

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee March 22, 2022

FRIESEN: OK, everyone, could I have your attention, please. Welcome to Transportation and Telecommunications. I'm Curt Friesen from Henderson, District 34. I'm the Chairperson of the committee. A few procedural items. I ask you to silence all your cell phones and other electronic devices. We will be hearing one bill today. Those wishing to testify on the bill should move to the front of the room and be ready to testify. We have on-deck chairs up front, when your turn comes that you're ready to go. If you will be testifying, legibly complete one of the green testifier sheets located on the table just inside the entrance, give the completed testifier sheet to the page when you sit down to testify. Handouts are not required. But if you do have a handout, we need ten copies. One of the pages will 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 names slowly for the record. If you forget to do this, I will stop you 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, to say the least, and everyone must speak directly and clearly into the microphone. We will use the light system in committee today. How many people plan on testifying? We're going to go three minutes. We'll have a light system. When the green light, you'll be given three minutes. When the light comes on, there's one minute left. And when your three minutes are up when the red light comes on, I'd ask you wrap up your testimony. With that, Mike Hybl is committee counsel, committee clerk is Sally Schultz on my left. We do have Chloe, and I do believe, is our page today, she's a junior studying political science at UNO. So thank you very much for being here. And with that, I will let people introduce themselves starting on my right.

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

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

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

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

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

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MOSER: Mike Moser. I represent Platte County and most of Stanton County.

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

FRIESEN: OK, thank you everyone. Proponents, we'd ask that you come forward. I'm not going to be opening on this. We're just going to take proponents, opponents, and neutral testimony. Proponents can come forward and please testify. Welcome.

BRAD WEGNER: Good afternoon, Senator Friesen and members of the committee. My name is Brad Wegner. I'm one of the owners of Midlands Contracting in Kearney, and I'm here today as a representative of NUCA of Nebraska. That's the National Utility Contractors Association. Let me spell my name, B-r-a-d W-e-g-n-e-r. Again, I'm currently the chairman of the NUCA one-call committee. As you know, NUCA members are typically the excavators as defined in the one-call law. We use the 811 system every day so we can build sewers for-- and water and conduit systems for you and your constituents. I'm here again to ask for your continued support of LB344 and especially AM1880 concerning enforcement of the one-call system. For my testimony, I want to make two points. The first one, I want to make it clear that the enforcement system continues to not work properly to protect utility owners' facilities. Two weeks ago, the Attorney General's Office filed a suit against an Omaha contractor. The first two violations on the suit occurred in March of 2019. Actually, three years ago, as of Saturday, three years. The first two-- the first part of the violations was that the contractor failed to call the one-call system and started digging. The second part of that violation on March 2019, was he hit a MUD gas line and failed to tell the one-call center that he did it. Then we go 32 months later, two and a half years later, he fails to call the one-call system again. Again, this is our point. The system is taking too long, simply. This gentleman was allowed to have another violation 32 months after a first one, and they're just now getting around to fining him. My second point is this, every one-call stakeholder has gone in front of this committee or in different ways said that the one-call system is not working. This includes the one-call board. It includes the opponents you heard from on the floor a little over a week ago and includes the Attorney General through their testimony on LB344 in the spring. NUCA Nebraska's goal will always be to improve the one-call system for everyone. And this gets that job done when it comes to enforcement. The opponents of the system-- the opponents, the opponents say the system is broken, but yet they fight to maintain the status quo and they bring no solutions

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of their own. I want to remind you that AM1880 changes nothing about the current one-call laws or its day-to-day operations. It's merely moving the enforcement of the act to a different entity, the one that is already in charge of the one-call system. My point again is this, if an operator or excavator is following the law then AM1880 should not be a concern. The question you need to ask is what are they scared of? And with that, I open for questions.

FRIESEN: Thank you, Mr. Wegner. Any questions from the committee? So I think when we've previously talked about one-call, I mean, that has been the biggest concern from the excavator side is just the safety factor of either mismarks, no marking, those types of issues. Is that your-- and again, one-call isn't enforced, that's probably your biggest--

BRAD WEGNER: Yeah, yeah, again, there's no, there's no change in behavior. And again, I gave you an example of, of one of us, a contractor that excavates breaking the law. We need everybody to be held accountable. Yeah, we can talk about mismarks and there's a lot of them and failure to marks and there's a lot of them. But there's also contractors doing it wrong, and they need to be held accountable quicker so that they learn to do things the right way so we don't have another MUD or a CenturyLink that gets knocked out in what, four or five counties a few years back and 911 is out. Those kind of things have got to stop happening. We're having all these warning shots given to us and we're not doing anything about it.

FRIESEN: Do you feel if something better was put into place that the number of complaints would drop after a couple of years as people get used to the idea that they're going to have to follow the rules?

BRAD WEGNER: Yeah, that's the idea. Obviously, initially, there's all these complaints that aren't being filed because of how long it takes. I think that number would jump at first, but yes, it would within time, people are going to learn they can't get away with it anymore.

FRIESEN: So as an excavator, if you come onto the site and, and something is mismarked or anything, do you report that to anyone?

BRAD WEGNER: Yes, I file a complaint.

FRIESEN: Do all of the excavators do that?

BRAD WEGNER: No, they do not. They don't think it's worth doing. And I, and I fought the battle with them that they have to go out and report them. They're already working 50, 60, 70 hours a week. They

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don't really feel like turning in a complaint when they know it's going to be two-- one to two to three years and they may not get a good result out of it anyway. It's just the juice isn't worth the squeeze, is the saying I keep hearing from a lot of them.

FRIESEN: OK. Thank you for your testimony. Any other questions from the committee? Seeing none, thank you. Other proponents?

MILISSA JOHNSON-WILES: Good afternoon, Chairman Friesen and members of the Telecommunications and Transportation Committee. My name is Milissa Johnson-Wiles, M-i-l-i-s-s-a, Johnson, J-o-h-n-s-o-n, dash Wiles, W-i-l-e-s, Assistant Attorney General appearing on behalf of the Attorney General's Office. Our office supports LB344 as amended by AM1880. As some committee members may remember from my testimony in February of 2021, I mentioned that agency-level enforcement as opposed to Attorney General enforcement through the courts seem to be the best way to accomplish the purposes of the proposed bill. AM1880 places that enforcement with the State Fire Marshal, which is the appropriate agency to investigate alleged violations. They have experience in investigating one-call violations and extensive knowledge of the one-call law. The process outlined in the One-Call Act, as it is currently with enforcement by the Attorney General in a civil action in the District Court, is an outlier in our office. It is by far most likely that the case that investigations and enforcement occur at an agency level subject to appellate review. Some examples that I'm intimately aware of are Motor Vehicle Industry Licensing Board, the Liquor Control Commission, the Equal Opportunity Commission, the Department of Motor Vehicles, the Department of Health and Human Services, and a canvas of others. A small canvas of others at our office include Accountability and Disclosure Commission, the Board of Engineers and Architects, the Department of Banking and Finance, the Public Service Commission, the Department of Revenue, the Department of Education, the Department of Insurance. And this list is by far from exhaustive. Nearly every case that comes to us has agency-level investigation and enforcement that is then appealable that our office will defend on appeal either to the District Court or to the Court of Appeals. There is another practical reason why enforcement needs to be placed at the agency level. Our office is limited in our ability to investigate alleged violations, not just because of logistics or staffing, certainly not because we don't care about the one-call law because we totally do, but because as an attorney, I'm, I'm ethically unable to be a witness in my own case. I had a case recently where the respondent early on had admitted to all of the violations and admitted all of those to me. Then when it came time to negotiate settlement, that respondent stopped communicating and stopped cooperating. That

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forced me to be in a situation where I had hours of, of litigation and pre-litigation discovery in order to establish the same violations because I would not have been able to testify to that in court. This for an end result and post result of a \$2,500 fine, so multiple, multiple hours of litigation just to get to that point. So we, we do believe that placing this with the, with the State Fire Marshal would allow them to investigate those cases early on and establish that basis. They can enforce early on, it'll move the process faster. And I will say that throughout these years, the cases where I've had the State Fire Marshal involved and investigating the alleged violations and, and laying that groundwork for me were the best cases that I had and were able to pursue. So with that, I have no more prepared comments and I'm available for questions.

FRIESEN: Thank you, Miss Johnson-Wiles. Senator DeBoer.

DeBOER: Thank you. Thank you for testifying. Thank you for being here. I've heard some people say that the Fire Marshal is not in a good position to enforce these rules because they don't have the kind of litigatory kind of process in place. But you said that the Fire Marshal is in the best place to enforce these. Could you--

MILISSA JOHNSON-WILES: Yes.

DeBOER: --could you sort of address those concerns about whether or not they would have the mechanism to handle quasi-litigation?

MILISSA JOHNSON-WILES: Well, so the, the number one thing is that they have the ability to investigate more so than our office, for example, and they have been doing that. So the State Fire Marshal from the beginning is aware and has been overseeing the one-call board of directors and hence the system and then has been investigating pipeline line hits, for example, and in, in the rubric of pipeline safety, but then the one-call law, so they have that mechanism available. This procedure would just allow for them to set up an administrative procedure to make those, make those decisions and make that finding. So as an administrative agency, they, they actually do a lot of enforcement in different areas, and I will defer to the State Fire Marshal with respect to the, the variety of things that they do. But this is not new to them with respect to enforcing a public safety law.

DeBOER: And you've mentioned several other places in which agencies act as quasi-judicial administrative procedural hearings for a variety of law violations. I assume that the AG would be able to support the

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creation of the system if they needed to do so in rules and regulations.

MILISSA JOHNSON-WILES: Yes, our office reviews rules and regulations. We also advise our agencies when they are adopting rules and regulations and can certainly do that with the State Fire Marshal and plan to do so if this bill passes with the amendment.

DeBOER: So some others have suggested there's an amendment out there that would simply, I think the language is fully fund the Attorney General to-- Office to better be able to enforce the one-call. Can you take me through whether that would actually be successful in enforcing the one-call if they just fully fund, I don't know what that means exactly, but fully fund the AG to be able to do that?

MILISSA JOHNSON-WILES: Well, we would-- I'm not sure what that fully-- and that amendment is. I would say that the, the fiscal note that we provided early on with LB344 before the amendment had a different, I mean, obviously had a different look to it. It would be a lot more substantial than that. And as far as fully funding, I would say we would probably have to have a team and it would be more than one person and an investigator.

DeBOER: OK.

MILISSA JOHNSON-WILES: And, and, and also still with civil actions in the District Court, those are lengthy. Administrative proceedings, proceedings have the opportunity to be a little bit more summary in nature and kind of get to, get to the, the facts easier. Civil actions are-- they're burdensome--

DeBOER: So what is the--

MILISSA JOHNSON-WILES: --and cumbersome.

DeBOER: --what is the expected time frame on some of these administrative procedures? Do you expect that they will be less than a year to do the investigation and-- because the, the gentleman before complained that it would take several years to get through the civil process. What, what would the administrative process take? Do you have an idea of that?

MILISSA JOHNSON-WILES: I'm afraid I, I don't have an idea--

DeBOER: OK.

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MILISSA JOHNSON-WILES: --of that. I, I can just say that based on other administrative agency-level enforcement that I've experienced or am familiar with four years is or three years is too long. That would not be happening.

DeBOER: OK, thank you.

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

ALBRECHT: Thank you, Chair. Thank you for being here to explain a few things. In reading through this amendment, it does say that the Fire Marshal would be able to have a hearing date set for the people, everything should be done within a 30-day period. And the civil penalties, who decides how much those penalties are? What would you--

MILISSA JOHNSON-WILES: Under the amendment it would be, the State Fire Marshal within the guidelines.

ALBRECHT: OK, so I'll ask them those questions. And do you have any idea how many of these cases that are in the Attorney General's Office, how many do we get in a year's time to look at just one-call, how far we'd be?

MILISSA JOHNSON-WILES: I would say that in 2021 we were a little lower than normal and we had 37. I think our average is about 50 to 60.

ALBRECHT: So we have a lot of them.

MILISSA JOHNSON-WILES: There were some, there were some issues in 2017, '16, '17 and '18 that bumped up the numbers quite a bit.

ALBRECHT: And is there any way that this group could find out, usually there's a culprit, if there's somebody that has a lot of them? I'd like to find out a little bit more about that if, if you could divulge if it's, like, people that subcontract with people from out of state maybe or is that a big deal and that's why they're not coming to the table or taking care of these things on-site or I'd, I'd just like to know. If we have 50 or 60 of them and it's ongoing every year because we have a lot of things going on in our state, I can't imagine that the Fire Marshal's Office alone could handle that many and get them closed because it looks like you have to do it within a 30 day-- assess the penalties within 30 days. And I mean, do they have to, to pay or be pulled off the job? I mean, I'd like to learn a little bit more about that. But if, if there's a way that we could request if that's OK. Chairman Friesen, can they ask-- can we find out are they,

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are they a lot to do with a certain kind of industry, whether it's broadband or whether it's, you know, building roads or homes, whatever?

FRIESEN: We can-- we'll, we'll look into some of this. But I think the main question here that I've shown from the excavators is that a lot of people aren't filing any of these complaints because they know nothing's going to happen. So we don't know the unknown.

ALBRECHT: But of the ones that they do have is my concern.

FRIESEN: Yeah, I--

ALBRECHT: What?

FRIESEN: --I think we're dealing just with underground utilities and you deal with pipelines and everything I take it, so.

MILISSA JOHNSON-WILES: Right, we receive complaints against excavators as well as operators.

ALBRECHT: OK.

MILISSA JOHNSON-WILES: So-- and a number of complaints, whether it's failure to timely locate or failure to properly locate or failed to call before digging, failure to report damage to the one-call center. So there's a broad range, and I will say to your point is that the word has gotten out over the years, which is why there has been an increase. And I, I would slightly disagree with Mr. Wegner with respect to our excavators not filing complaints because they don't think anything's going to be done. We get a, a substantial number of complaints from excavators as well as operators.

ALBRECHT: OK, very good.

MILISSA JOHNSON-WILES: So.

ALBRECHT: Thank you.

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

MILISSA JOHNSON-WILES: We also pursue those violations on both sides by the way.

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FRIESEN: What kind of penalties have you assessed against some of the complaints that we've heard of either mismarks or not marking a site? What kind of penalties do you impose generally?

MILISSA JOHNSON-WILES: So with it-- it's within the, within the, the bounds, of course, of the, the One-Call Act and the civil penalty assessments. And I will say that I had a, a settlement with an operator that was related to gas that was \$35,000 last year, and we had a settlement with respect to an excavator that was about \$25,000 last year, so our first offense would maybe be about assessment of \$5,000 with the chance to remediate a portion of that after compliance with the one-call law.

FRIESEN: Does the, does the fine-- is it kind of commensurate with the type of pipeline or whether it's a cable or--

MILISSA JOHNSON-WILES: Yes.

FRIESEN: --the fine--

MILISSA JOHNSON-WILES: Yes.

FRIESEN: --is higher, obviously, for more hazardous.

MILISSA JOHNSON-WILES: Right. And the penalties for fiber optic facilities increased about three years ago. So that has changed the game with respect to fiber optic facilities, they're now along the lines of gas lines.

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

MILISSA JOHNSON-WILES: All right, thank you.

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

JAMES DUKESHERER: Good afternoon, Chairman Friesen, members of the Transportation Committee. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I'm the director of government relations for the Nebraska Rural Electric Association. Our association represents 34 rural public power districts and electric cooperatives throughout the state and more than 1,000 dedicated employees of our system serve 240,000 meters across 90,000 miles of line. I will begin by thanking the Chairman of the committee for holding this hearing. As you know, the NREA testified last year in opposition to LB344, which created a

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dispute resolutions board and was advanced out of this committee. We support that the original language of LB344 is no longer in the bill, but we're concerned that the new language of AM1880, which has become the bill, made a significant shift in how the One-Call Act was enforced. This change in language all came to fruition without a hearing from the public or agencies that will be administering the program. Today, with this hearing, we hope that the testimony from representatives from the 811 Board, the AG's Office, the State Fire Marshal's Office will help all senators better understand the implications of AM1880. And in the end, will help this committee to advance out an amendment that best serves the state and the one-call program. We heard during General File debate that the State Fire Marshal's Office is well-suited to investigate complaints, interpret the law, and issue justice on these cases. Today, we can hear from them as to why they're better suited than the Attorney General's Office to handle these claims. The 811 Board met last Friday to discuss this amendment. Today, you have a letter from them with their thoughts on AM1880. We also heard on the floor of the Legislature that the AG's Office doesn't want this responsibility any longer. Today, we heard from them why that is the case and why they want to hand this responsibility over to the Fire Marshal's Office. NREA's goal through this hearing is to, to ensure that the committee receives the information it needs to make a well-informed decision. We believe this hearing presents a choice to the committee, a choice between, between transferring this responsibility to the State Fire Marshal's Office or keeping the process within the AG's Office and giving that office the additional tools they may need to efficiently process claims. You have before you a proposed amendment that we believe demonstrates this choice. NREA views the State Fire Marshal's Office as having expertise to, to-- for the investigation in claims, and we view the AG's Office as having the expertise to interpret the law. The amendment provides language that keeps this process within the AG's Office and requires them to dedicate a full-time employee to help ensure claims are processed more efficiently. Once again, we thank the committee and the Chair for making this hearing possible. We hope that after hearing from those directly impacted by AM1880, the committee will vote on what they believe is the best option for the state and will advance out what it views to be the best solution that will ensure a more efficient process for the One-Call System Notification Act. Thank you for your time.

FRIESEN: Thank you, Mr. Dukesherer. Any questions? Senator Moser.

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MOSER: So the opposition to the State Fire Marshal doing the investigations and the administration of this versus the Attorney General's Office is?

JAMES DUKESHERER: So we operate both as operators and as excavators. So we're on both sides of the equation. So we do have an interest in the claims process and we care that the process is handled efficiently and run by and conducted by an attorney that's knowledgeable and comfortable with the, the, the One-Call Act. We believe we have that in the AG's Office. The issue seems to be which we keep hearing is that they're dedicating a quarter of one person's time to the process. So then, rather than taking the entire process and moving it to an agency, going, going through a rules and regulations process, a learning curve probably with a new agency handling this. Why not just fix the problem where they're not giving it the time that it needs to, to look at these cases?

MOSER: You think people would be more responsive to a, a fix-it letter from the Attorney General-- Attorney General's Office rather than the Fire Marshal?

JAMES DUKESHERER: I don't, I don't believe that there'd be a difference. I think people would take both letters seriously.

MOSER: Enforcement from either one could be equal?

JAMES DUKESHERER: Yes, I believe so.

MOSER: Are both agencies as easy for you to get along with?

JAMES DUKESHERER: I don't see why not.

MOSER: Well, then I come back to the question.

JAMES DUKESHERER: I think that what-- our, our, our testimony is that what we're dealing here with is an interpretation of the law and what we need is an attorney process to do it and we, we have an agency set up to do that. Let-- think of a hypothetical, there's a, a mislocate in North Platte, for example, and we have to-- the Attorney General's Office wasn't processing a claim. That's what we've seen in the past. Now we have the Fire Marshal's Office has to look into that, they have to send an investigator out to do that. They have to, if there's a hearing, they have to hire an attorney.

MOSER: The Fire Marshal is already involved, but then the, the Attorney General's Office is coordinating that?

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JAMES DUKESHERER: Under the amendment, the Fire Marshal's Office would, would have to--

MOSER: Oh, oh, oh, but, currently, it's all done by the Attorney General's Office.

JAMES DUKESHERER: Correct. And under the amendment, the Fire Marshal's Office would have to investigate the claim. They would perhaps have to have a hearing, hire an attorney to a hearing officer. They would have these expenses. I haven't-- we haven't heard anything that--

MOSER: Who, who pays for the enforcement of this? Do the contract-- or the utilities have to pay for that or is the Attorney General's Office paying for that out of their own budget?

JAMES DUKESHERER: The One-Call System Notification Act, the one-call center, that's funded by the utilities, the, the locates. What this bill does, [INAUDIBLE] comes from.

MOSER: Well, when you say funded by, so people call one-call and then the utilities have to come out and mark their stuff--

JAMES DUKESHERER: Correct.

MOSER: --for free.

JAMES DUKESHERER: Correct. And that, that falls--

MOSER: And that's the expense.

JAMES DUKESHERER: Correct.

MOSER: Who pays for the one-call mechanism, you know, the phone lines, the people who answer the phone and all that?

JAMES DUKESHERER: That's all funded by the utilities.

MOSER: So you have to kick in a [INAUDIBLE] to pay for that?

JAMES DUKESHERER: Yes.

MOSER: And cable companies, phone companies, gas companies, everybody kicks in?

JAMES DUKESHERER: Everybody that falls under the act.

MOSER: Everybody who's governed by the act. Thank you.

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FRIESEN: Thank you, Senator Moser. Senator Bostelman.

BOSTELMAN: Thank you, Chairman Friesen. So in your amendment, your amendment calls for one person, additional staff person part time-- one full-time staff member to handle all the complaints filed in the AG's Office. And Miss Johnson-Wiles just testified before us just a few minutes ago that it's going to take more than one person because she looked into it and she could not then handle the case. So then obviously it's going to take a number-- and I'm not going to speak for the AG's Office, but my, my understanding would be that on most cases that they have is there is an investigative body that goes out and investigates whatever the complaint, whatever the action is that they're going to see. So how does this solve anything? Because you're-- you don't have an investigative body to take care of this because the one person in the AG's Office can't do what you're saying because you're going to conflict them out because they cannot investigate it and they cannot try the case or handle the case as well. So you're going to have to have multiple people.

JAMES DUKESHERER: I guess I don't fully understand how the cost to the AG's Office would be any different than the cost to the Fire Marshal's Office. And if one time-- one full-time employee isn't enough, then, then what is that number and how much dedicated staff do we need to get through these claims? That, that's certainly open for discussion. But I don't see how-- we don't see how handing this over to the Fire Marshal's Office changes that equation. The Fire Marshal's Office is going to have the same expenses of, of having staff that needs to be dedicated to going out and investigating these claims.

BOSTELMAN: But that's not what your amendment says.

JAMES DUKESHERER: And like I said, if, if it needed to be more staff to do it at the AG's Office, we would be open to that.

BOSTELMAN: Well, the Fire, the Fire Marshal already does these investigations. The Fire Marshal already has the expertise. The Fire Marshal is already doing these things. So isn't it-- I mean, this is the only exception in the state agency wise, it doesn't fall underneath the Fire Marshal, then why is it now that the AG is the one's-- only one that can do this when they're not staffed, nor do they have the people on board to do the investigation or the, or the ability, you're going to have to train them just the same. And then who's going to pay for it? My last question.

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JAMES DUKESHERER: And again, so yes, the Fire Marshal may have some expertise in the investigation side of the equation, but the AG's Office has the attorneys, you know, in-house that they can handle it. So the Fire Marshal's Office will have to hire a hearing officer. Somebody knowledgeable about the, the, the One-Call Notification Act, an attorney, and there will be expenses on that side of the equation for them.

BOSTELMAN: So they do that on the other cases then, correct? Anything else they investigate if they have, if they have a board or that, they're, they're going to have to hire an attorney to do that. Correct?

JAMES DUKESHERER: I would presume so.

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Senator DeBoer.

DeBOER: So one of the things I think we're looking at is whether the one-call violations should always go through a civil proceeding or whether it would be OK to put-- I think we kind of talked about it, it was kind of like a small claims version of these one-call actions through an administrative proceeding. So you heard the Attorney General [SIC] talk about that as well, that, that, that there's this idea of putting them through a small claims. Do you have a problem with putting the smaller sort of low-hanging fruit through this administrative process?

JAMES DUKESHERER: I, I think it's an interesting idea, and I think it highlights a point that the Fire Marshal's Office could, could definitely run into with this and that they may have small claims that don't justify sending somebody out for an investigation or, or holding a hearing and hiring an officer to do so and how will they handle these claims? Because maybe they'll only be for a few hundred dollars and they could have thousands of dollars of expenses to, to conduct the hearings and to send an investigator out and all of this, so. I think it's, it's an interesting idea.

DeBOER: But isn't that part of-- I mean, so part of what the Fire Marshal would be doing in those administrative hearings for small dollars would be creating a deterrent effect to have those sort of things happening in the future, right? So I, I guess what I'm really asking, the question part, the rest is just pontificating, and we don't have time for that, is, is your objection to having any of these

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claims go through an administrative proceeding, proceeding rather than a civil proceeding?

JAMES DUKESHERER: No.

DeBOER: OK. And then do you think that the Fire Marshal is in some way in a, a bad position to be handling these claims?

JAMES DUKESHERER: No, I think my testimony is that we do have an agency that has familiarity with this, who has been doing this. And what we continue to hear is that there's one-quarter of one person's time being dedicated to it and it seems logical not to shift it to a new agency but to maintain where it is and give it the proper time that it deserves.

DeBOER: Do you think there are any deficits within the Fire Marshal that would prevent them from being able to do this work in a good way?

JAMES DUKESHERER: I think there will be a, a different approach and they're lacking that attorney side that the AG's Office may be the experts in.

DeBOER: OK. Thank you. I think I understand.

FRIESEN: Thank you, Senator DeBoer. Any other questions from the committee? So I'm just looking at the current amendment, not the one you're proposing. The Fire Marshal, obviously, do they, they do pipelines, is that correct?

JAMES DUKESHERER: I'm not familiar with the pipeline side, but yes.

FRIESEN: OK, so that, that is their expertise is doing pipelines. And so all we're-- they're talking about underground facilities and so pipelines are extremely hazardous. So I-- do you feel that they have the expertise to deal with a very hazardous entity that's buried in the ground?

JAMES DUKESHERER: I-- again, I, I think my testimony is that, that both agencies have, have expertise to handle this issue, but we find that it's better in the AG's Office.

FRIESEN: So do you know that the Fire Marshal's Office has people scattered all over the state so they don't have to send anybody out, there's somebody in that area that could do that?

JAMES DUKESHERER: Obvious-- yes.

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FRIESEN: The Attorney General's Office, I don't think stations people all over the state. So does this amendment change any of the rules and stuff that we're doing here? Is it changing any of the rules, any of the relationship between a facility owner and the 91-- 811 Board? Is it changing any of those parameters that you operate under?

JAMES DUKESHERER: No.

FRIESEN: So I guess, you know, you guys have come here and opposed everything we've tried to do. We had what we called the hit court. We had a safety committee. Everything we've tried to do, you've come in and opposed. Do you, do you always follow the rules according to the, the 811 call?

JAMES DUKESHERER: Yes, our members do.

FRIESEN: So if you're always following the rules, what are you worried about?

JAMES DUKESHERER: We're not worried.

FRIESEN: No one's going to-- you are not going to be in front of the Fire Marshal's Office.

JAMES DUKESHERER: We're not worried, Senator.

FRIESEN: Then why the opposition?

JAMES DUKESHERER: The opposition is about which process do we believe is best.

FRIESEN: I mean, if you're following the rules, there won't be complaints.

JAMES DUKESHERER: We have an interest in, in the process being conducted by attorneys that are knowledgeable in, in the subject matter. They have an interest in--

FRIESEN: They won't, they won't have to look into it if there's no complaints. If everybody follows the rules here, we don't have a problem with this. But what we've heard for years that I've been here is there's a problem and we haven't fixed it. It continues. The Attorney General's Office admits it. There's a lot of excavators don't even turn in complaints and you're saying we, we have a problem, but let's not fix it.

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JAMES DUKESHERER: I disagree with that, Senator. I think our, our amendment shows that we are interested in fixing it, and we believe the fix is to have the Attorney General's Office dedicate more time.

FRIESEN: If you are always following the rules, we shouldn't have a problem, so. Seeing no other questions-- Senator Moser.

MOSER: Just a follow-up question to, to Senator Friesen. Your members follow the rules, but not everybody who works in the right-of-way are your members?

JAMES DUKESHERER: My members are the rural electric utilities, 34 rural public power districts across the state.

MOSER: But--

JAMES DUKESHERER: But yes.

MOSER: But-- so even though you follow the rules, you still may get drawn into discussions over how things were marked, what things were damaged.

JAMES DUKESHERER: Yes.

MOSER: So your interest is in the process because even though you follow the rules, you may get drawn into a discussion or a disagreement over the damages and who's responsible and those sorts of things.

JAMES DUKESHERER: Yes, and ultimately, this is about safety, and we want to make sure that, that the process lends itself to, to having a, a safe 811, 811 Board and, and 811 notice-- System Notification Act.

MOSER: OK, thank you.

FRIESEN: Thank you, Senator Moser. Senator Bostelman.

BOSTELMAN: Thank you. My last question is then, you don't trust the Fire Marshals?

JAMES DUKESHERER: No, Senator, that's not my testimony.

BOSTELMAN: It sounds like it is, because what you're saying is they can't do it, they can't do the investigation, but that we're going to have an attorney who can't do the investigation and do the case both. We're going to give it to the Attorney General's Office to do that, and that's just going to cause more work, more people, more people

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that aren't familiar with, with underground facilities like the Fire Marshal is. And what you're saying is, you don't trust-- to me, what you're saying is you don't trust the Fire Marshal to do the job.

JAMES DUKESHERER: No, I believe what my testimony is, is that we believe that the Attorney General's Office has that attorney expertise. They'll be interpreting the law. They'll be making determinations about was there fault within the law. And as attorneys and as the state agency with, with the attorneys, they are best suited for this.

BOSTELMAN: That's the court case. We're talking about before it ever gets to court. We're talking about what, what the bill is talking about is the investigative process, the process to go before a court. So one, maybe it doesn't ever have to go to court. You don't have to do that. And two, you can, you can, you can mediate. You can take care of this thing at the lowest level possible. That's what I think is what this, this amendment is trying to do. Instead of having 50, 60 cases go to the AG's Office, you may only have a handful that actually have to-- has to be litigated, if at all. I think that's what they're trying to do. I think that's what this amendment is trying to do and what I hear, what I hear you saying is that every single complaint that comes in has to be litigated. Do you, you have a comment to that?

JAMES DUKESHERER: We-- I believe that the Attorney General's Office-- we believe that the Attorney General's Office is not properly going through these claims for, for reasons that, that they can testify to and that if it's a, it's a matter of staff time being dedicated to this that we can fix that. Are they giving it the attention that it deserves, that it needs to get through the claims? And if we do that, we believe that the backlog of claims could be solved.

BOSTELMAN: Thank you.

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

JILL BECKER: Good afternoon, Senator Friesen, and members of the 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. We appreciate the opportunity today to provide comments on AM1880, and I want to start with a comment that James made too, safety really is our top priority when we are looking at the One-Call Act. And so my comments today really focus on the amendment and just due to time, I'm going to shorten these up a little bit. It is my

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understanding that the State Fire Marshal does not currently have a process in place similar to the provisions of AM1880 and obviously, hopefully, the State Fire Marshal will testify as to whether that is true or not. But it's my understanding that the language in the amendment takes the Attorney General completely out of this process until a party appeals under the Administrative Procedure Act. And with all due respect to the State Fire Marshal, we are concerned about a potential conflict with the State Fire Marshal enforcing various aspects of the regulations that would apply to us as a natural gas utility. In essence, under the powers granted under the amendment, the State Fire Marshal will be investigator, judge, and jury in those one-call complaints. Potentially, those are conflicting rules that could be an unlawful violation of the separation of powers, and we heard some testimony today about the investigative powers. We believe that currently-- again to be corrected by the State Fire Marshal, they do not have staff that would right now be able to handle investigations under this. And if in fact the committee believes that is the appropriate way to go, that then it would be our recommendation to con-- maybe not even a recommendation, but that would be something for the committee to consider that the State Fire Marshal investigate those complaints and provide written determinations of finding of fact, conclusions of law, and make a recommendation to the Attorney General's Office and then utilize the independent evaluation by that Attorney General as to whether or not there should be civil penalties assessed or, according to the amendment, those additional potential recommendations that-- to, to, to fix the problem. A couple of other things that I would mention, we-- there's no definition in the amendment about what type of notice is sufficient, whether there are-- whether multiple actions can be brought as a result of the same incident. What protections are in place for both operators and excavators under essentially what is now a due process requirement because we are essentially having a judicial process in place. We are concerned about the provision allowing an assessment of a penalty just in relationship to the size of the operation. Just because we're bigger doesn't mean we're necessarily bad. So I would hope that that would be taken into consideration. We believe that there does need to be some additional language around the provision authorizing the State Fire Marshal to adopt and promulgate rules, that there needs to be additional language saying what they need to promulgate those rules on. A few other items is the type of review given to the findings of the State Fire Marshal. Where do the fine proceeds go? Is the Fire Marshal required to submit an annual report? What evidentiary rights are afforded to those with a complaint-- with the complaints, and who

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bears the legal costs of defending those complaints? With that, I would be happy to answer any questions.

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

MOSER: Well, just as kind of a comment, I think the administration-- administrative differences between the Fire Marshal and the Attorney General, I mean, I think we can fix that. I mean, if we don't-- they don't have enough people in the State Fire Marshal's Office or if they don't have enough staff in the Attorney General's Office, I think that could be addressed. But why-- what do you like about being, say, ruled by the Attorney General's Office versus the State Fire Marshal?

JILL BECKER: Yeah.

MOSER: Do you think the State Fire Marshal would be more rigid in his application of the rules?

JILL BECKER: And I'm not saying that we prefer one over the other, Senator, that, that's not my testimony. We currently already work with the State Fire Marshal on enforcement of pipeline safety regulations, which are, for the most part, primarily federal, federal law and federal regulations. So we already have that relationship there in place. I think we really-- part of it is just the process that we don't currently have in place for this area. So that's what a lot of my comments focused on that due process piece because it's not in the amendment and it is not, my understanding, a current process that the State Fire Marshal has. So that's really what my comments are. We are looking at the language in the--

MOSER: Well, the Attorney General's Office has so many other fish to fry.

JILL BECKER: Sure.

MOSER: And they don't get down into the, the weeds, so to speak, with some of these claims because they're too small.

JILL BECKER: Sure.

MOSER: So, you know, that could be fixed or the State Fire Marshal could make rules and regulations and we follow those.

JILL BECKER: Sure. I mean, I--

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MOSER: So why would we prefer the Attorney General's Office versus the State Fire Marshal?

JILL BECKER: And I'm not saying that we do. I'm saying that neither one of them really has that process that is contemplated in the amendment.

MOSER: Well, then you should testify neutral instead of-- OK, that's--

JILL BECKER: I'm trying to provide some constructive feedback, Senator.

MOSER: All right. Thank you.

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

BOSTELMAN: Thank you, Chairman Friesen. The only question I have is you talked about, which I appreciate in there, about the Fire Marshal taking all phases, being the judge and that. How do you see that happening in all the other agencies in the state where this similar situation sets up?

JILL BECKER: Yeah, and honestly, Senator, we really don't know. We really don't have many activities of ours that would fall under the Administrative Procedure Act. So I really can't say. Probably the closest that we would get is filings in front of the Public Service Commission where they, as a quasi-judicial branch have, you know, have a hearing schedule. They have a hearing officer. We've got testimony, they've got a decision, there's an appeal process. So that's probably the closest thing that we would have to the process that the Administrative Procedure Act has.

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Any other questions? So you mentioned in there that the Fire Marshal's Office would take the Attorney General's Office clear out of the picture, and I, I don't-- fail to see where this amendment does that. I mean, any point along the timeline, you can contest whatever the Fire Marshal's Office rules and take it to the Administrative Procedure Act and to the Attorney General's Office.

JILL BECKER: Yeah, but until, until this process is complete, I'm going to say that that action would not be right until the agency acts.

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FRIESEN: And, and if the agency acted, though, and you disagreed with that, then you have a process.

JILL BECKER: Then, yes, I-- and I assume that then the, the Attorney General would step in, in defense of the agency.

FRIESEN: Has your company ever been turned in for mismarking or not marking your facilities?

JILL BECKER: Yes, we have. We are both an excavator and an operator in the system, and we do a lot of locates. Absolutely.

FRIESEN: So do you feel that the 811 system is working?

JILL BECKER: Sure. I also think that sometimes it does not.

FRIESEN: So when somebody hits a gas line and a building burns, we have a problem.

JILL BECKER: We absolutely do.

FRIESEN: And so I've had excavators tell me-- I've had an email from a gentleman in Omaha who called 811 to have facilities located in his home, his residence, and they planted flags saying that he had no facilities under ground and he was ready to dig. He knew he had gas buried to the house. He had electricity buried to the house. He had cable buried to the house. Don't you think this should be a, a case where somebody should be able to turn someone in and maybe fix the system before somebody gets killed?

JILL BECKER: Absolutely. We would want to avoid a hit.

FRIESEN: Because right now people aren't turning in those complaints of unmarks or mismarks because they know that nothing's going to happen because they're overwhelmed.

JILL BECKER: And that may be true, Senator, but the best solution isn't actually legislating our way out of this. What really needs to happen is better relationships between those operators and excavators when there is a problem.

FRIESEN: This has been going on for as long as I've been on this committee and nothing has changed.

JILL BECKER: Well, I would argue that hopefully things have changed. I would like to say that a lot of the work that we, as a company, have

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done with many of the entities that we work with has made a difference, but it will continue to evolve. As we see further broadband deployment across the state, we are going to have tens of thousands more locates required.

FRIESEN: Yes, and I see that safety as being a real issue. Thank you for your testimony.

JILL BECKER: Thank you.

FRIESEN: Any other testifying in opposition?

JOHN BUCKLEY: Good afternoon, Senator Friesen and the committee. John Buckley, J-o-h-n B-u-c-k-l-e-y, and I'm here representing Omaha Public Power District. I've got a few remarks, I won't repeat what some of the other folks have said, but I just want to paint a picture, too, for OPPD. We're excavator and a facility owner. So last year we had-- OPPD had, our contractors, 8,800 dig tickets we called in. And then we responded to 207,500 dig tickets for excavators in, in our service territory. And to, to, Senator Moser, your, your question on who pays? So for each ticket, we pay a little over \$1 to the call center and that, that funds the call center and the ticket processing system. So I think it's like \$1.03 or \$1.05 or something like that. So I just wanted to kind of add to that.

MOSER: Thanks.

JOHN BUCKLEY: So within, you know, OPPD from a damage perspective, if, as an excavator, we dig, the marks are good and we hit somebody, we, we pay the bill, we pay for that to be repaired. We have an investigative team that goes out on both sides. If us as an excavator or an excavator hits us, investigation team comes out, does an investigation and liability is determined. So if we mismarked, we fix it. If our marks are good, the excavator that hit our facilities pays the bill. And so that's worked very well. We've stayed out of court. We have good relationships with excavators within our service territory. As far as timeliness, that is an issue. Timeliness of enforcement. I will not disagree there. From our perspective, it's a funding issue. There's just not money available to staff it at an appropriate level. So the secondary is, is complaints. We've heard from the Attorney General that complaints don't come in with full documentation, especially with respect to damages, they don't have photos. They just don't have that documentation for things to move on there. So really, moving forward, I, I think we need a better funding mechanism and we need to document and have some training maybe and

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some outreach on, on documenting on a damage investigation. As far as one-call effectiveness, you've heard some people talk there. It's a partnership. So it's the excavators and the facility owner. So just last week, I checked our data. We had 181 out of 550 tickets that were refreshes, meaning we'd already been out there to locate it once, the excavator had not commenced excavation and kind of the mean of refreshes on that, that batch for Wednesday was 12.7. So meaning the excavator called 12.7 times for us to come back out and paint and, and flag and paint and flag over and over again. So it's a balance. It's a challenge for both facility owners and excavators. It's a partnership. So I believe that there has not been adequate stakeholder involvement in this bill. We just saw it drop when it hit the floor. With the amendment, we were not involved. We were not notified that there was going to be major changes to this bill. Communication, collaboration with facility owners, excavators, the Attorney General's Office, the State Fire Marshal is all needed to ensure the system. So with that, I'd be welcome to answer any questions.

FRIESEN: Thank you, Mr. Buckley. Any questions from the committee? You know, we've been working on different versions of this for three or four years so [INAUDIBLE].

JOHN BUCKLEY: No, I, I agree, but I did not, I did not see this language of handing it to the Fire Marshal until that bill was--

FRIESEN: This, this language came because of a hearing. I mean you have a hearing to get evidence and, and that's where this came from. The testimony from the hearing pushed us to this idea because we've tried so many other different ways and everyone's always opposed. So that email that I was talking about earlier of a, a residential homeowner, OPPD is one that planted flags in that area saying they had no utilities underground.

JOHN BUCKLEY: Yes.

FRIESEN: So what do you say to that homeowner when he chops through your electric line?

JOHN BUCKLEY: Yeah, so I would agree. It's not a perfect process, Senator Friesen. So we have individuals that look at our maps, look at our facility, look at the dig area, interpret the ticket, and decide if, if we're there in the dig area or not. In this case, the, the locator made an error and, and put a clear flag instead of, of, of locating our facility in the area.

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FRIESEN: So right now on the ticket cost, that money, do you agree that it just goes to educate facility owners and excavators because it goes to the one-call board which has no enforcement authority whatsoever, is that correct?

JOHN BUCKLEY: Yeah, so, so part of the dollars goes to fund the call center and then there's a surcharge which goes to outreach so it funds where we put on work-- locator workshops, we go out statewide and have workshops and communicate. We have a safety conference. We do mailings. We do radio commercials, TV commercials, billboards. So there's, I think-- I want to say, I don't know the exact number, I think it's like 30 cents of, of that goes to--

FRIESEN: Do you know that in this amendment the Fire Marshal's Office could require people to train their locate people better--

JOHN BUCKLEY: No, and--

FRIESEN: --as one of the options?

JOHN BUCKLEY: Yeah, and I, I don't have any problems with that. I mean, the locating company that we use has a training program, very extensive before they bring new people on. So training is, is a key part of this, map reading, you know, how to hook up. I mean, it's, it's not an exact science.

FRIESEN: Our whole goal here is to probably start to prevent the mismarks, the nonmarking, the near hits that people have before somebody gets killed. And in order to do that, enforcement has to start happening at some point. What other way is there that we can start to get it through to people that you have to follow the rules?

JOHN BUCKLEY: Yeah, I would say outreach is one of them, right, so there's, there's a stick and then there's the carrot, right?

FRIESEN: There's been outreach for how many years have we had 811.

JOHN BUCKLEY: Right. And so there's always going to be bad actors in the world. There's always going to be people that go down the interstate at 100 miles an hour. And so I'm not against enforcement, I guess, from the perspective of not being involved in the process, not knowing what the behind-the-scenes discussion is on rules and regulations.

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FRIESEN: Again, we've worked on this for three years. There's, there's-- that part doesn't fly with me, so. Any other questions from the committee? Thank you for your testimony.

JOHN BUCKLEY: Thank you for your time, Senator Friesen.

FRIESEN: Any others that wish to testify?

JOHN LINDSAY: Trying not to damage state property.

FRIESEN: Welcome, Mr. Lindsay.

JOHN LINDSAY: There we go. Remember to turn it off. Thank you.

FRIESEN: Welcome.

JOHN LINDSAY: Thank you, Senator Friesen, members of the committee. My name is John Lindsay, J-o-h-n L-i-n-d-s-a-y. I am a registered lobbyist on behalf of Northern Natural Gas and speaking on their behalf. Northern is opposed to the amendment to LB344 because it neither advances nor enhances the compliance or enforcement of the state's one-call statutes from the entity-- or excuse me, from the utility operator perspective for both excavators and utility. The passage of this amendment will be a step backward from the objective of the state's one-call statutes in terms of compliance and enforcement. As an operator of buried, high-pressured natural gas transmission pipelines, Northern is committed to strengthening state one-call laws in each of the states in its operation footprint. Strong one-call laws deter third-party damage to our pipelines. Third-party damage is the single most common cause of pipeline failure. A line hit on any of our underground facilities risks injury or death to the excavator, presents an unnecessary public safety risk to first responders or employees and the public in general, can result in a loss of critical natural gas service to communities, residences, schools, hospitals, and businesses. The amendment would significantly impair the enforcement of the state's one-call statutes. And I think-- straying from my prepared testimony, I think Senator Moser nailed the problem on the head. We have two state agencies, neither one of whom wants to, wants to enforce this program. And Senator Moser said that maybe the problem is neither is funded and maybe funding is the, is the issue because if the Attorney General can only afford to do one-quarter of one FTE to dedicate to this process, then the State Fire Marshal is going to have the same problem unless the State Fire Marshal is fully funded as well. We've worked with the Attorney General's Office on numerous, numerous occasions. They do a good job

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in, in the enforcement when they have the manpower to, to do so. They-- we've forwarded advanced, advanced complaints to them. And they have done work, but they just-- our experience is they run out of time. So I think the underlying problem has to be resolved before, before anything is going to take care of the problem.

FRIESEN: Thank you, Mr. Lindsay. Senator DeBoer.

DeBOER: Thank you, Senator Friesen. Mr. Lindsay, would an administrative process for handling some of these claims be out of the question? Is, is the, the concept of an administrative proceeding incompatible with the one-call system?

JOHN LINDSAY: I would agree with one of the prior testifiers that sometimes the damage, and it depends on the, on the infrastructure, but some, some of these claims can be very small, some can be huge.

DeBOER: Yeah.

JOHN LINDSAY: So it would have to fit both large and small, so you have to at least limit the cost of, of that. And then it would incur cost, of course, from the violator or potential violator.

DeBOER: So if we set up a sort of a small claims administrative process for the claims that are under \$1,000 or pick a number, would that-- and put it under the Fire Marshal, and there'd be an initial investigation by the Fire Marshal of all claims just for determining whether or not they were within that-- within their purview and then sent the rest up to the Attorney General, would that be objectionable?

JOHN LINDSAY: I don't know. I'd have to go back to my client to ask, but they want a way-- they want more enforcement.

DeBOER: They want more enforcement. And, and it seems to me that what we hear from folks is that the enforcement only works with sort of the very big claims because the small claim is kind of either someone doesn't file one because it's not worth it to go through the civil process, but an administrative process would inherently cost less and be sort of less cumbersome.

JOHN LINDSAY: Yeah.

DeBOER: So that's, that's sort of, I think, what this bill is trying to do. So the objection here, you said it, it neither enhances-- advances or enhances the enforcement. But if we had the sort of

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administrative proceeding for some of those things, it seems like it could.

JOHN LINDSAY: That may, that may be and I will call my client this afternoon and see what, what their thoughts are.

DeBOER: OK, thank you.

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

BOSTELMAN: Thank you, Mr. Chairman. I'm trying to figure out how to phrase this question so it isn't-- so it comes out right, I guess, the question deserves that. I don't know what the AG's workload is, and I don't speak for the AG in this sense, but my guess is there's a lot of significant crimes against people, others that are happening in this state that takes them longer to get to. And, and this is almost saying we're going to give them-- we want them to have another person there to take care of one-call issues rather than that murder or rather that, that human trafficking or rather those drugs, whatever that is. And I appreciate the comments on the litigation side as far as what the AG brings to the table, but they just don't have that investigative side and I'm, and I'm a little concerned in the sense that if we go this one route of we'll just put another body there, we'll give them more, more money, we're putting one, one-call ahead of all these others. What is your thoughts on that?

JOHN LINDSAY: Yeah, I'm not familiar with the Attorney General's budget. I am familiar with what the Attorney General does and, sure, capital crimes, crimes against persons would, should take precedence. This is a crime against property, you know, and it would be, I think, no different than, than someone, someone butchering somebody else's cow. That, of course, would be some sort of larceny with that, but it's, it's that, except it's much more expensive than a, than a farm animal would be. And so it should-- we would certainly prosecute those at least on the-- by the Attorney General at least on the, on the appeals side because the Attorney General will handle most criminal appeals. So I-- yes, it is a-- that's exactly the question of where should this take precedence in, in when we're talking about crimes against property or crimes against people. And I guess that's a decision the-- for the committee to make. I think it can be-- I think you can do both. I think we've been doing both, just not at a sufficient level. Like I say, the Attorney General has been helpful on, on several of our cases, there's just not enough enforcement there, and that's, I mean, if, if we had to fund another FTE at the,

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at the AG's Office, maybe that's something to be considered, considered maybe a, a-- some combination with the Fire Marshal doing the investigation and then handing it over to the AG for prosecution, but I think forwarded to a local company attorney. But I think that you could probably mesh the two together, and I'm certainly not speaking for any of the utilities in the room. But I think it-- you may be able to do it. Either way, it's going to cost more. It's going to cost more money.

BOSTELMAN: In your experience-- one last question for you, in your--

JOHN LINDSAY: Yeah.

BOSTELMAN: --your experience perhaps, other agencies, other departments, DHHS, others were, were talked about, I think, Board of Architects and Engineers, others that have some involvement there. How do-- how does this compare to that as far as how those function and where there is a board or there is a hearing and then there are penalties put out and [INAUDIBLE]. Do you have experience with that, can you help us understand that?

JOHN LINDSAY: There are some that are better. There are some that are-- that aren't as effective. And I think it, it does come down to it's people. I mean, the Attorney General's Office isn't going to have a computer that's going to say we're going to defend this, we're going to dismiss this. It's got to people exercising their judgment and that, you know, unfortunately, people cost money. So that's why it really gets down to that funding issue and, and, I, I think, frankly, no matter what you're doing or what decision you make, it has to be better funded than it is today.

BOSTELMAN: Thank you.

FRIESEN: Thank you, Senator Bostelman. Seeing no other questions, thank you for your testimony.

JOHN LINDSAY: Thank you.

FRIESEN: Any others who wish to testify in opposition? Seeing none, anyone wish to testify in a neutral capacity? Welcome.

CHRISTOPHER CANTRELL: Thank you. Good afternoon, Chairperson Friesen and members of the Telecommunications and Transportation Committee. My name is Christopher Cantrell, C-h-r-i-s-t-o-p-h-e-r C-a-n-t-r-e-l-l, and I'm the State Fire Marshal. I'm here to testify in a neutral capacity regarding AM1880 to LB344. This amendment removes enforcement

authority from the Attorney General's Office and establishes enforcement and civil penalty authority in the State Fire Marshal agency for all possible violations of the One-Call System Act. The amendment language allows the State Fire Marshal agency to investigate possible violations of the One-Call System Act either on its own volition or as the result of information submitted of a possible violation. As part of the Pipeline Safety Program, the agency has deputies who are tasked with enforcing possible violations of the underlying pipeline safety requirements, as well as violations of the One-Call Act. These deputies have training in the numerous federal requirements for jurisdictional pipeline operators, including requirements for compliance with the one-call system. However, these deputies are only permitted to investigate actions, actions involving jurisdictional pipelines, not other underground utilities. As a result, the agency will need to hire additional staffing to accommodate the requirements of AM1880. An additional deputy and support technician will need to be recruited, hired, and trained. While all underground utilities must comply with one-call system requirements, the agency is not familiar with the specific rules and regulations governing other member utilities. Creating a needed based knowledge would require additional training, as well as basic training needed to conduct investigations. Also, the agency will need to hire a hearing officer to conduct any requested appeals and provide all the equipment necessary for those appeals. To expedite the process, the agency would require the statutory authority to conduct virtual hearings. The agency also believes amendment language with more specific-- specificity detailing the fine structure and complaint process is needed to ensure the agency has the required authority to promulgate regulations on the sections of AM1880. The agency will also need to develop a form that is comprehensive enough to gather the needed information to determine if an investigation is warranted. For the new system to be workable, there will need to be information and feedback gathered from all parties involved in the one-call system. Regulations, guides, and public messaging will also need to be developed and shared to ensure the new system is workable for all parties. Additionally, some of the funding sources will come from federal grants that have specific application periods that need to be accommodated. Since all these items will require time, the agency believes an extended implementation date of October of 2023 will be necessary to shift enforcement authority from the Attorney General's Office to the State Fire Marshal. Thank you for your time and attention. I'd be happy to answer any questions you might have.

FRIESEN: Thank you, Mr. Cantrell. Any questions? Senator Moser.

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MOSER: So is this a, a job that you guys want?

CHRISTOPHER CANTRELL: We're here in a neutral capacity, it's not a matter of wanting it or not wanting it, we will do what is decided by the Legislature and by the provisions of Nebraska state government as it operates. So it's something that we can do if it passes and it's something that we can, we can continue doing if it doesn't.

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

ALBRECHT: Thank you, Chairman Friesen. And these are some of the things that you mentioned. So you've never had a situation with whatever it is that you do right now, and by the way, you're an agency of the state and who do you all answer to?

CHRISTOPHER CANTRELL: I'm appointed by the Governor.

ALBRECHT: OK, appointed by the Governor, answering to the Governor--

CHRISTOPHER CANTRELL: That's correct.

ALBRECHT: --and not to us, right, the legislative body?

CHRISTOPHER CANTRELL: Well, I'm appointed by the Governor and confirmed by the legislative body.

ALBRECHT: OK. And, and you have quite a staff over there. How many people?

CHRISTOPHER CANTRELL: We have about 72 people right now, we're allotted staff of up to 75. We have a couple of vacant positions.

ALBRECHT: Could you see yourselves having more, obviously, than one or two people doing something like this to keep up with the demand of 50 or 60 more cases than you have today?

CHRISTOPHER CANTRELL: What I see and one of the reasons why we put in a person, a field person and an administrative person is that I see that we are very busy right now and we have full-time people doing full-time work to protect the people of the state of Nebraska from all sorts of danger. So we would need at least the one person. We're being conservative in that estimate because that's, that's my nature and that's how I lead the State Fire Marshal agency is to be conservative.

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ALBRECHT: I mean, and it's the whole state. So you have a, a vast area that you all cover and those are some of my concerns if this is enough and if it isn't, you know, you're going to be coming back to us and you will have end up having quite a job on your hands. So--

CHRISTOPHER CANTRELL: And, and to speak to that, we do have more pipeline deputies--

ALBRECHT: You do that now?

CHRISTOPHER CANTRELL: --right now that have the ability should we have some of the funding mechanisms that we talked about to spend some of their time to be that-- to be responsive, but we do have-- there's been various things testified to over the course of, of the floor debate and that we have four people that cover the entire state.

ALBRECHT: So, so let me ask you a question. With what you do today, do you have the authority to place fines on people for certain things or do you pass that off to the Attorney General's Office to take care for you?

CHRISTOPHER CANTRELL: In this program, we do not.

ALBRECHT: In this program. But are there other programs that you have that you--

CHRISTOPHER CANTRELL: We have arson certified, you know, we have deputy state sheriffs who are arson investigators who are able--

ALBRECHT: OK.

CHRISTOPHER CANTRELL: --to write fines.

ALBRECHT: OK.

CHRISTOPHER CANTRELL: But I would not be using them for enforcement of this program.

ALBRECHT: So that's where I'm just, I'm just trying to wrap my head around how you, your organization, your agency can do-- I mean, I like the idea of you being the investigators and kind of laying it all out on who's doing what. But when it comes to the penalties and when I hear it's \$35,000, if somebody has-- hasn't done the right thing, I get it, and if, if, if lives are in danger, but that's a big deal for you guys to become judge and jury of the whole process.

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CHRISTOPHER CANTRELL: Right. And I believe in my testimony, I did indicate that we would need structure added to the bill for--

ALBRECHT: Yeah.

CHRISTOPHER CANTRELL: --to, to guide us on what those fines would be.

ALBRECHT: OK. OK. Thank you very much.

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

CHRISTOPHER CANTRELL: Thank you for your time.

LASH CHAFFIN: Good afternoon. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n. I'm a staff member at the League of Nebraska Municipalities. First, I'd like to thank the committee for holding, holding this hearing. In the last week, I've talked to numerous cities about one-call in general. My original intent was to testify in opposition mode, but in light of the testimony I've heard today, my remaining comments probably fit better in the neutral, in the neutral mode. What I've learned over the last week is somewhat shockingly, there's a lot of awareness of the 811 committee, and there's a lot of respect for that committee. Everybody seems to know somebody on that committee, not necessarily from their own, from their own utility, but they, they seem to know that and, and there, there seems to be a lot of encouragement to listen to the committee on those issues that they think are important. The-- also, I, I think what, what I have learned is my original testimony was very similar to the testimony of the Black Hills Energy and Ms. Becker kind of outlining some of the legal structure that would, that would be imperative to, to a move like this and, and I would encourage you, if the committee does move forward, to, to look closely at, at the, the legal structure and make sure that it, it does pass, you know, legal and constitutional muster. And, and thirdly, I guess, I don't really want to weigh in on the which agency I like the best, the cities already work with-- cities work extensively with the Fire Marshal. It's a very well-respected agency. And just sitting back there, I came up with, they work with-- 13 cities own and operate natural gas systems. They work with them there. They work with them on fireworks. They work with them on underground storage tanks. They work with the Fire Marshal on planning departments on ADA compliance, which this committee may not even been aware of. They, they work with the Fire Marshal on fire issues so there's just-- and I'm probably forgetting half a dozen things. I will say the Fire Marshal within municipal governments is a very well-respected agency.

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And you know, it's not always the same people, but it's, it's someone at that agency I work with. So I really don't want to weigh in on which agency. My initial concern was just kind of the legal structure of, of moving something like this. And also don't forget, the-- this is not the exclusive way of, of litigating excavations and the civil courts still exist. And, you know, many owners and excavators have been involved in that as well. So that-- with that, I will conclude my testimony and certainly answer any questions.

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

LASH CHAFFIN: Thank you.

FRIESEN: --for your testimony. Any others that wish to testify in a neutral capacity?

NATHAN STEWART: Thank you, Senator Friesen, committee. Here-- Nathan Stewart, representing Nebraska 811 or the one-call board, as it has been mentioned a few times this morning, N-a-t-h-a-n S-t-e-w-a-r-t. I sent out a copy of our position yesterday, so you should have all gotten that in your email. So I may not read through this entire thing. But just as our stance is neutral, we did have a meeting last week and discussed the bill and majority, we're not a monolithic group, we do have over 1,000 members, so you might assume that we have a lot of different opinions. We also represent utilities and excavators, and most of our utilities are excavators as well. So there's a variety of opinions, and this has certainly sparked a lot of discussion. But the general majority of the group did feel that from our position at the board is neutral on enforcement. I would say that we do and did discuss as a group the need for increased or additional enforcement. We hear, hear that from a lot of our stakeholders and a lot of our groups, most of which would desire a better enforcement mechanism. What that is, the board itself is more charged with running the call center and making sure that we receive excavation notifications and transmit those to our members improving our technology and making sure that all the kind of the trains run smoothly. As far as which mechanism would work better, our board is neutral on that. A few of the concerns that we did just note with the current language or the process, some have mentioned that just what we've noticed in developing technology and other things is the more stakeholder buy-in or engagement there is, the better the process works. Some were concerned with the, the size of the fine, and I know that was mentioned previously relative to the size of the entity, whether it's an excavator or a utility versus the fine kind of

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matching the specific violation or the seriousness of the violation. And then just-- there was a lot of discussion on people being confused. And maybe it's just not a complete awareness of statutory language versus, you know, regulatory rulemaking as far as what the actual process would be. Sounds like currently that's going to be a regulatory rulemaking process, but a lot of people just had questions or concerns about not having that specificity right now today and having a lot of questions because of that. And then finally, you know, I think the biggest concern for the board was just that it won't-- none of our current funding structures would be utilized to fund new enforcement mechanisms. We do do a ton-- a lot of outreach and education and things like that, that are funded through ticket fees. And there was a lot of concern about, you know, if, if we changed and enforced mechanisms and at some point in the future realize we're going to need a lot more than the one or whatever has been discussed today, would people start trying to increase our ticket fees or things like that to fund additional enforcement actions? And there is a lot of concern around that, but I haven't seen anything in the current language or, or the discussion today that indicates that, so. That, that's my position, I'm, I'm willing to take questions as well.

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

ALBRECHT: OK, so one-call is free, right?

NATHAN STEWART: Yes. For the user, yes.

ALBRECHT: For the user. And I think that's great. But if, if we're going off on these tangents of trying to figure out how do you train people and things like that, I'm going to just give you an example that's in my head and why all the testimony was important to me today because, let's just say there's an excavator, they're on a job, everybody's in a hurry, they're waiting for somebody to come mark it, the boss leaves the job, tells his guy, do not turn a key, do not dig anywhere, no matter who tells you to just, just wait till I get back. The boss leaves, one of the electricians comes out and says dig this hole, I got to have it now. So there is a situation that something did blow and they had to evacuate the daycare and the school around it and there's all kinds of things that went on. So, you know, then we ask the guys to come on the scene and investigate what happened and there's just a lot of things happening on these job sites.

NATHAN STEWART: There are.

ALBRECHT: And to just decide haphazardly whose fault it was, you know, even though the, the boss told the guy do not turn a key, do anything except for whoever is-- so what kind of-- I mean, are we missing something that there should be more training, there should be more on both sides, you know, whether you're the, the, the people that come out and, and draw the lines and maybe they were off a foot and they, and they hit the line. I think there's so much going on here. Help me understand, do they have-- does everybody have enough training on the importance on a job site of, of making sure that they know what they're doing and the utility companies are lenient enough on some of the excavators? I mean, these, these are all business people. I, I hate to see somebody be fined \$35,000. If it was intentional and you didn't care and you're just going to do it, yeah, maybe you probably need to. But there's just a lot of extenuating circumstances. So if you have 1,000 people, where are they-- I mean, are they saying the same thing that-- there's got to be a common denominator in all this when things like this happen.

NATHAN STEWART: Sure. And yeah, and I appreciate that. I don't think I'm properly equipped to, like, pinpoint on one thing--

ALBRECHT: No, not just--

NATHAN STEWART: --like training, right, there's a variety of things. And again, like our focus is on running the center primarily, making sure that all our technology is up to snuff and that everyone can communicate. But really the portal between the person who wants the dig and the utility gets their notification and we have a positive response that goes back that says that's been done. You know, we've done a ton of technology upgrades in the last ten years to try to make that whole process work better. Because if that's broken, everything else is going to crumble around. There's not even going to be the chance for compliance. So that's really where our focus is from the board level is that. And we certainly, as you said, we have 1,000 members, we have a lot of institutional knowledge about why things happen.

ALBRECHT: And how, how--

NATHAN STEWART: But from my view as the chairman just to be able to say and pinpoint one thing like training, I'm sure there's training that is involved, a lack of it or more of it that's needed in some noncompliances. But to say that that's the overriding overarching, I don't think that we have the view of that to be able to, to make that analysis.

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ALBRECHT: So you have 1,000 members, how are you funded to do what you're doing?

NATHAN STEWART: Through ticket fees. So--

ALBRECHT: Ticket fees, meaning the operators pay you?

NATHAN STEWART: The operators fund the system, yes. So if an excavator calls in a notification, that notification gets charged to all the utilities that receive the notification from us.

ALBRECHT: OK.

NATHAN STEWART: So we, we might get one excavation notification come in from 123 Main Street. We'll send it out to five different utilities that are present there. They all would pay into the system based on receiving that notification--

ALBRECHT: OK, very good.

NATHAN STEWART: --from us.

ALBRECHT: I'm thinking we're going to have to know this because I think there's going to be a much bigger bill to come in the years ahead to be able to fund a different agency to do the investigation in this.

NATHAN STEWART: Which is why I said, you know, from our view, we've, we've clearly heard, you know, I don't think there is a fence because most utilities are very large excavators, but we've heard it from both sides of the fence that more enforcement is needed and that maybe there's-- not every violation or even close to it is being submitted today.

ALBRECHT: Correct.

NATHAN STEWART: And so I, I wouldn't be surprised if that happens, and that was where the concern was, but that's where we also acknowledge there is a definite need for more enforcement.

ALBRECHT: OK.

FRIESEN: Thank you, Senator Albrecht. Seeing no other questions, thank you for your testimony.

NATHAN STEWART: Thank you.

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FRIESEN: Does anyone else wish to testify in a neutral capacity?
Seeing none, we'll close the hearing on LB3-- what is it, LB388--
LB343-- LB344.