology completely exists. There's actually many handheld trenching systems that exist that can get this line more than two inches deep.



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**ALBRECHT:** OK, so you're, you're definitely here speaking for yourself and you've experienced it, but you're president of Omaha Build or Build Omaha. So do you have others that you're here representing?

**ERIC LAKEMAN:** I am. So not only myself, Build Omaha. There's several different organizations in Omaha that-- as builders that-- and again, if you were to ask me, I could bring in 45 different builders and lots of examples.

**ALBRECHT:** OK and have you, have you discussed it with the one-call folks? I mean, they have a board too. Are-- do they recognize this as a major problem?

**ERIC LAKEMAN:** I don't think that's their focus. And again, I don't want to talk out of turn.

**ALBRECHT:** Right.

**ERIC LAKEMAN:** I want to specifically speak--

**ALBRECHT:** But I-- I mean--

**ERIC LAKEMAN:** --to what I know about.

**ALBRECHT:** Knowing what I think I know about this committee-- and we have them in front of us a lot of times too. I think you can complain to them and I, I think they would look for the culprits that are out there. Is it the same people all the time? Are we talking about just anybody that haphazardly happens to do it one time that oops--

**ERIC LAKEMAN:** Well, no, I think that-- I think it's two separate issues. So the one-call, their specific job is to locate that line within a 36-inch window for me. And I don't think that's, that's the problem here. The problem is simply the depth of where these lines are located at.

**ALBRECHT:** That they're not just burying them when they do it, when they bring it to the house.

**ERIC LAKEMAN:** Yes. I mean, we're just-- all we're really asking for is what I would call a safe zone between zero and where they're supposed to be at, which we think is a minimum of 12 inches. And so that's really-- and again, just to take, if nothing else, to take the liability off of all the individuals working that are trying just to discover where that line is.

**ALBRECHT:** Thank you.

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

**ERIC LAKEMAN:** Thank you, guys. Appreciate it.

**FRIESEN:** Any other proponents for LB1166? Seeing none, anyone wishing to testify in opposition to LB1166? Welcome.

**ED JARRETT:** Thank you, Senator. Fellow members of the committee, for the record, my name is Ed Jarrett, E-d J-a-r-r-e-t-t, and I'm a senior manager of plant operations for ALLO Communications, as well as a member of the One-Call Notification Center Board of Directors. My purpose here today is respectfully oppose LB1166 on behalf of ALLO Communications. For almost 20 years, ALLO have been building ubiquitous city Fiber to the Premise networks and communities throughout Nebraska, investing more than \$500 million in bringing broadband to Nebraskans. ALLO is currently using private capital to build out new networks in multiple Nebraska communities such as Fremont, Columbus, Ashland, Wayne, Grand Island, Kearney, Seward, Milford, York, Sidney, just to name a few. The drops that are represented here today, the service lines to the homes are the final connection point to homes and businesses, which are usually buried on private residential properties. The changes to the proposed LB1166 would hinder ALLO's ability to install drops quickly and efficiently and would greatly increase our costs, leading the higher-- to higher rates for our customers. The change-- changes proposed in LB1166 are impractical for several reasons. First, underground sprinkler, sprinkler systems, invisible dog fences, other underground utilities often prevent ALLO from burying drops ten inches or deeper to avoid these facilities while maintaining that depth. We would have to use directional drilling. This is several times more expensive than trenching and putting our drops under other facilities would make it difficult to repair or replace them. Second, the fiber contains glass and cannot be kinked and this bill would make it necessary, necessary to bend our fiber in ways that could not-- that could damage it. Finally, many of our existing drops are buried at less than ten inches and this bill would change the rules of the game and require us to rebury many of our existing facilities. In conclusion, the changes proposed in LB1166 would greatly increase the cost of connecting homes and businesses to wired voice, TV, and broadband services, which would drive up the cost of these services for Nebraskans. It would also lead to a dig first, ask questions later approach and would absolve reckless excavators from liability of damaging facilities. For these

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reasons, I encourage you to not advance this bill from, from the committee. Thank you and I'm ready for any questions,

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

**GEIST:** Thank you for your testimony. What is the usual depth that you bury your cable?

**ED JARRETT:** It kind of varies, but our typical depth is usually around six inches that we can stay above underground sprinklers. We are deploying it to an established neighborhood and-- where they've already got sprinklers, they've already got their utilities drawn to their home. And so we're trying to stay around that six inches. I know there has been instances where we've gone a little shallower and those, those issues have been fixed when the-- when they arise, so usually--

**GEIST:** What about, what about if you have a home that doesn't have an underground sprinkler?

**ED JARRETT:** Well, if we know that it doesn't, then we'll go as deep as we can as, as our vibratory plow will let us and that's usually about 10 to 18 inches.

**GEIST:** OK.

**ED JARRETT:** And then I noticed, you know, some of the electrical companies, we, we get a contract with every market that we go into for new deployment to home and they will bury a conduit with the electrical and other telecom conduits. But when we go to try to pull our fiber, our, our fiber into that conduit, it's either been tamped and kinked at the end of the house or where it comes up to the demark on the-- out on the easement and so we're not able to pull into that conduit. And we've tried to dig it up, fix the conduit, and we still just have the issue of not pulling. So to get our customer connected sooner than waiting for the issues to be fixed, then we will bury it in ourselves. And also another question, just to speak for that, is the, the temporaries that are put on the ground in the wintertime when the ground is frozen, it just-- it damages your equipment when you're trying to vibratory plow through frozen ground. So we have deployed temporary drops to the customer to get them up on service and get them on the network. And we try to follow the fence line and, you know, make it as less inclusive as we can for the homeowner for safety and for anybody that needs to work in that yard, so.

**GEIST:** OK. Thank you.

**ED JARRETT:** Um-hum.

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

**DeBOER:** Thank you, Senator Friesen. Thank you. This is just something-- I don't know about burying cable and the process of that. When you are burying it, we're talking about ten inches or something here, is it uniform, the depth at which-- so if I have a hilly or kind of a-- you know, sort of all-over-the-place backyard, I mean, it seems to me that-- do you sort of follow them, the sort of horizon--

**ED JARRETT:** Yeah.

**DeBOER:** --line or do you go kind of to a uniform depth and then whatever's going on in the ground is sort of different? Like maybe I have a berm or maybe I have this or that. So how does that--

**ED JARRETT:** No, we try to use the same depth. With the machines that we have, they'll follow the same landscape.

**DeBOER:** So they'll follow the landscape for the depth.

**ED JARRETT:** Yeah.

**DeBOER:** So if something changes-- so you put it in and there's a berm and then somebody changes their landscape and there's no longer a berm, that had nothing to do with you guys, now it's suddenly three inches deep as opposed to--

**ED JARRETT:** Yep.

**DeBOER:** OK.

**ED JARRETT:** Yep, erosion or landscaping, yeah--

**DeBOER:** Or erosion or changing the landscape.

**ED JARRETT:** That changes the depth.

**DeBOER:** OK, thank you.

**FRIESEN:** Thank you, Senator DeBoer. Senator Moser.

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**MOSEER:** Do you typically use conduit or do you just bury it right in the ground?

**ED JARRETT:** Yeah, we use conduit. We use conduit.

**MOSEER:** So you could use the same conduit and just repair it if it gets cut?

**ED JARRETT:** Yes.

**MOSEER:** Do you charge the other contractors if they damage your line?

**ED JARRETT:** Yes.

**MOSEER:** Or the homeowner?

**ED JARRETT:** Not the homeowner, unless-- if the homeowner does the damage and they're our customer, we'll work with them individually. But if a contractor does the damage and it's negligence from the One-Call Act, then, you know, we assess the situation and then we bill accordingly. We're-- we try to be fair, but we also try to keep our customers connected.

**MOSEER:** So do you think that the contractor was being a little bit too careless that you bill him and if you think that it-- he has a good excuse, you might not?

**ED JARRETT:** Yeah, we could adjust at that time.

**MOSEER:** That sounds somewhat reasonable.

**FRIESEN:** Thank you, Senator Moser. Senator Albrecht.

**ALBRECHT:** Thank you. Thanks for being here and I knew that you were here before on the one-call. So seasonally when we have ice storms or snow or and you-- do you ever just lay them on top of the ground and leave them there until you can get back--

**ED JARRETT:** Yes.

**ALBRECHT:** --later when everything thaws and-- so you are doing that?

**ED JARRETT:** Yes,

**ALBRECHT:** And but, but would you say that you do work with your contractors to let them know that, hey, we've been-- obviously, they know that you've been there if the line is laying on top of the

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ground, but you leave the type of fiber that you put in with all little glass laying on top of the ground?

**ED JARRETT:** It's protected with a protective sheathing and plastic around it, around the glass, the actual glass. And what we will do is put either orange flags or pink flags periodically on that fiber just to indicate that there is something laying on the ground so that it's not just bare.

**ALBRECHT:** I mean, I know right now everything's moving fast and everybody has to get going and I hope people are understanding that. If we're only talking about not phone lines but just the, the Internet type activity, then we probably do need to have some grace with people if it's happening that way. And as you say, you will with the customer, but I think we also have to, to understand that, you know, when we have to keep coming here to regulate, regulate, regulate-- I'm not for heavy regulation on anybody. I want you to be able to do your job and to get it done, but also not to, you know-- ultimately, it's always passed on to the consumers. So if somebody breaks something and you guys go back and fix it quickly, you're still going to charge somebody, right? I mean, I've had a situation at my place where it was disconnected, but it wasn't my fault. It was an animal on the outside or whatever so that was taken care of. But I, I feel like bills like this, sometimes we need to figure out is it, is it a particular vendor that's doing the, the damage or not being forthright in, in what he's doing? Because I know when you're a contractor, you're on the job, you've got a lot of stuff going on too. So I'm happy to hear what you have to say, but with conditions in Nebraska, I think we all have to lend some grace to this situation. So thank you for being here.

**FRIESEN:** Thank you, Senator Albrecht. Senator DeBoer.

**DeBOER:** Sorry, one more thing. You heard the gentleman talking about that-- sort of the weeds and, and then they broke the line with the weeds and drove over on some, I assume, kind of maybe some tracks in the ground and then drove over a line on that and that cut it because it was frozen. In those sorts of instances, what confidence does he have that he's not going to be charged for breaking the, the lines in those instances?

**ED JARRETT:** Well, as I referred to earlier, we do mark our temporary lines that we lay on the ground with the ground is frozen or if that customer wants-- needs service-- if their 911 service is going to be cut off and we need to get them service really fast, then we'll lay a temporary drop on the ground, a service line on the ground and we'll

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mark that drop with flags sticking up in the air every two to three feet so that it's noticed. And if it does get damaged on the top of the ground, I mean, it-- I hate to speak for other companies, but, you know, we, we'll work with contractors. We, we do every day, but.

**DeBOER:** Because it seems like that's something that could happen fairly easily and if there are weeds growing up, maybe there are flags in there, but you can't see the flags anymore because there are weeds all around them. So, I mean, I can see how it could happen, is what I'm saying. And so I guess the question is what confidence does someone have that they're not going to sort of run afoul of a strict liability measure if they, you know, sort of unwittingly have a problem with these lines?

**ED JARRETT:** Yeah, I think each telecom company is going to be different--

**DeBOER:** Yeah.

**ED JARRETT:** --on that answer. I mean, I have a little bit of confidence in our company. We do things a little different. You know, we're here for the consumer. We're not here for poking, poking fingers and blaming, but ultimately to keep our customers connected.

**DeBOER:** OK, thank you.

**FRIESEN:** Thank you, Senator DeBoer. Senator Moser.

**MOSER:** How about a waiver? If the customer wants temporary Internet and phone or fiber then you have them sign a waiver and say if it's damaged, it's at their expense or it's at your expense? Decide it ahead of time rather than coming back and-- because there could be a lot of latitude in how much you bill somebody when you cut a line. I mean, if you charge them for full bore, for everything that you do, it could be \$1,600.

**ED JARRETT:** Yeah.

**MOSER:** But if I called up and I said my phone's off, you might come out and fix it for a couple hundred bucks. I don't know if that's fair to say that, but.

**ED JARRETT:** Well, it's reasonable, I think.

**MOSER:** Yeah, I just think--

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**ED JARRETT:** The customer is different than the person doing the work.

**MOSER:** Yeah, yeah, yeah, yeah. You should-- it should all be the same.

**ED JARRETT:** Yeah.

**MOSER:** But when, when you-- when it's a business, you charge them full--

**ED JARRETT:** Depending on the investigation evidence. So if you find that the contractor is, for one, breaking the laws of the 811 statutes digging without potholing-- so the statute is-- and I'm not sure exactly which one, but once you do a locate, you are not to dig around that marked facility with a mechanized machinery. So if you're digging with a sod cutter or trencher or plow and you cut that facility, then you're going to get charged.

**MOSER:** You're supposed to use--

**ED JARRETT:** You're supposed to pot-- soft dig, which is I follow the shovel--

**MOSER:** Soft shovel and vacuum up the water out of it?

**ED JARRETT:** Yep. Soft dig with either a vac or a shovel, which I know costs money, but that saves on a \$1,600 bill.

**MOSER:** Well, I think pictures that he showed us, I don't know if you saw them, but the lines are just laying across--

**ED JARRETT:** Yeah, that's a temporary service line.

**MOSER:** Yeah and there's clumps of concrete laying around and stuff that could have brayed the line and--

**ED JARRETT:** Yeah, see, that's a, that's a unique situation that--

**MOSER:** You see a solution here or you just want to leave it the way it is?

**ED JARRETT:** I think it's just a-- yeah, I don't, I don't want to answer for another telecom. I know the way we do things are to try to be hassle free and exceptional.

**MOSER:** Sometimes the industry has better ideas than we do. That's just what I was asking.



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**ED JARRETT:** Yeah, I just-- you know, we're in it for contractors contract-- the consumer especially and contractors are consumers, so. You know, we want to partner the best with contractors, but I don't think making a mandate on private property on depths will be the end-all solution.

**MOSER:** Yeah. Thank you.

**FRIESEN:** Thank you, Senator Moser. Any other questions from the committee? So if-- again, if the line is supposed to be buried eventually, but it's not, I know it's easy to see it, but if it gets damaged by somebody-- obviously they didn't need to call Digger's Hotline, it's laying right there-- who would pay for that then if it was a contractor that just accidentally drove across it?

**ED JARRETT:** Well, again, I don't want to answer for other telecom companies, but, you know, we've-- ALLO is kind of unique in that situation. We'll do what it takes to get the customer back up and then, and then we'll assess the damage. If it was-- you know, if we could have come out and put a conduit around that where they're going to be crossing, contractor could have contacted us and said, hey, we're going to be driving across this drop, can you either bury it or make it to where we could drive across it without damaging it? Then ALLO would go above and beyond to do that.

**FRIESEN:** Because they weren't required to call Digger's Hotline because they weren't digging.

**ED JARRETT:** Yep, but to be a good contractor, you would want to make sure that that line is-- and that customer is connected. So you do-- you know, make that one call that says, hey-- it may take two or three calls to get to me, but we're going to make sure that-- we're, we're going to be hassle free for when you do the project.

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

**ED JARRETT:** Thank you.

**FRIESEN:** --Mr. Jarrett. Welcome.

**TIP O'NEILL:** Chairman Friesen, members of the committee, happy Valentine's Day. My name is Tip O'Neill. It's spelled T-i-p O'-N-e-i-l-l. I'm president of Nebraska Telecommunications Association. The NTA is a trade association that represents a majority of companies that provide landline, voice, and broadband

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telecommunication services to Nebraskans across the state. We oppose the introduced version of LB1166. This bill would amend the One-Call Notification System Act by waiving excavator liability for certain telecommunications facilities located on residential property and could lead to dangerous circumstances where excavators would be allowed to excavate without regard to public safety. We spent a lot of time, Senator Friesen and members of the committee who are still here, on the One-Call Act when I, when I was counsel to this committee and came up with LB462 that, that passed. But the purpose of the act is very simple. We've all seen the ads, call before you dig. Before excavators, including residential property owners, can dig, with some exceptions, they must contact the one-call center. The one-call center contacts utilities in the excavation site to locate their utilities. If the excavator damages a property located facility, the excavator is liable for the damage. If the utility is not properly located within the time specified in the act, the utility is liable. LB1166, we believe, is unworkable for, for, for several reasons. First, LB1166 is not limited to perspective buried facilities and will retroactively apply to all buried communications lines, many of which were buried decades ago when no regulations existed. Second, even when telecommunications lines are buried at or below ten inches, as the bill requires, there is substantial shifting over time. Some shifting is caused naturally, such as normal weather expansion and contraction situations, and the lightweight nature of telecommunications facilities are pushed upwards depending on the soil type. Other shifting, as Senator DeBoer referenced, is caused by homeowner grading, landscaping, and other earth work. Third, LB1166 does not specify who or how it is determined if a telecommunications facility on a residential property is at or below ten inches. Operators of utilities, not excavators, pay the cost of maintaining the One-Call system. In our opinion, this bill gives excavators a free pass to dig without proper location of those facilities. The NTA opposes LB1166. I'd be happy to answer any questions. Senator DeBoer, you brought up an early-- an, an interesting question regarding why it's just laid on top of the ground. If that line is damaged, that's not-- it's not an ex-- it only apply-- the One-Call Act only applies to excavations. And if somebody damages a line laying on top of the ground, I would assume the, the typical negligence civil claims would-- that, that would be the, that would be the standard that would apply in terms of who, who would be liable, negligence and contributory negligence, so.

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

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**DeBOER:** Since you, since you've started a conversation with me, so is it maybe just that folks don't understand and are, you know, are charging excavators or others who are on the property for these-- you know, in the case of it's in the weeds or some of these things, is that-- is there a, kind of an information gap?

**TIP O'NEILL:** I'm just guessing somebody is trying to get somebody else to pay for it.

**DeBOER:** And then they do that and the other person is like, oh, I guess I have to.

**TIP O'NEILL:** Yeah, so--

**DeBOER:** Yes.

**TIP O'NEILL:** --that would be my guess. I, I, I don't know that.

**DeBOER:** All right, thank you.

**TIP O'NEILL:** It's probably a company I, I don't represent that would do that, so.

**FRIESEN:** Thank you, Senator DeBoer. Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Friesen. So I just have to ask you, the-- I mean, to me, what we're talking about here are lines just laying exposed, not-- so that's not part of what-- the way this was written in the beginning.

**TIP O'NEILL:** Right, there's, there's no, there's no strict liability for damaging a line that's laying out there. The only way there's strict liability is if that line is buried and the excavator is-- does locate--

**ALBRECHT:** So we might have to be talking to you after this is all said and done on what do you want to do with those lines that are exposed for extended period, periods of time in the, you know, seasonal type work? Maybe there is something that needs to be said if, if it truly is a reoccurring type situation because I certainly wouldn't want to be the contractor that had to pay that bill. And I don't think that the homeowner-- obviously, they're not going to make-- hold them liable so I think there should be a little--

**TIP O'NEILL:** Well, it depends on whose fault it is that the line got run over.

**ALBRECHT:** Right, right.

**TIP O'NEILL:** I mean, that's, that's really--

**ALBRECHT:** But it would be tough, I would think, on any job site that you're not going to run over something in the yard because you're backing in to, to drop stuff off, you're hooking things up. I mean, there's a lot of things--

**TIP O'NEILL:** Sure.

**ALBRECHT:** --going on. So I still believe that there might be something--

**TIP O'NEILL:** Unless there's a big flag sticking up.

**ALBRECHT:** That's right. Flags would be good.

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

**TIP O'NEILL:** Thank you.

**FRIESEN:** Any other opponents to LB1166? Seeing none, anyone wish to testify in a neutral capacity?

**JILL BECKER:** Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Jill Becker, spelled J-i-l-l B-e-c-k-e-r, and I appear before you today as a registered lobbyist on behalf of Black Hills Energy. I am testifying in the neutral capacity really just to provide some perspective for the committee on maybe the larger issues that this committee is going to face. So this bill specifically, if we look at the green copy of the bill, would actually benefit our company probably in some instances because we are both, under the act, an excavator and an operator. So if we would hit a telecom line that's not following the standard procedure, in theory, that could benefit us. It would take us out of the strict liability statutes. But I wanted to provide some perspective for the committee on really what we're seeing. And given that this committee is hearing so many of the broadband piece of legislation, which I haven't been in to testify on because how we do-- broadband deployment is really not my call, but we care tremendously about how that process happens. And in Lincoln, a few years ago, there was a project that was started to really expand broadband, broadband deployment across the city. The number of locates-- and I'm sorry, my iPad is not working in this room so I'm, I'm a little bit shaky on the

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numbers, but I am pretty sure that our locate numbers just in Lincoln during the time period of that project tripled. Nothing else in the statutes changed for us. We still had to comply with the statutes as they were. We had to respond within 48 hours. We still had to meet all of those marking requirements under incredibly difficult circumstances and at tremendous cost to our customers. Granted, it is our facilities that we are trying to protect, but I think there's just-- over time, utilities have-- as they have done projects or as communities do projects, kind of has, has evened out in the sense that if I'm doing a project, then the next year another utility is doing a project and we all have to locate and mark each other-- mark our items during each other's projects. These broadband projects are, are not the same. We are going to see a tremendous impact on all of the utilities that have to be located and our customers are going to pay for that. There are tremendous safety risks and certainly natural gas utilities face a higher risk. Certainly, nobody wants to have their cable line cut. Last night, we all would have been really sad to miss that game, but it's a lot different if it's a gas line that gets cut. So those are just some of the things that I wanted to mention for the good of the committee. We're very interested in any potential changes to our one-call statutes and always look at these items through the lens of will it make things safer, safer for the customers, safer for all of those entities involved in that process? And then we just want to make sure that we're involved in those conversations. It is going to be tremendously important for all of those groups to work together as our state and all of our states really look at further broadband deployment. With that, I'd be happy to answer any questions.

**FRIESEN:** Thank you, Ms. Becker. Any questions from the committee? So do you ever lay your gas lines on top of the ground running through?

**JILL BECKER:** Actually, Senator, many of you may be familiar with an organization that we require-- that we acquired a couple of years ago. They actually did have natural gas lines on top of the ground. It was called top-of-ground pipe. It was put in the ground as a cost-saving measure under the theory that people could see them and wouldn't hit them. After we acquired that company and still today, we are in the process of burying all of that. It is a safety risk.

**FRIESEN:** OK.

**JILL BECKER:** And no matter how well you think people can see stuff, they miss it.

**FRIESEN:** Thank you. Senator Bostelman.

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**BOSTELMAN:** Thank you, Chairman Friesen. So in this instance where you talked about, so there are lines that have existed for some time, you're going back into existing residents and putting in new lines. So do they have sprinkler systems, do they have electric fence, you know, wires? How do you handle that?

**JILL BECKER:** Through a lot of effort. We are actually doing-- I'll just use Lincoln as an example. We are doing a project that has required a lot of work in those established neighborhoods. It takes a tremendous amount of planning. It, it takes a lot of conversation with our contractors to make sure that we-- they are doing everything correctly in our behalf. We've got to make sure that those notifications to landowners go out. If there is a problem, that people have an avenue to contact us. When we are finished, that their lawn works as it did or better than when-- before we showed up. So it's-- and it takes a lot of time.

**BOSTELMAN:** But you're communicating with the property owner of the land, right?

**JILL BECKER:** We are.

**BOSTELMAN:** So I mean, it's-- it has to be-- OK, thank you.

**JILL BECKER:** Yeah.

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

**JILL BECKER:** Thank you.

**FRIESEN:** Any others wish to testify in a neutral capacity? Seeing none, we do have one online comment in support and I don't believe Senator Sanders is here to waive-- she waives closing. So with that, we'll close the hearing on LB1166. OK.

**ALBRECHT:** We'll open the-- excuse me-- we'll open the hearing on LB1145. Senator Friesen.

**FRIESEN:** Senator Albrecht and members of the committee, my name is Curt Friesen, C-u-r-t F-r-i-e-s-e-n. I represent the 34th District and here today to introduce LB1145. I introduced LB1145 to take care of an unforeseen consequences of a committee bill passed last year, LB174. In part, LB174 removed the date of birth and driver's license information from accident reports maintained by the Department of Transportation. Their specific reasoning for the change was that the

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filer's birth date and driver's license information was not relevant to users of crash reports and should be kept private to avoid bad actors from potentially harassing, harassing and stealing filer's identity. Well, the department forgot about one specific user of the reports and that was the media. The media regularly uses the age of people involved in accidents when reporting to ensure that they don't cause confusion for people with the same name. Obviously, the media is not attempting to use this information to harass or steal someone's identity. Rather, they are using it to provide accurate reporting on accidents. When we drafted LB1145, we wanted to keep the bill as narrow as possible and thought that allowing the year of birth to remain public would clear up any confusion regarding the ability of law enforcement or the Department of Transportation to release the age. Apparently, that was not enough, as news organizations have been told that the statute needed to be specifically allowed them to release the age. Thus, I'm submitting AM1864 that will add the language. Nothing in this section prohibits a peace officer or a law enforcement agency from disclosing the age of an operator or owner included in any report required under this section. It's my hope that we can advance this bill quickly and have it on consent calendar for passage. If you have any questions, I'd be glad to answer them.

**ALBRECHT:** Thank you, Senator Friesen. Does the committee have any questions? Seeing none, stay to close I'm sure. Do we have any proponents wishing to speak to LB1145? Welcome.

**MIKEL LAUBER:** Thank you. Members of the Transportation and Telecommunications Committee, my name is Mikel Lauber, M-i-k-e-l L-a-u-b-e-r, director of news for KOLN TV, and I'm testifying today on behalf of Media of Nebraska Inc. in support of LB1145. Media of Nebraska is composed of the following five organizations: the Nebraska Press Association, Nebraska Broadcasters Association, Nebraska Public-- Publishers Association, Omaha World-Herald, and the Lincoln Journal Star. The primary focus of this nonprofit organization is to advocate for the protection of free speech rights, open meetings, and public records access. LB1145 is a simple fix to an unintended problem that merely restores the public's ability to learn crucial information about newsworthy events. Journalists have traditionally used age along with name and city of residence to help identify individuals mentioned in articles and to protect against liability that could come from misidentifying individuals with similar names. Serious car accidents have always been and will continue to be newsworthy events that require identification for those involved. Before 2021, the dates of birth of such persons were disclosed in the accident reports produced by law enforcement agencies responding to the incident, which allowed

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the media to calculate and report the ages. However, the legislative action during the 2021 Session amended Nebraska Revised Statutes 60-699 to redact birth dates with the goal of protecting against identity theft. The Department of Transportation, when explaining the reason for this change, stated that the filer's birth date and driver's license was quote, not relevant to users of crash reports and should be kept private to avoid bad actors from potentially harassing or stealing the filer's identity, unquote. Unfortunately, that amendment had the unintended consequence of hindering the media's ability to report facts because when the birth date redacted and the age of a driver not otherwise provided, the media may not be able to confidently, to confidently identify those who are involved in newsworthy acts. Obviously, the media is not attempting to use this information for nefarious purposes. Rather, the birth date is irrelevant to an important part of any accurate reporting on accidents. For example, the John Smith living in a certain town who caused a car accident might be different from another John Smith in that same town and without the age, the public could be confused about which John Smith was in the accident. In addition, the other John Smith could bring a cause of action if the media outlet failed to reasonably distinguish, distinguish between the two. The age is crucial because enabling journalists to report the age along with the name and city of residence better informs the public. LB1145 solves the problem by expressly permitting law enforcement agencies to disclose the age of those involved in car accidents while keeping the specific date of birth confidential. The bill should be enacted to restore journalists' ability to accurately report matters in the public interest. Media of Nebraska hopes that the committee will see fit to promote access to this information, which has been traditionally accessible, and advance this legislation.

**ALBRECHT:** Thank you, Mr. Lauber. Any questions? Seeing none, thank you for being here.

**MIKEL LAUBER:** Thank you.

**ALBRECHT:** And the other proponents? Seeing none, anyone in the neutral position? Seeing none, we had no comments online, so, Senator Friesen, you're welcome to close.

**FRIESEN:** Basically, a very simple bill and I think he did a good job of explaining it to it. And the page now is handing out the amendment that I should have given you earlier, so if there's any question, I'd be glad to answer them.



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**ALBRECHT:** Very good, anyone have any questions after the-- see the amendment? We're good? Thank you. We'll close out LB1145.

**FRIESEN:** OK, we will open the hearing on LB1110. Welcome, Senator Slama.

**SLAMA:** Wonderful. Good afternoon, Chairman Friesen, members of the Transportation and Telecommunications Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I'm here today to introduce LB1110, which would allow Nebraskans to register all-terrain vehicles and utility-terrain vehicles for street use in our state. The idea for this bill was brought to my attention by hundreds, like literally hundreds, of ATV and UTV enthusiasts in my district and across the state. A few of them have made the time to join us today. I think the committee has gotten a decent amount of letters and messages in support as well. ATVs and UTVs are very useful for Nebraskans across the state, especially in rural areas. They're used for both recreational and utility purposes. Although we have provisions to allow some uses of ATVs and UTVs on our streets, our current statutes create a confusing and inconsistent legal patchwork. For example, our current statute authorizes municipalities to adopt an ordinance that would allow people to drive ATVs and UTVs on city streets, though only within their jurisdictions. Many towns in my district and all across the state have adopted such ordinances. Where the issue arises, however, is from Nebraskans outside of city limits wanting to take their ATV or UTV into town. While on their route, these individuals would technically be breaking the law unless they fell into the gray area, which allows ATV and UTV use for agricultural purposes. Just by crossing the city limits, they would fall into a bubble where their use, if accepted by the municipality, would be legal again. LB1110 would keep well-intentioned Nebraskans from being labeled as criminals for simply driving their preferred vehicle. LB1110 would also open the door to a dramatic economic benefit to our state. Currently, Nebraskans leave our state to go to South Dakota or other states with looser restrictions on ATVs and UTVs for their vacations. I know of several people in my district, about as far away from South, South Dakota as you can get, that actually register their vehicles, their ATVs and UTVs, in South Dakota so that they can take them on ATV/UTV operating-- off-roading vacations. If we open our roads to these vehicles with reasonable safety measures-- that's the key here-- we can expect an enormous amount of tourism dollars coming from Nebraskans vacationing in state and others traveling here from out of state. Also, LB1110 would boost our state funds by vehicle registration fees alone. The state of South Dakota makes over \$1 million annually through registration fees for

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ATVs and UTVs. If you look at the fiscal note for LB1110, you will see that the Department of Motor Vehicles estimates that they will see \$1.6 million of revenue in fiscal year 2013 [SIC] and \$2.6 million in '24. Safety considerations are at the heart of this bill as well and this is something that we've spent months crafting. Under LB1110, there would be requirements in place to make sure Nebraskans are driving their vehicles safely, safely. This bill would mandate headlights, tail lights, among other features, and would require that all occupants wear a helmet. Also, these vehicles would not be permissible on the interstate or on freeways and expressways. LB would-- LB1110 would also give local authority to counties and municipalities on the use of ATVs and UTVs in their jurisdictions. If a city, town, or county does not want these vehicles operated in their jurisdiction, which they can do with many other kinds of vehicles, they simply just have to say so. It would make sense if Omaha or Douglas County would want to opt out of this legislation since they probably won't have as much need for ATV/UTV transportation as my constituents down in Johnson County. I'm more than willing to work with the committee and any stakeholders on any technical changes that need to be made to LB1110 to get this bill passed. Thank you very much for your consideration and I am more than happy to answer any questions you may have.

**FRIESEN:** Thank you, Senator Slama. Senator DeBoer.

**DeBOER:** Thank you, Senator Friesen. So if I have an ATV now that I can drive, do I have to wear a helmet now?

**SLAMA:** I don't believe that's specified in statute. A specific municipality can require that a helmet be used when it passes its ordinance permitting them, but just for general agricultural purposes, no, I don't believe that you need to have one.

**DeBOER:** So this would add that requirement to only permitted or all ATVs?

**SLAMA:** This would add it to the permitted ones. I'm open to discussions on the other ones. I just don't want to be in a situation where we're requiring on private property helmets and--

**DeBOER:** Right--

**SLAMA:** --getting into that kind of overreach. But yeah, just for the registered ones under this structure.

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**DeBOER:** --because we have an ATV that we have seatbelts on that we wear the seatbelts, but not the helmets. So this seems to be the other way around so I'm just curious how that would work, you know, if we went out to get our mail or--

**SLAMA:** Sure.

**DeBOER:** --or whatever on the, on the, the road. So if we don't register it, everything stays the same. Is that what this bill is?

**SLAMA:** Yeah, you would still fall under that agricultural loophole. You could drive it on your own property. It's kind of like having a truck that you just keep around your farm--

**DeBOER:** Yep.

**SLAMA:** --that you don't drive on the road, same general idea.

**DeBOER:** OK, thanks.

**FRIESEN:** Thank you, Senator DeBoer. Senator Hughes.

**HUGHES:** Thank you, Chairman Friesen. Thank you, Senator Slama. So I think your question was answered, but the agricultural exemption still stays?

**SLAMA:** Yes, the agricultural exemptions still stays.

**HUGHES:** So when you talk about counties and, and-- well, basically counties making different rules for your bill, that the county rules would not pertain if you have the ag exemption.

**SLAMA:** That ag exemption would still stand.

**HUGHES:** OK, so how, how is the county sheriff or somebody to know the difference between whether it's a recreational vehicle, you know, running to town for a six pack of beer versus a farmer, you know, going across the road, heading to check a, a pivot or something?

**SLAMA:** Yeah, that's a great question. And a lot of the visual cues that we have in this from license plate, the registration, the headlights, tail lights, those would make it clearly visually qualified as a registered vehicle. For the ag exemption, if you're just running to check pivots, it operates much in the way as it does now if you're not registering the vehicle where you could be pulled over and asked by the county sheriff. That was actually a big reason

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in me bringing this bill because as I researched more, I found the enforcement of that was really hit and miss across the board. So I think LB1110 just clears the way, provides a clear path for people who want to register their vehicles to run on the road. And if they have a vehicle that they're going to use for both ag and recreational purposes or even just transport, non ag purposes, that they can register and clear up a lot of this patchwork that we have now.

**HUGHES:** So if, if my ATV or UV is strictly ag, is there some type of signage or plating or something that I could put on it so I wouldn't get pulled over, you know, when I'm crossing the highway to go to my north pivot or something?

**SLAMA:** I'd be definitely open to that technical fix. I think that's a two-line technical fix I would definitely be on board with making.

**HUGHES:** But I guess then that opens up a whole nother can of worms--

**SLAMA:** Yes.

**HUGHES:** --of registration and cost and, and those type of things.

**SLAMA:** Yes, it comes down to the give and take of if you think that the non-- the, the vehicles that are going to be used for ag purposes, but not be registered for other purposes, just how wide of a range we're looking at.

**HUGHES:** So currently we have the situation where a municipality can allow--

**SLAMA:** Yes.

**HUGHES:** --these vehicles with their-- you know, some of them, you just-- if you've got a red flag on it, don't necessarily have to have, you know, lights and brakes and turn signals and helmets and all that stuff. So what your-- would this bill cause those municipalities to have to cause their residents who are using their golf carts or UVs, UTVs to get licensed and helmets and all that stuff just to go down and get the mail?

**SLAMA:** It would operate in a similar way to just you operating your car or a motorcycle where the state law would supersede any, anything that comes into conflict. So you would--

**HUGHES:** OK.

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**SLAMA:** --have to have headlights and [INAUDIBLE] lights and a license plate and--

**HUGHES:** Thank you.

**SLAMA:** Yes, sir.

**FRIESEN:** Thank you, Senator Hughes. Senator Moser.

**MOSER:** What about-- are you requiring insurance?

**SLAMA:** Let me-- glancing over at my wonderful legislative aide, Kacy, I can confirm that, yes. Similar to a motor vehicle, you would be required to have insurance on this, yeah.

**MOSER:** You'd have to have insurance.

**SLAMA:** And this is a model that's worked very well in South Dakota.

**MOSER:** Well, why do you need to register them?

**SLAMA:** If you just want to legalize them across the board to run on our highways, I think there's some guys from the Department of Motor Vehicles behind me that might have some strong opposition to that. It's a safety concern. The registration ensures that they're street legal and hits on the other safety concerns.

**MOSER:** So they're going to, they're going to come out and inspect your ATV when you get it registered?

**SLAMA:** They're going to ensure that it's got headlights, tail lights, and everything else, just like when you are supposedly registering--

**MOSER:** Why not just require headlights, tail lights, and not register them?

**SLAMA:** That's a fair question.

**MOSER:** Because the counties and the cities can make their own rules anyway.

**SLAMA:** Yes, they can make their own rules anyways, but they can't-- cities, municipalities are the only ones that can legalize the, the ATVs and the UTVs.

**MOSER:** Well, if we make them legal all over the state then counties don't have to worry about it.

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**SLAMA:** Yeah, which is a great part of it. Like right now, it's really confusing for our ATV and UTV users. We have a lot of counties that have farms that overlap in counties and sometimes the county sheriff enforces that ag use requirement, sometimes they don't.

**MOSER:** Are these counties mostly by bigger cities, like more populated areas?

**SLAMA:** No, they're mainly rural. It depends on what your size of rural is.

**MOSER:** But they can still do whatever they want anyway, so you're building--

**SLAMA:** The municipalities, yeah.

**MOSER:** Well, but the county can too, can't they?

**SLAMA:** No, they couldn't authorize what we're doing in LB1110 because it's operating on state highways. That's, that's the big stickler is if it's state roads, you got to follow state law and that goes beyond the statutory authorities of the municipalities and the counties.

**MOSER:** Well, if they-- if the counties don't have any authority to write rules, then why are they doing it now?

**SLAMA:** They--

**MOSER:** You're saying the rules are different in different counties.

**SLAMA:** I'm not saying there's rules that are different in different counties. I'm saying it's-- the rules that we have now that it either has to be for ag purpose or your municipality has to have specifically authorized it. I'm saying that those two things aren't being enforced across the board right now and it creates a patchwork where our sheriffs, when they do enforce it, are being seen as the bad guys when really they're just enforcing our state law. But it hasn't been enforced in so long and it's so hit and miss that that leads to issues and confusion and frustration, frankly, with our system.

**MOSER:** Thank you.

**FRIESEN:** Thank you, Senator Moser. Any other questions from the committee? So I've got a couple of questions that I-- so you're not requiring anybody to register their vehicles?

**SLAMA:** Not unless they want to take it out onto the state roads.

**FRIESEN:** OK and so that would be an option. So when they do have to register it, do they choose to do that, do they also have to pay sales tax?

**SLAMA:** I can answer that question on closing.

**FRIESEN:** OK.

**SLAMA:** I don't know that offhand.

**FRIESEN:** You know, and I, and I can see some, some reasons for registering. A few years back, we had a bill in front of us that registered ATVs and UTVs and things like that. But when it went retroactively, obviously it caused some concerns. But, you know, I think back then, the idea was more with the theft and reporting and being able to track them. It wasn't really for getting into driving them on highways. And that's kind of what this focus is, right, is on the highways?

**SLAMA:** Yeah, the focus is having, yeah, that more functional use.

**FRIESEN:** OK. Thank you, Senator Slama.

**SLAMA:** Thank you.

**FRIESEN:** Seeing no other questions, are you going to stick around for closing?

**SLAMA:** I will. I may have another bill come up. I've got three today so I will do my best to stick around.

**FRIESEN:** All right, thank you. Proponents for LB1110.

**MONTY KROEZE:** Hello. I'm Monty Kroeze, M-o-n-t-y K-r-o-e-z-e. Dear committee members, I'd like to thank you for the opportunity to speak to you all. I'd like to tell you about our group. We're from Richardson County. We have nearly 80 people that ride and travel together with all ages from 70-year-old people to little ones. Grandparents have gone out in our group and bought UTVs to be able to explore with the younger generations. We'd like you to consider the positive aspects of this act-- that this activity brings as whole families, old and young, spending time together, riding from farm to streams to ponds that we do. Kids outdoors playing, often running while we talk and laugh and enjoy together. However, we want to be

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able to do these activities legally. We enjoy putting on UTV runs for charities. You'll see on one of the pages, we do the FFA poker run. In the last few years, we've raised \$10,000 to \$15,000 for FFA poker runs. Now, when-- with the money we raised, we-- not just FFA poker and we do see a couple others. We raised money for a woman that lost her home to a fire in Verdon, Nebraska. Another lady in Verdon, Nebraska, was battling cancer. She was a widower. We helped pay her medical bills. We published these on social media and we had people from Kansas, Missouri, Iowa gladly coming for the camaraderie and the cause of helping. And they often comment they would prefer for Nebraska to be legal like many other states are doing. And a lot of times, people will stay in the, in the little towns, eat, hotels, etcetera, bring in now commerce there. I'd also like to touch on the fact that without a license, what my-- what many people do, they're purchasing their UTV out of state. Without a license, there's no incentive to go to your courthouse and pay the sales tax. And nowadays a four-seat RZR, even used, they're nearly \$30,000. At 7 percent, that's \$2,000 a machine. Now I personally-- I'm kind of an idiot. The only thing I enjoy doing is traveling it off-road. I have nearly \$2,000 dollars in a truck, a camper, for RZR's. My kids, anything I can do to get them away from the video games. And the minute I say, hey, we're loading up to go riding, they're happy to go. They don't want-- they-- their phones are done for the weekend. I mean, they're outside running. You're going to see pictures of our trips, kids playing in the streams, they're outside. And again, this is all ages and that's why I love this activity so much. I kind of got off a track here a little bit, I apologize. But the biggest thing we find when we go to Colorado, Oklahoma, Kansas, Missouri is how many other Nebraska tags we see at these campsites where we're riding. I mean, you guys have no-- the last trip we took to Rush Springs Ranch in southern Missouri last year, we took 80 people. Eleven campers, we rented 15 cabins. I know we spent \$10,000 down there in camping, riding, food, fuel in just four-day weekend and we do this two to three times a year. That's money leaving Nebraska. I think we need to think about keeping that revenue here. Another consideration-- to answer some of your questions, a lot of farmers aren't aware. I found this out from my local insurance agent. Yep, ag use, they're exempt so they have insurance on them already for-- through the farm. But there's clauses in a lot of insurance companies that the farmers don't know. They have to be in a straight line from their farm to save their cows. They also have to be able to prove that it's for ag purposes that they're driving. Otherwise, if they get into an accident and the insurance company can say that they weren't using for ag purposes right now or they are not in the community that has the law passed where they're



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legal, the claim can be dropped because technically you're breaking the law. Insurance companies, if I'm right, they don't have to pay up, they don't have to pay a claim when you're breaking a law. And my agent said this would alevate [SIC] a lot of headaches by just legalizing them. My top-- one other thing I want to touch on, I know on the social media side, a lot of people complain that they say they're polluters. All these machines have catalytic converters, exhaust. And a lot of modern ones, for the last ten years, they have a one-wheel-drive option. There are two-wheel drive, four-wheel drive, and one-wheel drive at the push of a button. And one-wheel drive, often you're getting 45 miles to a gallon out of them. They're not polluters. They actually would help people when they're cruising around town just getting groceries because a lot of trucks don't get anywhere near 45. Some cars don't. I think it'd be a big help. But the things I handed you guys, I just wanted to show you how positive of a family activity it is. And then I also included an article on the growth of the UTV market and the, and the impact it's making on a lot of states. Thank you for your time. I appreciate it, but I-- if you have any questions, I'd be glad to add-- answer anything.

**FRIESEN:** Thank you, Mr. Kroeze. Any questions? Senator Albrecht.

**ALBRECHT:** Thank you, Senator Friesen. Thanks for being here. So when you go to Missouri with 80 people, does everybody have a helmet on or they are non-helmet?

**MONTY KROEZE:** Well, we all ride in UTVs, so they have roll cages and a lot of your UTVs come out with just a seat heart-- seat-- like a car, right? Most of the people I ride with, we rip those out the minute we buy them. We put in full three-inch race harnesses, four point and five point. Now a lot of us, the adults, we don't always ride with helmets. But my group, we require anybody 18 and under, even though 18 they're technically adult, but if they're in our group, we tell them you're not riding with us without a helmet. Because some of us like me, I get a little silly. I like to climb the tough stuff and I have rolled a few of them. Thank-- knock on wood, I've never been injured or anything. But when it comes to the kids, yes, we require helmets. In fact, my son, I require him to wear a chest protector, the whole nine yards, even though he's four point-- and the four-point harnesses I can tell you could work because my son actually had a pretty good crash once.

**ALBRECHT:** Yeah, so, so if you're in Nebraska and this passes, you'd all have to have a helmet, right?

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**MONTY KROEZE:** Yeah, I, I-- that-- if that's the way it-- yeah, I, I wasn't aware that they were going to require helmets, but if that's what it takes-- because I drive for a living. My license, I'm a commercial driver. I can't afford to get tickets.

**ALBRECHT:** Right, right.

**MONTY KROEZE:** And so if that's what I've got to do to comply, I would wear a helmet, yes.

**ALBRECHT:** And how fast does yours go on a highway? Can you get out of somebody's way that's coming up, up on you--

**MONTY KROEZE:** Basically any, anything probably built after 2009, really anything over 500 cc's, they can, they can drive the speed limit even on highway.

**ALBRECHT:** Really?

**MONTY KROEZE:** Yes. Yeah. Most, most UTVs, though, are governed, how fast they can actually go. Most are governed at about 71 to 82 mile an hour. That's all the faster they'll go. They'll just flat out shut down. But yeah, anything over 500 cc's, you're going to find-- could, could run 60 mile an hour all day long down a highway and with the flow of traffic.

**ALBRECHT:** Thank you.

**MONTY KROEZE:** Yeah.

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

**BOSTELMAN:** So thank you for coming in. So does this meet highway safety standards or the federal standards or are these strictly off road?

**MONTY KROEZE:** I know that there's a lot of gray areas in there. A lot of manufacturers have now stepped up. OK, so up till a few years ago, the machines I buy, one of the first things I do when I get them home, I would rip the roll cage off them because they were built out of glorified exhaust tube and I would have my own custom-built cage that was built out of thicker wall. Now all of that has gone to the wayside the last few years too. I-- there was a few accidents where the cages collapsed and most manufacturers have stepped it up. In my personal opinion, I would rather be in one of those and, and be in a crash at

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50 than I would a smart car because I've actually been in them where-- again, I'll admit I'm off-road in other states. I'm sure everybody here has seen crazy hill-climbing videos. I'm one of those idiots. I'm climbing stuff two blocks up. I've rolled them and flipped them multiple times, got out of the machine, rolled it back over, everything is there. I don't think you can go up a two-block hill in a car and flip the car back over and be able to drive it.

**BOSTELMAN:** Question isn't whether you could flip the car or not. Question is, is whether your vehicle is safe to be on the highway? The question is, is do you have fenders on it? Question is do you have airbags on it? The question is, is it safe for those other people on the road?

**MONTY KROEZE:** OK.

**BOSTELMAN:** Whether you're safe or not, the question-- that's my question.

**MONTY KROEZE:** OK. My-- how I would answer that is, is that that's why I think they should be licensed as-- same as a motorcycle where you're required to have a helmet. But unlike a motorcycle, you're going to have seatbelts, a roll cage over you. No, they don't have airbags, but motorcycles don't have airbags. So that's why I think it should be similar to a motorcycle.

**BOSTELMAN:** I'll go back to, I'll go back to my original question. Are these approved for highway use when you purchase it? Is it off-road use only or does it say it meets the federal highway standards for driving on a highway?

**MONTY KROEZE:** I don't know federal highway standards, sir. I couldn't answer that. I would have an opinion and some comparisons I could do between-- you know, dirt bikes technically--

**BOSTELMAN:** We're not talking about dirt bikes. We're talking--

**MONTY KROEZE:** OK.

**BOSTELMAN:** --about UTVs.

**MONTY KROEZE:** Yeah, no, I couldn't speak on the federal standards compared to a--

**BOSTELMAN:** Thank you.

**MONTY KROEZE:** --to a car, I apologize.

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

**MONTY KROEZE:** Thank you for your time, I appreciate it.

**FRIESEN:** Sounds like a lot of fun.

**MONTY KROEZE:** What's that?

**FRIESEN:** It sounds like a lot of fun.

**MONTY KROEZE:** To me, again, it's about the whole family. There's nothing funner when an 80-year-old grandpa can buy a Ranger and go follow his grandkids and then stop and play and take them fishing and then the, the parents are out trail riding, getting a little silly sometimes, maybe, but then the grandkids and grandparents are together. I think it's a great family activity.

**FRIESEN:** Thank you.

**MONTY KROEZE:** Thank you.

**FRIESEN:** Any other proponents for LB1110? Welcome.

**CLIFTON JACKSON:** Hello. My name is Clifton Jackson, C-l-i-f-t-o-n J-a-c-k-s-o-n. I just wanted to come here and show my support for this bill. I'm a lifelong resident of Nebraska. I grew up in a rural area just south of Omaha. And I'm, I'm right in between one of those areas, like Julie was talking about, that there's three areas around where I live that allow UTV use, but don't allow me to use my UTV. So it just-- it'd be nice if the state could go across the board and have it where everybody can register and-- sorry, I'm getting a little excited-- register it and have insurance and everything. And if you did get stopped, you have all the information you need and, you know, the sheriff's department knows everything that you're required to have. You know, I, I purchased my side-by-side from South Dakota so it already has-- it has a horn. They, they all come with always running headlights. The tail lights are always lit up, you know, and the brake lights work, just as a car. The only thing they don't have is turn signals, which could easily be added. You can have DOT windshield with a wiper if you, you know, if you want. So I don't-- I mean, I don't, I don't understand why it's taking so long to get something across the board, you know, statewide. But I also-- when, when we do go out of state, it makes it really difficult because we don't have a

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registration. Well, I guess mine is registered, it's just not the street legal. But when we go out of town, you have to go from trailhead, put your vehicle back on a trailer, drive three miles down the road to unload it and do another trail. And it would just be much easier because everybody from South Dakota that's there in Utah or down in Arkansas, they're just going from trailhead to trailhead with their street-legal license plates because of the "reprocity" laws. So I just-- I, I think that would, that would make it easier on us residents when we leave. We do leave the state. Plus it would make it easy us-- easier on us if we go visit a friend within the state. You know, there's some areas that the-- countywide, they just let you ride them. And then there are some areas like Douglas County. I guarantee you, you don't want to be riding in that area. So I mean, I've never had an issue personally riding my UTV around where I live. I mean, the, the sheriff's department, really, they don't even look at you just because they realize everybody's out there. Everybody's just-- you know, it's just like having a convertible essentially on a nice day. So I just like to see, you know, everybody get on the same page and, you know, there might be some safety issues that need-- that arise, you know, that need to be taken care of or, you know, anything like that that-- you know, it just-- it should be easily done. I don't, I don't really see a reason why it shouldn't be since all the states around us, I think, except Colorado, have some sort of law on the books like what we're trying to do.

**FRIESEN:** OK. Thanks, Mr. Jackson. So if-- like in your case, is there a need to be on a state highway to accomplish what you're doing or is it [INAUDIBLE] roads or--

**CLIFTON JACKSON:** No, there doesn't need to be. It's just-- like, if we were-- if we had the ability to use the highway, it would, it'd be nice. I mean, I can travel anywhere in my county. I live in Cass County, just, just straight east-- yeah, east of here. And I mean, I could travel the whole county on county roads. But, you know, if it's raining, it's going to be muddy, you know, and stuff like that. I have a 2018 Polaris side-by-side. I mean, I can travel 65 right down the highway just, just as if I was in my truck. So, I mean, it's-- I wouldn't necessarily be on the highway, you know, all the time, but if, if I did just want to go down to the store that's six miles away, you know, it'd be a lot quicker to do it that way, you know?

**FRIESEN:** That's where I think I have the-- I have a little bit of a question on the safety involved too and how do we address that issue even with--

**CLIFTON JACKSON:** Yeah, well, and I do know--

**FRIESEN:** I pay, I pay insurance extra too for mine, but I've never really had to drive on the state highway.

**CLIFTON JACKSON:** Yeah. And, and I mean, it's-- just the, the safety of them-- I mean, they're, they are built off-road purpose only. They-- they're not federal. You know, there's-- they don't meet any safety standards like that because they're not crash tested. I mean, the manufacturer specifies off-road use only, but they are able to be on an off-road environment at a very high speed perfectly fine. So if they were on the highway, which is well-maintained compared to a trail up in the mountains, other than somebody-- you have to make an invasive maneuver for something else, I mean, the vehicle is going to be in way better shape than half of the vehicles out there.

**FRIESEN:** Let's say you were traveling down the highway though and somebody overtook you and you maybe failed to signal even, even if you had blinkers on there and they struck you.

**CLIFTON JACKSON:** Um-hum.

**FRIESEN:** Do you feel our rules of the road laws would even protect you? When you're on a state highway, there's some liability issues of what kind of vehicles are allowed on there.

**CLIFTON JACKSON:** Yeah.

**FRIESEN:** So you start talking about vehicles that have not been safety tested, do you feel that, again, if a vehicle hits you, that their insurance would cover it? Because they're just going to say, basically, that you're-- it's not a safe vehicle and it's because of the vehicle you were injured. Kind of brings up some questions on liability.

**CLIFTON JACKSON:** They're going to have to have an attorney present because that's not going to fly with me. I mean, it's-- that, that's like a theoretical question and I mean, I feel safe riding it down the highway. I mean, it's-- I'd rather be in it getting hit by a truck than on a motorcycle getting hit by a truck. I personally have a motorcycle. It's registered and stuff. I'd rather go on the side-by-side and drive down a dirt road than take my motorcycle--

**FRIESEN:** All right.

**CLIFTON JACKSON:** --so.

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**FRIESEN:** Thank you, Mr. Jackson.

**CLIFTON JACKSON:** Yep.

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

**CLIFTON JACKSON:** All right, well, thank you very much.

**FRIESEN:** Are there any other proponents of LB1110?

**KAYLA WALFORD:** Hi. I'm Kayla Walford, W-a-l-f-o-r-d. I actually work for a dealership here in Omaha, ATV Motorsports. We are for it, not only for our benefit because I know it will bring a lot of people into our business, but because we've lost a lot of business to out of state for the same reason. Iowa, a lot of places in Iowa just went street legal. And I really like the way they did it. They have street DOT tires you have to have on there. You have to have the tail lights, headlights, blinker, horn so it makes it more of the street-legal feel and a vehicle on a side-by-side or an ATV, which we have provided a lot of those to, the Pottawattamie County residents in our area, because they cross the river over to come to us. But I know us riding as a group when we go riding, we go to Arizona a lot. They're street legal down there. South Dakota, Missouri, they all have these rules and we'd like to mimic those because I know our group of like 20, 30 people, half of them go down to Arizona and ride while a lot of them might stay up here if they were able to ride them here. It would bring a lot more people in our communities.

**FRIESEN:** OK. Thank you, Mr. Walford. Do you ride them on state highways or is a street legal on city streets?

**KAYLA WALFORD:** Arizona is highways, not expressways or major interstates, but they are highways. South Dakota, I personally haven't rode up there so I'm not sure, but I believe they are on the highways as well up there.

**FRIESEN:** OK. Thank you for your testimony. Any questions? Senator Bostelman.

**BOSTELMAN:** Yeah, thank you. Thank you for your testimony, coming in today. I don't know if I heard you right. Are their-- are they making-- the newer models, newer vehicles coming out, are they making them more to be street--

**KAYLA WALFORD:** The-- on the MSO--

**BOSTELMAN:** --legal we'll call it?

**KAYLA WALFORD:** On the MSOs, they do say off-road use, but they are more street legal because the way the Pottawattamie County is doing it is they're requiring DOT tires, turning signals, headlights, tail lights, basically more like a car. The only thing that I feel we don't have like they would is-- oh, they require mirrors as well. The only thing they don't have is the airbags.

**BOSTELMAN:** No, I was just-- didn't know if there was a-- if there's-- my question is kind of like if there's a movement in the manufacturers to--

**KAYLA WALFORD:** I believe they're starting to, but as of right now, they are still off-road use.

**BOSTELMAN:** OK, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions?

**KAYLA WALFORD:** Oh, another thing I wanted to bring up is I deal with titles a lot and-- because of the dealership and right now, I believe-- we've passed-- we're-- all ATVs and UTVs needed to be titled in 2011, ATVs in 2004, and we still have people coming in to try to trade in their ATVs with no titles. So I feel like getting them registered and street legal will push people to get-- pay their sales tax, get their titles, and then there's no confusion on who owns the machine.

**FRIESEN:** OK, that's true. Thank you. Seeing no other question, thank you for your testimony.

**KAYLA WALFORD:** Yep, thank you.

**FRIESEN:** Any other proponents for LB1110? Seeing none, anyone wish to testify in opposition to LB1110? Welcome.

**JOHN SELMER:** Thank you. Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is John Selmer, J-o-h-n S-e-l-m-e-r, and I'm the Director/State Engineer of the Nebraska Department of Transportation. I'm here to testify in opposition to LB1110. I would like to thank Senator Slama for contacting us prior to this session to discuss this bill. Current law does allow ATVs and UTVs to cross highways under specified crossing rules. Additionally, cities and villages are able to designate permitted use within their boundaries. An exemption already exists for



agricultural use. However, all-terrain vehicles and utility-type vehicles are not defined as motor vehicles and accordingly, they are not allowed to travel along highway-- our highways, roads and streets. LB1110, as introduced, would define ATVs and UTVs as motor vehicles and if they are properly registered under the bill, they would be allowed to travel on state highways with the exception of interstate, freeways, expressways, or on highways where they have been prohibited by a county, city, or village ordinance. LB1110 would also allow these vehicles to tow trailers on highways. However, no driving skills test is required for a person to be licensed to drive an ATV or UTV on Nebraska highways under the bill, as is the case with licensing a motorcycle. Nebraska DOT has several highway safety concerns with this bill. First, ATVs and UTVs were not designed to operate on the highways. The traditional ATV tire is designed for off-road use only. Many manufacturers warn against driving these vehicles on paved surfaces because of the knobby tires affecting the handling of the vehicle. Consumer product safety groups warn that ATVs should not be driven on paved surfaces. Second, a driver or occupant of an ATV or UTV does not have the benefit of all the safety features of motor vehicles. There have been many occupant safety advancements in motor vehicles, such as seatbelts, airbags, crumple zones, and other structural components that protect drivers and occupants when motor vehicle crashes occur. ATVs and UTVs do not have any of these benefits-- these types of safety features. The size and speed differential between ATV, UTVs, and traditional highway vehicles simply creates greater risks for the drivers of those vehicles on state highways. Motor vehicle crash statistics involving ATVs and UTVs confirm a greater risk for these vehicles in highway crashes. In Nebraska, an ATV crash is 13 times more likely to be fatal than a typical motor vehicle crash. A car-ATV crash is eight times more likely to be fatal than a car-car crash. We reviewed some of the ATV crash information in South Dakota where ATV use is allowed on highways. After adjusting the data for population differences between Nebraska and South Dakota, South Dakota's ATV crash rate is 156 percent higher than Nebraska's. Their fatality rate is 21 percent higher and their injury rate is 172 percent higher than what we're experiencing. Thank you for your consideration for these concerns and your interest in public safety and I'd be happy to answer any questions.

**FRIESEN:** Thank you, Director Selmer. Senator Moser.

**MOSER:** You stated that the ATVs are more dangerous than cars. Are the accident rates different for motorcycles or are they about the same?

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**JOHN SELMER:** You know, I didn't check motorcycles as, as to what the rates are on there so I couldn't answer that, that question.

**MOSER:** Yeah, I would think they might be just as dangerous as far as that goes, but thank you.

**FRIESEN:** Thank you, Senator Moser. Senator Albrecht.

**ALBRECHT:** Thank you, Senator Friesen, and thank you for being here today. Can you tell me, did you look up how many ATV deaths there have been in Nebraska by chance?

**JOHN SELMER:** Well, I look, I looked at it more nationally where it's happening. The Consumer Product Safety Commission put out a report in 2020 looking at the number of ATV crashes over a three-year period.

**ALBRECHT:** Um-hum.

**JOHN SELMER:** And looking at that three-year period, there was a little over 2,000 fatalities and that's all crashes. And that's-- and what they found out is 44 percent of those occurred on public highways.

**ALBRECHT:** On the highway.

**JOHN SELMER:** On the highways.

**ALBRECHT:** OK.

**JOHN SELMER:** And there was some interesting information with that too in terms of 90 percent-- 80 percent of those highway fatalities, the drivers did not have a helmet--

**ALBRECHT:** OK.

**JOHN SELMER:** --75 percent of them were actually single-vehicle crashes. So they weren't car to ATV. They were someone losing control of the vehicle; 70 percent of those were rollover crashes. And what I found very interesting was about 44 percent of the fatalities, the driver was over 45 years of age. So it's not that it's someone who doesn't have experience. I think with a highway, the ATVs basically have a high center of gravity and knobby tires. They're could be circumstances where I think there is even a limitation of 30 miles per hour. And if I'm on there, I probably want to get separation and drive faster. It's the turning movement and the high center of gravity that can cause a problem. So I think someone who's very familiar with them, probably you might be able to get away with it, but it's an

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unforgiving environment when you're out there with less safety features out there. So I think a highway-- this is my personal opinion-- would probably make you feel you could drive a little faster. You feel a little safer because of that, but the high center of gravity and the knobby tires might cause issues.

**ALBRECHT:** So I know that you came from Iowa. Did you work on their bill at all while you were there?

**JOHN SELMER:** You know, I heard the testimony on "Pot County," so I think that's just Pottawattamie County. Last I knew of when I was over there, it was very similar to what we had here. I don't know if it was statewide unless it was just this year because our discussion at that time was similar to just a local ordinance or crossing, crossing highways.

**ALBRECHT:** Thank you.

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

**JOHN SELMER:** Thank you.

**FRIESEN:** Anyone else wish to testify in opposition to LB1110? Seeing none, anyone wish to testify in a neutral capacity? Welcome.

**BETH BAZYN FERRELL:** Thank you. Good afternoon, Chairman Friesen, members of the committee. For the record, my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials and I'm testifying neutral on LB1110. We'd like to thank Senator Slama for introducing the bill and for sharing it with us ahead of time. Some of our comments that county treasurer said offered about sort of the technical aspects of the bill are incorporated in the green copy and we appreciate that. As far as the discussion on the policy issues, a lot of our discussion was similar to what you've talked about today; safety issues, law enforcement, ag use, those kinds of things. In the end, we didn't really strongly have pros and cons so we decided to come in neutral, let you know we're very interested. We'll continue to work with Senator Slama. If there's something that we can work out on this bill, we'd be happy to, to be involved in that. I'd be happy to take questions.

**FRIESEN:** Thank you. Any questions? Seeing none, thank you for your testimony. Any others wish to testify in a neutral capacity? Seeing

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none, Senator Slama will you close? We did have 56 online comments in support, one online comment in opposition.

**SLAMA:** I like that ratio. Thank you, Chairman Friesen, members of the committee. I think we had a really great discussion today about some of the issues inherent in our statutes in our state. Currently, just to clarify a few points that were brought up, counties cannot authorize operation of ATVs and UTVs for nonagricultural purposes on county roads outside of unincorporated villages, villages and cities. So when we're talking about those county roads, that, that falls outside of this discussion. And moreover-- and wherever negotiations take, takes us, whether it's just authorizing use of ATVs and UTVs on county roads, I'm open to it. But if you look at our current patchwork of laws and see the unevenness with which they're enforced and the challenges it poses not only to people operating ATVs and UTVs on our roads and law enforcement who are stuck between a rock and a hard place of traditionally hit-and-miss enforcements on these usages, I think it's clear improvements need to be made. And just to close, again, from a safety perspective, I understand the questions about ATVs, UTVs on the highway, but on the other hand, we allow bikes to operate on our highways in this state as well. So I do think we have to look at both sides of that coin. Thank you very much for your consideration. And again, I am fully open to negotiate to improving these statutes.

**FRIESEN:** Thank you, Senator Slama. Any questions from the committee?

**ALBRECHT:** I do have just one.

**FRIESEN:** Senator Albrecht.

**ALBRECHT:** Sorry. Thanks. I need to know did you open with-- is this a priority bill?

**SLAMA:** It's something that-- I'm, I'm still figuring out what my priorities will be and it depends on the pace with which if we can get fixes that gets the committee on board, I'm definitely open to it because this is a big issue in my area.

**ALBRECHT:** OK, thanks.

**FRIESEN:** Thank you, Senator Albrecht. Seeing no other questions, thank you, Senator Slama.

**SLAMA:** Thank you, Mr. Chairman.

**FRIESEN:** That will close the hearing on LB1110 and the hearings for the day.