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Transportation and Telecommunications Committee
March 12, 2013

[LB358 LB589]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, March 12, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB589 and LB358. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; Beau McCoy; Scott Price; and Dan Watermeier. Senators absent: None.

SENATOR DUBAS: Good afternoon, welcome to the Transportation and Telecommunications Committee hearing. Today we will be hearing LB589 and LB358. So I'll begin by making committee introductions. To my far left, Senator Lydia Brasch from Bancroft, Senator Beau McCoy from Omaha, joining us shortly will be Senator Galen Hadley from Kearney. Anne Hajek is our committee clerk; she's the one that keeps a record of everything that transpires here today, and she is the one that needs you to fill out your paperwork and state and spell your name for the record and all of those things which, hopefully, make her job a little easier. I am Annette Dubas from Fullerton. To my immediate right is Joselyn Luedtke; she is the committee counsel. Vice Chair of the committee, Senator Jim Smith from Papillion. Again, joining us shortly will be Senator Scott Price from Bellevue. And we have Senator Dan Watermeier from Syracuse and Senator Charlie Janssen from Fremont. As senators come and go throughout the hearing today, please don't take it personally or be offended, they're introducing bills in other committees and taking care of other business so there may be some coming and going throughout the committee process. Again, it has nothing to do with the bill or anything that you may or may not be saying. The Legislature is fortunate to be served by a page program. The pages are a very important part of our process; they help keep things running smoothly whether we're up on the floor or in our committees, and we are served by two very competent pages. We have Kaitlyn Evanko-Douglas from Montrose, Colorado; she is a senior at UNL studying political science and global studies. And David Postier from York, Nebraska, who is a sophomore at UNL studying secondary education. So we thank them for their help and their service. If you plan on testifying today, on the table back there by the door is a green sheet. If you will have that filled out and bring that with you to the table when you're prepared to testify. The page will pick that up from you, and again, that's to help us in our record keeping and transcribing process. If you're here today, you don't want to come up to the table and testify, but you would like to be on the record with your position on either one of the bills, if you'll fill out the pink sheet, which is there by the door, that will be picked up at the end of the hearing for the transcribers to use as part of the permanent record. When you come to the table to give us your testimony, we ask that you state and then spell your name for the record, even if it's a very simple name, just helps, again, with the transcribing process and makes sure that we have a very accurate record. So if you'd state and spell your name we'd appreciate that. I know it's our first inclination to grab hold of the microphone and adjust it or mess around with it;

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it's just in front of us, and that's what we want to do, but the microphone is more for transcribing than it is for amplification, and it will pick up what you say without you having to touch it at all. It is very, very sensitive. In fact, it is so sensitive if you're tapping your fingers or rustling papers it will pick up that...that noise and, again, makes it a little bit challenging for our transcribers to get an accurate record. So if you can resist that temptation to adjust the mike, we'd really appreciate it. I will be using the lights today so you'll have five minutes for your comments. At the start of your five minutes, the green light will come on. At the end of four minutes, the yellow light will come on; and then at the end of your five minute period, the red light will come on. That doesn't mean you have to stop mid-sentence or mid-word. Please finish your thought and know that senators will likely have questions, and that doesn't go against your time, and we'll allow you to, maybe, elaborate on some things that, possibly, you didn't get to state before the end of your time. If you have handouts, we ask that you have 12 copies of handouts. And again, give those to the pages; they'll distribute them to the committee. If you don't have enough handouts with you, if you'll get those to the page, they'll go and make copies for us. So they'll help you take care of that. Ask that you silence any electronic devices that you may have with you today. Again, not to interrupt our testifiers or to interfere with the transcribing process. If you do need to have any conversations that are beyond a whisper, we'd ask that you take those out into the hallway to keep from interfering with the hearing process. With that, I think we've taken care of the housekeeping duties, and we are ready for our first bill, so Senator Watermeier. Welcome.

SENATOR WATERMEIER: (Exhibit 1) Thank you. Thank you, Chairman Dubas and members of the Transportation and Telecommunications Committee. I am Senator Dan Watermeier, spelled Dan, D-a-n, Watermeier, W-a-t-e-r-m-e-i-e-r, representing District 1 covering the southeast corner of the state, and I'm here today to introduce LB589. The intent of LB589 is to clarify existing law applying to operators of gas and hazardous liquid pipeline facilities regarding exemptions from the requirements of the One-Call Notification System Act in the event of emergency conditions involving a pipeline leak. LB589 exempts bar test surveys and addresses an emergency condition in response to or reported or suspected leak from triggering the One-Call Notification requirement. Excavation to repair a verified leak would require notification but would not have to wait for the location of other underground facilities to be marked. LB589 creates immunity from civil penalties, but not from strict liability for damage caused by either the bar testing or the repair excavation. Under current law, the One-Call Notification System requires an excavator to contact the center at least two full business days before the commencing of an excavation giving time for the other underground facilities to be marked. Since this is not realistic in an emergency situation, the law states that these requirements do not apply to emergency conditions. LB589 attempts to clarify what is required of a gas company in an emergency condition in relation to bar testing and repair excavation. The definition of a bar-test survey is taken from the language used in South Dakota. It is a procedure used to determine whether a gas leak exists. It involves

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the use of a hand probe that does not conduct electricity to make small holes in the ground along the pipe route. The air in the hole is then tested using a gas detector. Bar testing is done under two types of circumstances. Routine bar testing is performed annually to test the integrity of the line. Emergency bar testing is performed when a natural gas leak has been reported. LB589 addresses the second circumstance. Under LB589, bar testing under emergency conditions would be exempt from the One-Call Notification requirement and would not have to wait for the location of other underground facilities to be marked. Any gas leak present at an emergency condition that demands immediate attention...furthermore, the risk of damaging other underground facilities with the use of nonconductive hand probe is minimal. LB589 does not alter the requirement that routine bar testing must comply with the One-Call Notification requirements. Regarding excavation under emergency conditions to repair the leak once it is verified, I would like to offer AM348, which I believe should be in your packet. As introduced, LB589 required an operator to give notification, but it did not have to be prior to the excavation undertaken to address an emergency condition. With AM348, the operator must give notification prior to the excavation, but it does not have to be given at least two full business days in advance, nor do they have to wait for the location of other underground facilities to be marked. These exemptions are triggered when the bar testing or the repair excavation is deemed necessary by the operator of the gas pipeline to address any emergency condition. The bar testing and repair excavation must be performed by either the gas pipeline operator or its employees or a qualified excavator under the contract with the operator. If the gas pipeline operator strikes another underground facility and causes damage, the operator will be immune from civil penalties as in the case under any other emergency situation which arises through no fault of the excavating operator. However, the operator will not be immune from strict liability for damages. This means the gas pipeline operator would still be automatically responsible for damages caused by hitting another underground facility. If the gas pipeline operator through its own fault caused the leak in the pipeline in the first place, then it may be subject to civil penalties under current law. In summary, LB589 clarifies existing law and codifies current practices regarding the responsibilities of natural gas companies in addressing emergency conditions caused by a gas leak. LB589 allows natural gas utilities to make the immediate action to verify and repair gas leaks which can endanger the public and property. Such leaks are unpredictable and demand urgent action to protect the public safety. I encourage you to vote favorably on LB589 with the amendment that I have submitted. If you have further questions I'd be glad to answer them. But I think there will be more qualified testimony behind me. [LB589]

SENATOR DUBAS: Thank you very much, Senator Watermeier. Are there questions? Seeing none, thank you. Do we have our first proponent to LB589? [LB589]

ANDY POLLOCK: (Exhibit 2) Senator Dubas and members of the Transportation and Telecommunications Committee, my name is Andy Pollock, A-n-d-y P-o-l-l-o-c-k. And I

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appear before you today as a registered lobbyist for NorthWestern Energy. I would like to thank Senator Watermeier for introducing LB589, and I would ask the committee to advance this legislation. Also, I would like to point out that Jim Hartman, who is NorthWestern's Nebraska region manager, he's from Grand Island, is with us here today. If you have technical questions, Mr. Hartman will be available to answer them. NorthWestern brought this legislation to Senator Watermeier after it became clear in discussions with the Fire Marshal's Office that existing law is confusing as to what is required under the One-Call Act in emergency situations involving leaking gas pipelines. Senator Watermeier did an excellent job of explaining LB589. I will simply highlight a few important points. First, this bill applies only to emergency conditions. Senator Watermeier explained what bar testing is. Each year, NorthWestern inspects a portion of its pipeline system, and it utilizes bar testing to do that. These are routine; they're planned inspections. In that regard, they're much like soil sampling which you will hear about in the hearing on LB358. Obviously, these routine inspections are numerous; they're frequent, but they are also planned. And for all such routine bar testing, NorthWestern makes a One-Call Notification. It always calls Diggers Hotline for routine bar testing. LB589 addresses bar testing and excavating under only emergency conditions. An emergency condition is a term that's already defined in the One-Call Act, and I give you the definition in my testimony. LB589 does not change that definition. Please keep in mind that in all cases a leaking gas pipeline presents an emergency situation; a clear and present danger to both life and property exists. The only thing between the danger and catastrophe is one spark. Immediate action is needed. In most cases, unless the leak is so large that it's obvious, bar testing is the first step. One technician is dispatched immediately to conduct the bar testing when a leak is reported. That person's sole focus is inspecting the line as soon as possible. The emergency condition demands urgent response. If bar testing then verifies a leak, the utility will dispatch a crew to repair the leak. At this time, as Senator Watermeier said in his opening, AM348 requires the utility to make a One-Call Notification. It must be made; that One-Call Notification must be made prior to the repair excavation. After that notification is made, the crew can then begin to dig to repair the leak. Under the bill, the crew does not need to wait for a locate. Senator Watermeier discussed civil penalties and strict liability. Under current law during emergency situations the excavator is neither...and this is under existing law...is neither strictly liable nor subject to civil penalties. Under this bill, the utility would not be subject to civil penalties, but it would...it would remain strictly liable. I've had some questions about the strict liability provision. The language you see in the bill is similar to the language of the current emergency exemption which says that Section 76-2324 and 2325 do not apply. Section 76-2324 is the strict liability section. Section (76-)2325 deals with civil penalties. Under the LB589 exemptions for bar testing and repair digs, there is no mention of (76-)2324. In other words, strict liability still applies. So for example, if NorthWestern damaged a telephone line while it was out bar testing or digging to repair a leak in an emergency situation, it would be strictly liable, and it would have to pay that telephone company the cost of repairing the telephone line. LB589 makes important clarifications to existing law. It

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follows existing practices. It allows natural gas utilities to take immediate action to protect the public safety when there is a gas leak. For these reasons we urge you to please advance LB589. [LB589]

SENATOR DUBAS: Thank you, Mr. Pollock. Are there questions? I would have one for you. So you have to...when you realize that there is a repair that has to be done, and you know where it's at, you make the call, but you don't have to wait for the locate, correct? [LB589]

ANDY POLLOCK: Yeah, when you're going out to do the actual dig to fix the leak, you do have to make the call, but you don't have to wait for the locate. [LB589]

SENATOR DUBAS: So there could be a potential that you could hit another line without waiting for that locate? [LB589]

ANDY POLLOCK: There is that potential. That's correct. It requires a balancing of sorts. The balance being maintaining the integrity of the underground facilities which, obviously, has public safety components and addressing a leaking natural gas line which, obviously, like I said in my testimony, presents a danger to the public safety. It's a balancing of those interests. And I think everyone agrees, at least that I've spoken with, that it makes sense to take care of the gas leak to fix it even with the risk of damaging that telephone line or whatever else might be in the ground. As one of the people that I talked to said, be a lot better to have you fix the situation and potentially damage my telephone line than to have the telephone line be blown up in an explosion. So it's balancing the interests, but there would be that risk. [LB589]

SENATOR DUBAS: You know, you're referring to telephone lines, but could there be the possibility of another gas line in that same place that you don't know of? And so by not waiting for a locate maybe hitting another gas line that you're not aware of that could...that would be a devastating occurrence? [LB589]

ANDY POLLOCK: There, I suppose, is that possibility. We do have law on the books that prohibits double piping. [LB589]

SENATOR DUBAS: Okay. [LB589]

ANDY POLLOCK: And so, hopefully, that would minimize that risk. Also, and I will correct this if anything I say here is incorrect, when we're talking about large interstate pipelines, I think those are usually in well-defined areas that, typically, the local distribution company, the company like NorthWestern, would be familiar with and would take precautions to avoid hitting that interstate line. [LB589]

SENATOR DUBAS: All right, very good, thank you. Senator Price. [LB589]

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SENATOR PRICE: Thank you, Senator Dubas. And continuing that vein of thinking, is there a situation where you would see someone would put another utility in the proximity of a gas line without having informed someone? So what I'm trying to get there is, we have all these different utilities out there, one of them being a gas line. There may be a problem; they're aware of what's out there because nobody can put anything there without notifying all the others. You couldn't put your gas line in there without notifying everybody else. And no one else can run a trunk down within 25 feet or 30 feet or whatever the numbers of that line without notifying someone. Are there not notification laws that say when we put out new utilities, I mean...We went through a whole formal process; there was a review process. We would all know that they there; I'm just trying to set the table saying you should probably know what's already there. [LB589]

ANDY POLLOCK: I think in most cases you probably would know what's already there. [LB589]

SENATOR PRICE: Right. [LB589]

ANDY POLLOCK: And one of the reasons, Senator Price, would, hopefully, be that when that utility line was put in the ground, they made a One-Call, and you came out and located your line, and they knew what was there and knew to avoid it. Now the One-Call law hasn't been around forever, so there could be a situation where a line already exists which is why you have the Diggers Hotline, the One-Call requirement. And we strongly support that requirement, and you'll hear me testify to that effect on LB358. It's imperative that we take seriously the One-Call requirement; it's there to protect the integrity of the systems that are out there, and it's there to make sure that people know what's underground when they're digging, whether it's me digging in my yard, whether it's a farmer digging in the field, or whether it's another utility digging along their line. [LB589]

SENATOR PRICE: So if you have a technician out there looking with a bar test, right? [LB589]

ANDY POLLOCK: Right. [LB589]

SENATOR PRICE: So they don't know exactly where it is; they're trying to locate, obviously, that's what we're trying, so...whether it was a drop in line pressure, whatever, they have an idea. Do they use any utility locating devices prior to...so in other words, they don't just drive up to where they think it is and start sticking a probe in the ground. They say: we have to locate it. So they probably have some type of...it may be for a testifier behind you, because I see heads shaking, but I was just thinking the logical order of things, someone goes out and says, I know I've got a pipe runs somewhere in here; they get out their out their pipe-sensing gear, they figure out where it is then they

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start to probe in there, because it would probably be no good to check too far away. So they're already having a kind of a utility location service going on in and of itself. [LB589]

ANDY POLLOCK: Senator Dubas asked a similar question, and Mr. Hartman who is here, talked about that this morning with her in the Rotunda. What they do is they go to the house where the gas leak has been reported. They start at the house at what is called the "riser", and it's basically the meter, and then they go from there to the main that would be out near the street somewhere, and in...at least in a town, and they probe along the way until they get a zero reading, meaning zero natural gas leaking. So the bar test is the first assault. The bar test is the first operation to figure out if there is gas leaking. And then the question from there is, is it migrating up and down the line; how widespread is the gas leak? So that's, essentially, how it looks. And Mr. Hartman, if you want more detail, I'd be glad to have him get up here at the end of the testimony. [LB589]

SENATOR PRICE: Okay, thank you. [LB589]

ANDY POLLOCK: Thank you. [LB589]

SENATOR DUBAS: Further questions? Seeing none, thank you, Mr. Pollock. [LB589]

ANDY POLLOCK: Yeah, I would say if I could, I'd like to thank SourceGas, Black Hills, MUD and the One-Call Board for their discussions and the input in trying to put together a good piece of legislation, as well as Senator Watermeier. Senator Dubas, I know it's not my place to ask a question, but Mr. Hartman could either follow me. I know there will be some other witnesses, and my thought was he could either follow me or he could come after the other witnesses if their testimony happens to prompt technical questions. [LB589]

SENATOR DUBAS: I would suggest him waiting until other testifiers, and then if there's something that's left unanswered, then he...welcomed to have him come forward. [LB589]

ANDY POLLOCK: Okay, wonderful, thank you very much. Thank you. [LB589]

SENATOR DUBAS: Next proponent for LB589. [LB589]

JILL BECKER: Good afternoon, Senator Dubas 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 appear before you today as a registered lobbyist on behalf of Black Hills Energy. And we're just appearing in support of the legislation before you and hope that you will advance it out of committee. We support, if there is a need to do so, a clarification to ensure that what we as the gas companies are doing is what, you know, we should be

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doing for safety reasons. I think that the primary aspect of the whole intent of the One-Call laws is the safety of the...just the public out there. And if there is a need for clarification based on the situation that NorthWestern describes, we certainly support that. And with that I'd be happy to answer any question that you may have. [LB589]

SENATOR DUBAS: Very good. Are there questions? Seeing none, thank you. [LB589]

JILL BECKER: Thank you. [LB589]

JOHN LINDSAY: Thank you, Senator Dubas, members of the committee. My name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of SourceGas. SourceGas is a local distribution company which operates, primarily, in about the western two-thirds of the state. We support this clarification in the law with respect to emergency situations. We think it's important to have clear processes in place so that even the utilities who are responding to a line hit or other leak know exactly what they're supposed to do. This bill, we think, does provide that clarity, and we are in support of the bill. I'd be happy to answer any questions. [LB589]

SENATOR DUBAS: Thank you. Are there questions for Mr. Lindsay? Thank you. [LB589]

RICK KUBAT: Good afternoon, Senator Dubas and members of the Transportation and Telecommunications Committee. My name is Rick Kubat, that's R-i-c-k K-u-b-a-t. I am a government affairs attorney working on behalf of Metropolitan Utilities District. The MUD Board on March 6 took a position to support LB589; wanted to voice that support. When there is a natural gas leak, the first thing that we want to do is ensure the safety of the residents in the area, and we believe that LB589 will assist us in that process. That's all I have; happy to answer any questions if you have any. [LB589]

SENATOR DUBAS: Are there questions for Mr. Kubat? Senator Hadley. [LB589]

SENATOR HADLEY: Thank you, Chairman Dubas. I guess it's more of a statement. We only have to look at the tragedy in Kansas City recently to understand the potential impact of a gas leak and the consequences that can occur. So I think it's a very, very important issue. [LB589]

RICK KUBAT: Thank you, Senator Hadley. [LB589]

SENATOR DUBAS: Other questions? Senator Smith. [LB589]

SENATOR SMITH: Thank you, Madam Chair. Mr. Kubat, with MUD, I think maybe a little bit different from some of the other utilities is you actually have your own locators at that utility, whereas some of the other utilities may use a contractor locator or location

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company. In that particular case, is this bill as relevant to MUD, because you probably can have your locators there in advance of your crews to do the work, right? [LB589]

RICK KUBAT: Senator, my understanding is that it's still applicable to us saying it's similar when there's a local gas leak. You know, we want to, when we can, call and get a locate, and we want to do that. But if there's an emergency situation, we want to do what's necessary to ensure the safety of surrounding residents. [LB589]

SENATOR SMITH: Okay, thank you. [LB589]

RICK KUBAT: Thank you. [LB589]

SENATOR DUBAS: Other questions? Seeing none, thank you. Next proponent? [LB589]

ANDY HARTMANN: Thank you, Senator Dubas and the committee. I'm Andy Hartmann, A-n-d-y H-a-r-t-m-a-n-n. With AM348, the One-Call board of directors supports LB589. And I am representing the board of directors of the One-Call System. The overreaching purpose of the One-Call Notification Act is the protection of the public safety. The public safety demands that we protect the integrity of our underground facilities, and the act is designed with that in mind. Emergency situations, especially those involving leaking explosive liquids, require a balanced approach. While we cannot overlook the importance of protecting the integrity of our underground facilities, the leak of an explosive liquid presents a clear and present danger to the public and property. Action must be taken immediately to eliminate the danger. We believe that LB589 as amended strikes a good balance. It allows for immediate action to be taken to verify and repair gas leaks, but it also requires steps to protect the underground facilities. In particular, AM348 requires a notification before digging to repair a gas leaking...or a leaking pipeline, excuse me. The bill also imposes strict liability. If the operator damages other underground facilities, the operator remains strictly liable for the cost of repairing those facilities. It is our understanding that the existing and accepted practices is to conduct bar testing without making a notification for the reason just explained. We believe this is the best practice necessary to protect the public safety. But if there is uncertainty as to whether this practice conforms with the status, we need to clarify the law. We...just as we have the One-Call Act to protect the integrity of our underground facilities, we must also be vigilant in making sure that the integrity of the act is protected. This means that exemptions must be very few and very narrow and very clear. With regard to gas leaks, the law is not clear. LB589 addresses those uncertainties. And for that reason, we urge you to advance the bill. And that is the...One-Call board of directors, we support this bill. Are there any questions? [LB589]

SENATOR DUBAS: Very good. Thank you, Mr. Hartmann. Questions? Seeing none, thank you. [LB589]

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ANDY HARTMANN: Thank you. [LB589]

SENATOR DUBAS: (Exhibit 3) Next proponent for LB589? Further proponents? Are there opponents? I do have a proponent to read into the record, for LB589, League of Nebraska Municipalities, Gary Krumland. Anyone in the neutral? Seeing none, Senator Watermeier, would you like to close? [LB589]

SENATOR WATERMEIER: I'll just pass. [LB589]

SENATOR DUBAS: Senator Watermeier waives closing and that will close the hearing on LB589, and we will move on to LB358. [LB589]

SENATOR SMITH: All right, we will begin the hearing on LB358 and, Senator Dubas, welcome to introduce the bill. [LB358]

SENATOR DUBAS: Thank you, Senator Smith. My name is Senator Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s; I represent Legislative District 34. LB358 was brought to me by the natural gas companies as a result of concern over who should be required to use the One-Call Notification System. As you probably know, One-Call requires excavators to notify a hotline so underground facilities can be marked. Since the inception of this system in Nebraska, there has been an exemption for tilling of the soil, seeding, and other agricultural purposes. The other agricultural purposes is where we are running into uncertainty. In 2011, Attorney General Opinion on whether soiling sampling is excavation stated that lack of clear legislative direction on the subject and that legislative direction would be helpful. The public policy question here is, who should be exempt? Farmers who know their land? Soil samplers making inconsequential probes into the soil? Everyone? As farming practices have changed over the years, this issue has become more prevalent today. The natural gas pipeline and telecommunications companies feel very strongly that soil sampling should not fall within the other agricultural purposes definition and should be required to make the call. They reason that probes are becoming more invasive and pipes are becoming closer to the surface because of prolonged drought and more severe floods. There's also a very real safety concern, not only for those who are working in the fields, but the public at large. Pipeline explosions are devastating and costly. Severing a telecommunications line will impact telephone service, which includes Internet, 911 service, cell phone towers, FAA radar sites, and anything else that is carried over those cables. Those who do soil sampling will state that their activities are certainly an ag purpose and there has never been a problem related to soil sampling. Soil sampling is done on a regular yearly basis and is much more technological in nature because of GPS systems and our tillage equipment and the need to be far more careful with the application of chemicals and fertilizers. More often than not, the farmer is not the one doing the soil testing. Co-ops and co-op agronomists know farmers' fields actually better than the owners themselves. Soil

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samplers keep meticulous records on every field and usually return to that same field year after year. I agreed to carry this legislation with the hope of finding a workable solution for all parties. I understand the agronomy companies who have a very short window of time to get their work done; it's usually in the fall after harvest and before winter really sets in. Their job can be impacted by the weather which makes their work schedules even more unpredictable. There are thousands of these samples taken over the course of a few months which creates a burden for the agronomy companies to make the calls and wait for the marking of the clearance. Both sides have legitimate concerns and they will be presented through testimony today. It is my intention to continue to work with the stakeholders to find a solution that will take into consideration the difference between routine regular soil sampling and excavation work and the serious safety concerns. I have been meeting with the interested parties since the start of session, and we are continuing to meet to determine what is that best course of action. This is not a new issue for our committee; Senator Hadley certainly knows it's been around before. But it is one that will continue to come back until a decision is made. And I'm hoping that we can find that decision sooner rather than later. So with that I would attempt to answer any questions, but there are many people who are here today to give you their expertise on both sides of this issue. [LB358]

SENATOR SMITH: All right. Thank you, Senator Dubas, for your opening on LB358. Are there questions for Senator Dubas? Seeing none, thank you. And we will now move to proponents of LB358. Welcome. [LB358]

JOHN LINDSAY: (Exhibits 4 and 5.) Thank you, Senator Smith, members of the committee. For the record my name is John Lindsay, L-i-n-d-s-a-y, appearing as a lobbyist today representing Northern Natural Gas Company and SourceGas. A couple of years ago, there was a bill introduced, as Senator Dubas mentioned, to address this same area of statute and, in fact, the same issue and that is: to what extent does the agricultural exemption apply. And I think the best place to start is in 1994 when the original One-Call legislation passed. And at that time, Senator Doug Kristensen, who of course hailed from the greater metropolitan Kearney area, noted that the agricultural exemption made sense for the landowners because the landowners knew their land. It was not extended to third parties at that time for a reason, and those reasons are still valid today. And, in fact, as Senator Dubas also mentioned that agricultural practices have changed and evolved over the last 20 years since this was first adopted. We believe the legislation should change with it or at least the interpretation thereof. There was a lot of resistance when the One-Call bill was first adopted in 1994, and the reason was people didn't think they should have to make a call. And those people at that time included excavators, construction companies, some utilities, etcetera. But over time, it's just part of the way they do business, and it's part of what they build into their schedules. It's a free call, three digits. In fact, you can now do it from your mobile phone or access the Internet from your mobile phone and do it that way. It has evolved. Northern Natural Gas right now responds to about 17,000 requests a year in Nebraska

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for its locate requests. Approximately 90 percent of those are handled over the phone. So we're talking about a small...smaller number because large areas can be cleared over the phone and still maintain the safety aspects that the bill was designed for. In fact, the concern with safety is such that, if someone is going to be excavating within 25 feet of a Northern Natural Gas facilities, we will actually have personnel on site to make sure that that infrastructure is protected. And why is that so significant that that infrastructure be protected? And it is because sometimes you might...you might pick up that this is maybe a rural versus urban...has a rural versus urban bent, and we don't believe it does. And the reason is, the laws of physics apply in both areas. That underground facility doesn't care whether the soil on top of it is in a city or out in a field. It's going to do what it's going to do if it gets hit. And what is it going to do? I had distributed to you, if I could ask you to take a look at the photos taken by Northern Natural Gas during a line hit over in Hinton, Iowa. Hinton, Iowa, is north of Des Moines a little bit. This took place April 25, 2012. You look on that first photo, the first page, there's a couple things I'd like you to note. First, there are two high-pressure pipelines going through those fields. If you will note first that those pipes go diagonally across the fields. You may hear testimony, we did two years ago, heard testimony that those pipes are along fence lines. At least that was the assumption that was made by some of those who were doing the...some of the excavation. The fact of the matter is, that's just not true, and it's a dangerous assumption to make, especially if you're on a backhoe digging near this pipe which is exactly what happened. The second thing I would ask you to notice is to look at the impact that that line hit had. You can notice some of the detail there, including that it almost went out to what is known as the PIR or the Primary Impact Radius. It almost went out that far because that explosion was that significant. On the next page you'll see that the flames that actually flared up to 60 feet or more immediately after the explosion. You'll see on the following page the flames when the backhoe or the tractor caught fire that that tractor continued to crawl for awhile from that impact. On the next page you'll see a photo of the tractor, or what's left of it, and you'll note that the cab is pretty well burned away. The fortunate thing in this is that nobody was killed, and that's just by luck. The person operating in that cab was thrown the opposite direction from the flames and because of that is still alive. But if you'll notice, most of that cab is missing. On the next page you can see the drain tile ditch line. You can see the crater that was created. This was not an excavation. This is the crater that was created by the explosion out in the middle of a field. Again the next page, again you can see how the steel pipe was blown away and the crater was created and the tile plow which was found 35 feet from the impact location on the following page. And that next page is what I want to draw attention to. That's a picture of the sign that says there's a natural gas pipeline in that field. You notice that it is some distance over to where the pipeline is. This picture tells why we need to make sure that those calls are being made and those pipes are being marked before the digging takes place. Because the fact is, if you're new to that field, you don't have a clue where that infrastructure is. And finally the last page, an aerial view of the impact zone of that line hit. And you can see there is nothing around there except agricultural field. Nothing around there except

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agricultural field, and you can see the damage and devastation. We don't need to look to Kansas City which took place in an urban area to show what the dangers are. We simply need to look into the area that we're talking about. My time is up. I would urge the advancement of the bill. [LB358]

SENATOR SMITH: Thank you, Mr. Lindsay, appreciate your testimony. Do we have any questions for Mr. Lindsay? I do have a couple of questions. Can you speak to the depth of the tilling relative to the buried depth of the pipe? [LB358]

JOHN LINDSAY: The natural gas pipes are typically buried at a depth somewhere between 42 and 48 inches, sometimes 36 to 48 inches. That is the original buried depth of the pipe. The problem we run into is that you have wind erosion, you have soil erosion, you have from just tilling practices that that depth can vary and can change, and we have migration that does occur. So it is not a standard depth...typically is at the time it's buried, but it doesn't remain that way over a period of time. [LB358]

SENATOR SMITH: Okay, because those pipes have been there for years, and that erosion takes place... [LB358]

JOHN LINDSAY: Right. [LB358]

SENATOR SMITH: ...and you don't know at what depth they exist. [LB358]

JOHN LINDSAY: Right. Yeah, because the top soil can be moved and result in a different depth. [LB358]

SENATOR SMITH: And so as a proponent of this bill, you're seeing this bill as a means to restrict tilling without locating for...in those cases that are not described by the additional language here. [LB358]

JOHN LINDSAY: Right. [LB358]

SENATOR SMITH: So it's a further restriction for your client. So they see that as a good thing. [LB358]

JOHN LINDSAY: Yes. [LB358]

SENATOR SMITH: And if we have a landowner that...so if a landowner were to hire someone to do the tilling for them, they would not be exempted. They would have to receive the locating? [LB358]

JOHN LINDSAY: Yes. [LB358]

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SENATOR SMITH: But yet the landowner uses a relative or themselves, they go out and do the tilling, then they are exempted. Is that correct? [LB358]

JOHN LINDSAY: If done for a fee, yes. [LB358]

SENATOR SMITH: So it's really the fee that triggers this? [LB358]

JOHN LINDSAY: Yeah, the idea is that if you're doing...if you're performing that work as a business, you're performing that for compensation, then it ought to be treated like a business. And other businesses that are not doing that particular type of work, in a similar circumstance, would have to make that call. [LB358]

SENATOR SMITH: So this is more of a...you see this as more of a compromise because it really does not remove the risk? [LB358]

JOHN LINDSAY: Yes. [LB358]

SENATOR SMITH: We just reduce certain components of the risk. [LB358]

JOHN LINDSAY: I think if you looked at some other states, yeah, there would be...there would not be an agricultural exemption. [LB358]

SENATOR SMITH: All right, thank you, appreciate it. I see no further questions, thank you. [LB358]

JOHN LINDSAY: Thank you. [LB358]

SENATOR SMITH: We'll continue with proponents of LB358. I see none. I do have...oh, I'm sorry. You have to move fast. [LB358]

ANDY POLLOCK: I promise I wasn't asleep. Senator Smith and members of the Transportation and Telecommunications Committee, my name is Andy Pollock, A-n-d-y, Pollock, P-o-l-l-o-c-k. I appear here on behalf of NorthWestern Energy; I'm their registered lobbyist. And simply...I would reiterate that NorthWestern Natural Gas supports this for many of the same reasons that you heard from Mr. Lindsay in his excellent testimony. I would harken back to some testimony that I gave earlier today on LB589 and remind the committee that that bill dealt only with emergency conditions involving a natural gas leak. As I said during that hearing, when NorthWestern and, I believe, other utilities inspect their systems, they often bar test. And when we bar test, there is a probe, as Senator Watermeier testified on LB589, pushed down in the ground manually. It's always manually, and it's an insulated probe. For emergency situations like we're talking about in LB589, the bill would not require a One-Call. But for all of our routine bar testing which happens frequently and often, NorthWestern does make a

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One-Call notification. They call Diggers Hotline. In that regard, some of these ag processes like the soil sampling are very similar to that, and in that event again NorthWestern always makes a call to Diggers Hotline. With that I would be glad to try to answer any questions. [LB358]

SENATOR SMITH: Thank you, Mr. Pollock. Do we have questions for Mr. Pollock? I see none. Thank you for your testimony. [LB358]

ANDY POLLOCK: Thank you. [LB358]

SENATOR SMITH: Welcome. [LB358]

JILL BECKER: Good afternoon. Good afternoon, Senator Smith and members of the Transportation and Telecommunications Committee. My name is Jill Becker, 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. And I just want to express our appreciation for the bill that's been brought before you today and indicate our support of it similar to the other bill that you heard today. The whole intent of the One-Call Act is the safety of Nebraska citizens. And we support all efforts that would help ensure their safety. Even though we as a distribution company are primarily located within the communities that we serve, that's not necessarily always the case; sometimes we are in the more rural areas. But I think it's also important to note that just because we are, I guess you would say, a more urban utility provider, that certainly does not make us immune from the third-party damages that result from these unintentional hits. And most certainly, I don't think any one out there is, certainly, intending to hit these lines; certainly, it is a very, very high safety risk. And I think people would be very shocked to know just how often these types of activities occur. And if nobody has been hurt yet, it's only a matter of time. Frankly, we're just lucky. And I think what you've seen from some of the national cases is that, unfortunately, when instances like this happen where lines are hit, the consequences can be just utterly devastating. And so we encourage you to advance LB358. And with that I'd be happy to answer any questions that you might have. [LB358]

SENATOR SMITH: Thank you, Miss Becker. Are there any questions? I see none. Thank you. [LB358]

JILL BECKER: Thank you. [LB358]

SENATOR SMITH: Any additional proponents of LB358? Welcome. [LB358]

ERIC CARSTENSON: Senator Smith, members of the Transportation and Telecommunications Committee, my name is Eric Carstenson. Eric is E-r-i-c, Carstenson is C-a-r-s-t-e-n-s-o-n. I'm a registered lobbyist and president of the Nebraska Telecommunications Association; we're a trade association, that represents

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the telecom industry in Nebraska. The NTA supports LB358 and thanks Senator Dubas for her work on this issue. The One-Call System was designed to protect Nebraska's citizens from dangerous service outages. It only requires one free call, and then the landowner's property is quickly marked so they can begin digging or testing with those facilities. The One-Call creates a balance between utility companies that pledge to quickly and expeditiously locate buried facilities in exchange for no liability to the calling party. Any change to that law that would upset that balance for digger's responsibility to call before they dig should also retain a strict liability for any damages that would occur. With that that concludes my testimony, and I'd be happy to answer any questions.
[LB358]

SENATOR SMITH: (Exhibit 6) Thank you, Mr. Carstenson. Do we have any questions? I see none. Thank you. All right, any additional proponents of LB358? I see none. I do have a proponent to read into the record. This is from Gary Krumland from the League of Nebraska Municipalities. We now continue with opponents of LB358. Welcome.
[LB358]

TIM MUNDORF: (Exhibit 7) Vice Chairman Smith and members of the Transportation and Telecommunications Committee, my name is Tim Mundorf, that's T-i-m M-u-n-d-o-r-f, and I appear before you today on behalf of Midwest Laboratories, Inc. of Omaha, Nebraska, and the Nebraska Agribusiness Association. The Nebraska Agribusiness Association represents fertilizer, agricultural chemical, and seed retailers, both cooperative and independent; product manufacturers; soil testing laboratories; and related equipment manufacturers in Nebraska. I appear before you today in opposition to LB358. The bill as drafted would require anyone who takes a soil sample or performs any other tillage practice and charges for the service in Nebraska farm fields to require them to call the One-Call Digger's Hotline. We would like to thank Senator Dubas for working with us and trying to find a solution to this issue. We think it is important. The issue surfaced two years ago for us and was addressed by a ruling from the Attorney General's Office in 2011. A copy of that ruling is attached to my testimony which references an agricultural exemption in current law. The exemption from having to call One-Call spells out tilling of soil and gardening for seeding and other agricultural purposes. In researching the history of the creation of the One-Call statutes, it should be noted that the original legislation, LB421 in 1994, did contain a depth limitation as originally introduced. However, that provision was removed, and the current tilling of the soil exemption was put in its place. My remarks will address the soil sampling as a tillage practice, and I will not discuss other practices which farmers can pay for services such as fertilizer application, soil ripping, planting, and other practices. Soil sampling has been around since the 1950s and has grown for many reasons which include things like environmental factors such as preventing the leeching of fertilizers into our groundwater, savings in the cost of fertilizer and nutrients for the plant, providing for the increased production of crops as we scientifically spoon feed these fertilizers to plants for better food production and creating more food for our increasing world population. In

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2011, when this issue first surfaced, we did a study of the total soil samples done in Nebraska. The current way the One-Call System operates makes it impossible and not feasible for soil sampling to be handled within the current system. Like I said, soil sampling has been around for over 50 years. Until just two years ago when this issue surfaced, soil samplers in Nebraska had never called the One-Call Diggers Hotline. And in all those years soil samplers in our state and other states have not been required to call the Diggers Hotline. This information has been provided for us by our trade associations in those states as well as national associations representing our industry. The Diggers Hotline staff and board and the utilities will tell you that calling for doing soil sampling is easy, free, and they will be able to handle our request and mark the farm fields within the 48-business hours as required by law. We do not believe they will be able to provide this service, and this has been evidenced by their handling of our business calls thus far. The number of soil samples sent to laboratories in the state of Nebraska totals over 600,000 in a year. And those are just samples coming from the state of Nebraska. Most of those, up to 70 percent, being done immediately done after harvest for a period of about a month and a half. There are states provide laboratory services such as in Iowa and Minnesota that also take some samples from Nebraska, but we just polled the laboratories in the state of Nebraska to come up with our numbers. My testimony includes those numbers. I won't read through all of the math for you. But the bottom line is the total number of soil samples that the laboratories pulled in Nebraska...handled that came from the state of Nebraska were 600,000 samples. We did some math looking at the assumptions of how many of those samples were composite versus what we call "grid samples" which is a very intense sampling process, and we came up with about 141,000 total locations. And those locations being, basically, quarter sections that we pulled samples from. So 141,000 locations that we would have to clear. Seventy percent of those locations would be in that month and a half time period for about 98,000 or 99,000 total samples to be done in the fall which would work out to about 3,000 calls per business day or 375 calls per hour. I've got additional testimony there; I'm not going to read through it all. I would like to reference a couple of photos I've included in my testimony. One is on page 6. It shows a sampling probe that I use when I pull soil samples. My family also farms; I pull samples on their farm, and I'll do a little bit of custom work for friends or neighbors pulling soil samples. I have the software to do the grid sampling. The following page shows a "subsoiler;" it's used for breaking compaction soils or a piece of tillage equipment. As I said, my family farms. I run the subsoiler; I also pull soil samples. The subsoiler we run on our farm runs between 14 and 18 inches deep. It impacts ground up to about 20 inches deep. And these aren't exact measurements, because, you know, when you set that equipment, as you go up and down little ridges, it goes deeper and shallower. The reason I know I don't have to call Diggers Hotline in my fields is because I ran that sampler through it at 20 inches deep, and I'm pulling 8- or 12-inch samples for fertility purposes. That is my locating service for that farm. And I'll take any questions, and I do thank you for your time. [LB358]

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SENATOR SMITH: Thank you, Mr. Mundorf. Do we have questions? I do have a couple of questions for you. [LB358]

TIM MUNDORF: Please. [LB358]

SENATOR SMITH: Repeat what you just said. You said the...what we're looking at here on this particular page... [LB358]

TIM MUNDORF: Yep, absolutely. [LB358]

SENATOR SMITH: ...you say that runs about 14 to 18 inches deep. [LB358]

TIM MUNDORF: The one that's shown in the picture runs between 12 and 22 inches. The one we use on our farm is made by a company called BLU-JET in Thurston, Nebraska. And it runs...its operating range is 14 to 18 inches. We run that piece of equipment on about 20 percent of our farm every year. We also apply anhydrous ammonia. I take 8-inch samples for soil fertility purposes. Our anhydrous bar injects anhydrous 8 inches into the ground. I pull it with a 300-horsepower tractor. So because of that, I know if a field has had anhydrous applied to it, running 8 inches deep, I know I'm not going to hit a line with my 8-inch sample probe. [LB358]

SENATOR SMITH: And then how is the probe used? And how deep is that? [LB358]

TIM MUNDORF: I step on it with my foot and press it into the ground. [LB358]

SENATOR SMITH: And how deep is that? [LB358]

TIM MUNDORF: It will do a maximum of a foot, the one that I'm using; 8 inches is the common depth I take. [LB358]

SENATOR SMITH: And do you believe that the bill, the way it is written, does not allow for the soil testing with the probe is... [LB358]

TIM MUNDORF: I believe the bill, the way it is written, there is so many samples taken it will be difficult for them to handle it. But more importantly, since we're already out there doing tillage that's excluded by the law currently, and the bill as it's written, whether that's the farmer or someone else, running at depths at 8 inches or far greater, there's no reason to call One-Call then to clear the field. [LB358]

SENATOR SMITH: And some statistics you were sharing, you say this would generate about an additional 3,000 calls per day? [LB358]

TIM MUNDORF: That is correct. If we called One-Call on every field that we sample, it

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would be an additional 3,000 calls a day or 375 an hour. And I called One-Call myself two years ago when this issue came up to clear a field. It took between 20 and 30 minutes, and I went out to sample the field, and the local utility had just put one flag in the field. They had not marked the utility, but they said okay to hand sample even though I was taking 3-foot-deep samples. [LB358]

SENATOR SMITH: Was that because they gave you an all-clear on everything else? [LB358]

TIM MUNDORF: I think it's because they found it somewhat ridiculous that they were doing it for soil sampling, but I don't know; I didn't talk to the gentleman. [LB358]

SENATOR SMITH: And there was some previous testimony that said 90 percent or so could be resolved with a call in. [LB358]

TIM MUNDORF: This field had a cable...cable company line running just inside the edge of the field, so they decide to have it marked. But on the call that I had with Diggers Hotline, I believe if it had not have had that in there, they would have been able to clear the field. But we don't know until we make the call of course. [LB358]

SENATOR SMITH: Okay, thank you. [LB358]

TIM MUNDORF: Yeah, thank you. [LB358]

SENATOR SMITH: I see no further questions for Mr. Mundorf. Do we have additional opponents of LB358? Welcome. [LB358]

RAY WARD: (Exhibit 8) Vice Chair Senator Smith, members of Transportation and Telecommunications Committee, my name is Dr. Ray Ward, R-a-y W-a-r-d, and I appear before you on behalf of the Ward Laboratories in Kearney, Nebraska, and the Nebraska Agribusiness Association, and I appear in opposition of LB358. Attached to my testimony is a letter signed by several other state associations who represent fertilizer, chemical, seed, salts, sampling kind of businesses. The letter indicates that soil sampling procedures do not require a call to One-Call in those states. In fact, in our survey of all states, we have not found any states which require this procedure to be covered by any state law. As drafted, LB358 opens up a serious problem for crop input industry. The language indicates that tilling of the soil and gardening for seeding and other agricultural purposes are exempt if performed by the landowner or other...or the landowner's tenant if no fee is charged. The key is, if no fee is charged. If it's a safety issue, what difference does it make if it's a fee charged or not if it's the same procedure regardless of who is doing the sampling or tilling? More than 95 percent of the soil samples are taken by crop consultants in the ag input industry or the...the fields where these samples are taken are more well-known to the consultants in the industry than

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some farmers that might just acquired the land or landowners as they are providing this service year after year on the same fields. More importantly, LB358 is drafted "any tilling of the soil or other agricultural purposes which is performed for a fee" will now be required to call One-Call Diggers Hotline. This means several practices in our industry has to provide like putting down or applying anhydrous ammonia, providing custom planting, providing any type of tillage practices on a farmer's field, soil sampling, moisture testing, and harrowing, disking, soil ripping, and other land treatments. There's no way that One-Call System can handle all these tillage practices. We encourage the committee to indefinitely postpone LB358 and look at a study of all tillage practices and help devise a better system for farming practices while also recognizing safety procedures. One-Call is a great system for excavating, but farming practices are so broad and the amount of activities which would be required to verify under the system would greatly hamper agriculture as it exists today. I might add that I've been in the business for 52 years, and the soil samples we're talking about are plant-nutrition testing where we're trying to advise farmers on how much fertilizer to use on a field. It's not engineering purposes; it's a chemistry-type purposes that we're sampling the fields to determine the amount of fertilizer that should be applied. Thank you for allowing me to testify today. If you have any questions, I'd be happy to answer them. [LB358]

SENATOR SMITH: Thank you, Dr. Ward, for your testimony. Do we have questions for Dr. Ward? I do have one. With your experience over the years, have you seen damages from tilling and sampling? [LB358]

RAY WARD: I have not seen any damages from tilling or sampling for fertility. [LB358]

SENATOR SMITH: Okay. [LB358]

RAY WARD: And that partly is because we do that out in the field away from right-of-ways. And the testimony on the pipelines that go across...diagonally across fields and that kind of thing, I understand that...that serious part, but we do not sample the road ditches, so to speak, or rights-of-way near the road. [LB358]

SENATOR SMITH: Okay. And then the sampling device, are they consistent? Are they all roughly 12 inches? [LB358]

RAY WARD: The NRDs in the Phase II, Phase III areas where the groundwater nitrate is high require 36-inch samples. So those probes are...is required for three feet. [LB358]

SENATOR SMITH: Probably the shortest would be 12 inches...12 to 36? [LB358]

RAY WARD: On our soil testing procedures, our soil tests are calibrated for an 8-inch sample. So we ask and prefer that. The top soil samples are taken 8 inches deep. [LB358]

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SENATOR SMITH: All right, thank you. [LB358]

RAY WARD: Okay. [LB358]

SENATOR SMITH: We continue with opponents to LB358. Welcome. [LB358]

ED WOEPPEL: (Exhibit 9) Senator Smith and members of the committee, my name is Ed Woeppel, and that is E-d W-o-e-p-p-e-l, and I'm here today to represent the Nebraska Cooperative Council. The council is a trade organization for the farmer-owned cooperatives in the state involved in the grain and supply marketing of farmers' products. I'm here today to testify in opposition to LB358. The bill which would amend the One-Call Notification System Act by requiring the third parties, not the owners or the tenants, who are charging a fee for soil sampling to call One-Call center prior to taking those samples. Those that have been before me have provided testimony talking about many of the concerns, but there are a couple that I'd like to mention, so I will try not to be repetitive for the committee. One of the things that we found two years ago was mixed response from the local utilities regarding the utilities' ability to mark the fields within the 48-hour time period. In one case, a soil sampler was told that the utility would need to send an employee from Kansas to mark the field, and it would be probably two weeks before that could happen. In another case, one of our members was asked by a local utility why they were calling the One-Call because members had never called in the past. And further the utility indicated that...or they appeared to indicate that they really did not have the staffing to mark all those areas in a very expansive trade territory. In essence, the local utility didn't appear to see the need for the One-Call and apparently was not staffed to be able to do that within that 48-hour time period. As was mentioned in previous testimony, a large volume of these samples are taken in a very short period of time. So if local utilities don't have that necessary staffing, it really becomes a problem for our members. And if you think back, I believe it was three winters ago, when eastern Nebraska was basically covered in snow from the first part of December until March when spring arose, we had about 45 days with which to do the soil sampling from mid-October until the end of November. In those scenarios, when you have delays in marking the fields, it really creates inefficiencies for our members in doing the soil sampling and for the farmers who are relying on that data for formulating their crop nutrition plans. So that has created a problem for our members in the past. So with that I will stop there, and if there are any questions that anybody would have, I'd certainly try to respond to those. [LB358]

SENATOR SMITH: Thank you, Mr. Woeppel. Do we have any questions? I see none. Can you just describe what the locating process would look like. Have you had property located or have you seen it...you know, as far as how it is located? Is it white lined? Is it...do you have an area that is marked off as clear? Are there flags? I mean, what is look like? [LB358]

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ED WOEPPEL: I have never actually had any cropland done. On my personal residence I have had that done, but not on cropland. So... [LB358]

SENATOR SMITH: Okay. Maybe someone that follows you can answer that. [LB358]

ED WOEPPEL: Perhaps. [LB358]

SENATOR SMITH: All right. [LB358]

ED WOEPPEL: But in that case, they had both flags and spray painted where lines were running up to my house. So... [LB358]

SENATOR SMITH: Great, thank you for your testimony. We continue with opponents of LB358. Welcome. [LB358]

JESSICA KOLTERMAN: Thank you. My name is Jessica Kolterman, K-o-l-t-e-r-m-a-n. I'm the director of state governmental relations for Nebraska Farm Bureau Federation. I come before you today on behalf of the organization, and we are opposing the bill. We've been looking at this issue for about two years, and we would want to be at the table in trying to find a solution. I think our members' concerns really stem from the fact that this is a very compressed time line in order to do this. You know, our members are really doing more soil sampling now than ever before. And with the technology that continues to develop, that will just increase. And, you know, I think there's some common ground here. I think everyone is aware of the safety concerns, and everyone is willing to work through that. I don't know if the One-Call Notification System is the answer. But there are ways we can continue to talk and hopefully find something that everyone will be comfortable with, and we're a partner in that. We welcome anyone else to be at the table as well as we look forward to moving forward and trying to find some solutions to these issues. [LB358]

SENATOR SMITH: Thank you, Miss Kolterman, appreciate your testimony. Do we have any questions? I see none. [LB358]

JESSICA KOLTERMAN: All right. Thank you. [LB358]

SENATOR SMITH: Thank you. Welcome. [LB358]

HARRY MUHLBACH: My name is Harry Muhlbach, and I live in Lincoln, Nebraska, 5701 Vine Street; spelled H-a-r-r-y, middle initial L, Muhlbach, M-u-h-l-b-a-c-h. First if all, I want to thank all the senators for serving Nebraska and thank you. I'm here in opposition to this because of several things. We had two examples already given today about gas explosions, one in Kansas City and one in Iowa. Has nothing to do with soil

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boring. Those were contractor errors and assumed if they would have followed regulations they would have called One-Call and got something located. So those two examples were actually misleading on what this bill is trying to correct. I'm going to give you an example. I'm a contractor here, and I've called One-Call over the years, and I've had four mistakes from One-Call. I've dug up a 50-wire telephone line that was cleared. The phone company was going to discontinue my service for life if I did not pay that bill. If it wasn't for the One-Call guy stepping forward and saying, I did mislocate that. So I got through that, but that took six months. I went...another one, I cut a high-powered buried power line from the Omaha Public Power District, and that was located with a One-Call. I could have lost my life over that. So my point is that, this One-Call, we're assuming that we're protecting ourselves. There's nothing in life that is 100 percent safe. And today...I've asked around since this was introduced...this bill was introduced how many soil samples have caused a really catastrophe accident. Most of these soil samples are done in a rural area. And the person that is going to be jeopardized is the person that is sampling the soil. Now do you think that person would want to go out there and kill himself? The gas companies used to, and I haven't lately, they used to send me a map of where all the high-powered gas lines are buried. I haven't received any of them for several years. I still have them on file. Now these co-ops and stuff, maybe the gas companies need to send them some of these high-powered buried lines so that they know where these are at and have a discussion with those companies. My point is, this One-Call isn't guaranteeing anything. It...two other lines...I'll finish out my examples on that one. There was a buried line that I knew was left, one of them was a fiber optic. I had to call Grand Island. It was a AT&T line coming from Denver to Colorado (sic), and I called them, and I says, I need this located. Okay. Well, nothing happened. I mean nothing happened for two weeks. And so I was busy enough I'd...I called them back and I said, I need this line located; I says I wasn't kidding. So the guy came out there, and he gave me a clear. And I says...I turned around, and I says, you know, I know this farm, there is a buried fiber optic here. Why don't you get out and try again. He got out again, and he says, by gosh, he says, I would have gotten fired. And...but...if I hadn't told him that he had made an error, and this was over a fiber optic, and it would have shut down 911 in a major area of Nebraska. So I got that resolved. It wasn't too long after that, I had another power line that was buried. I called One-Call. They came out, and they gave me a clear. And I knew where this line was, and I says that was no way that was clear. They wrote down...he asked...Mr. Smith asked a question about how they locate. They'll paint on the ground "OK," or they'll put a flag, and they'll paint "OK" on the flag or something. So I had an "Ok". Well, I knew it wasn't okay. So I called back, and I says to the dispatcher, I says, you guys mislocated this line. I says, I can go ahead and dig it up because I know where it's at, but you guys are going to get the bill. Oh, please don't do that. Why don't you request another call. So I requested another One-Call on the same project. They came out and mislocated again. So I called them back, and I says, you guys still haven't got it right. So the third time I called them, and they come out there, and I went and showed them where the transformer was. They were reading off of the wrong prints to start with. I went over and

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showed them where they...where it was. And he said, well, you are right, there is a buried line where you want to work. And so it goes back to One-Call is not 100 percent. And I haven't seen any damages from soil samplers with One-Call. Now I have talked to a couple of co-ops, there's a question when you start going 36 inches deep that maybe something needs to be discussed there on a deep probe. And if...this bill kind of reminds me of just a little deal. I used to be a dairy farmer, and the health department said, we're going to start requiring the cows not to be in the barn at milking time for health reasons. (Laughter) And this kind of reminds me of that. [LB358]

SENATOR SMITH: Hold tight for just a moment to maybe...does anyone have any questions for Mr. Muhlbach? I do have a couple of questions. You say you're a contractor, you're an excavator then? [LB358]

HARRY MUHLBACH: Yes. [LB358]

SENATOR SMITH: So do you...do you do soil testing, or is it... [LB358]

HARRY MUHLBACH: I farm too, and I do soil testing. I hire my soil testing done. [LB358]

SENATOR SMITH: You hired out. [LB358]

HARRY MUHLBACH: But I have done it, too. [LB358]

SENATOR SMITH: Okay, you pay a fee for the people to come in and do the soil testing and as far as tilling as well...tillage? [LB358]

HARRY MUHLBACH: Right. [LB358]

SENATOR SMITH: Do they till for you as well? [LB358]

HARRY MUHLBACH: No. [LB358]

SENATOR SMITH: You pay a fee for that? [LB358]

HARRY MUHLBACH: No. [LB358]

SENATOR SMITH: So with the...for the soil sampling then, or testing, probably at...there's a determination, there's certain areas that they want to test, so they have to mark these areas to call the One-Call center right? And then they would come in, and they would just flag it in those particular areas. Is that the way that it would work? [LB358]

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HARRY MUHLBACH: Well, when you call in for One-Call, say if you're going to work on a quarter section of land, you give them the boundaries, you give them the legal description, and you say I'm going to be working in this section, in this quarter; you tell me if there's any utilities out there in that quarter. They're supposed to...if there happens to be a gas line across there, they're supposed to mark the gas line across there. Anywhere in the legal area that you give. Now, sometimes they'll ask you if it's in the front of the property, rear of the property, but on the farm, it would be the whole quarter so they have to look it up. And then you'll get...at the end they'll say, these are the utilities that cover the One-Call. If there are any other utilities on this property, they are not covered under One-Call. So then it's up to you to find out if there is anything else or if it's a private...and it will say private lines are not covered. The most important thing about a gas line is the guys...the gas lines that are going to wells are low-pressure lines. It's your main lines that are crossing...it's the certain...the 800-pounds, the 400-pound pressure lines, the real high-pressure lines, those are your dangerous lines. Mostly your services are 8 pounds, 10 pounds; those aren't going to...they'll leak, but as a rule they won't kill anybody. [LB358]

SENATOR SMITH: All right. Thank you for your testimony. [LB358]

HARRY MUHLBACH: Yep. [LB358]

SENATOR SMITH: We continue with opponents of LB358. Welcome. [LB358]

TODD SHANK: Members of the Transportation and Telecommunications Committee, my name is Todd Shank, T-o-d-d S-h-a-n-k. I appear before you on behalf of the Nebraska Independent Crop Consultants Association. I'm a crop consultant in the Kearney, Nebraska area. We take 36-inch soil samples on all of our fields due to the fact that our NRDs require deep soil sampling because of groundwater contamination from nitrates. We've never had any issues of hitting any...anything, I mean, even with our hydraulic probes, you can tell if you hit a rock going down. So it's not like we would hit a line and punch through it and actually cause an explosion. Another thing that we do as crop consultants is we're probing every week during the summer for soil moisture. So really the One-Call program is not set up to be going out and marking a field in a standing corn crop, because we are probing corn that is sometimes 14 feet tall. The biggest risk to us soil sampling is not so much the lines that One-Call wouldn't mark for us anyway. It is going to be a farmer-owned power line that's buried from a transformer to a well or to a center pivot. And, you know, we can...as long as they're in a straight line, we know where those are and know to stay quite a ways away from them because that is a very big concern to us. Guess going back to previous testimony, we do know our...the farmers' fields in a lot of cases better than what the farmers do because we're in their fields every week, and we're walking through their fields every week from the first of May until September, October. So if there's anything out there, we usually know about it. I guess does anybody have any questions? [LB358]

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SENATOR SMITH: Do we have questions for Mr. Shank? I do have a question for you, sir. So do you keep records of the utilities and the pipelines that are in particular fields that you repeatedly test? [LB358]

TODD SHANK: Not records, but, you know, if they're marked, if there is a mark right away, we...you know, when you pull into a field you look and see if there's a mark right away somewhere, and a lot of times those are in the road ditch or close to the edge of the field. We're not taking soil samples within a hundred, 200 feet of the edge of the field anyway, so... [LB358]

SENATOR SMITH: And then the probes that you use, some are hydraulic, some are just hand operated. [LB358]

TODD SHANK: Yep. [LB358]

SENATOR SMITH: And they range from 8 inches to 36 inches. [LB358]

TODD SHANK: Yes. [LB358]

SENATOR SMITH: And I imagine that the ones that are...the greatest depth are the ones that are hydraulic? [LB358]

TODD SHANK: No, we go to 36 inches with a hand probe as well. [LB358]

SENATOR SMITH: Okay. All right. Senator Price. [LB358]

SENATOR PRICE: Thank you, Senator Smith. Thank you for coming and testifying, being an operating. It's good to talk directly to someone who does something. Is there a chance that you could come up to a property, a property line and that the marking pole could be on the opposite side? I mean, if you have a line that runs across a field, but not on the frontage road. [LB358]

TODD SHANK: Okay. [LB358]

SENATOR PRICE: And I know that we've had in other committee hearings about tree lines and different things that are out there, is there a chance that that would be obscured from your ability to...I mean, you pop out there, and you don't see those markers? [LB358]

TODD SHANK: There is. Usually, you know, the first year that we would sample a field, we would drive the border just to kind of get a feel for the field and the boundaries and any, you know, we're going to sample based on hills and things of that nature. [LB358]

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SENATOR PRICE: So, yeah, more geographic consideration. [LB358]

TODD SHANK: Yeah, so we're going to be driving around the field so we shouldn't miss any markings. [LB358]

SENATOR PRICE: Okay, thank you. [LB358]

SENATOR SMITH: All right, I see no further...oh, I'm sorry, Senator Watermeier. [LB358]

SENATOR WATERMEIER: Thank you, Mr. Smith, Senator Smith. Mr. Shank, a question, I guess, in general as far as if you got an area that you're not sampling, and it's outside the groundwater management area where the NRDs are, on average how much of it would be deep soil sampling at 36 inches compared to 8 to 10 inches? [LB358]

TODD SHANK: We actually still take 36 on average. [LB358]

SENATOR WATERMEIER: You do, even though you're not required to? [LB358]

TODD SHANK: Yes. [LB358]

SENATOR WATERMEIER: How much of your work is VRT work...or grade sample work? [LB358]

TODD SHANK: Very little. [LB358]

SENATOR WATERMEIER: Very little? [LB358]

TODD SHANK: Yes. Most of what we do is composite samples. [LB358]

SENATOR WATERMEIER: Really, okay. Do you GPS mark your samples even in the summertime when you're trying to mark for your consulting work? You don't... [LB358]

TODD SHANK: No, we do not in the summertime. [LB358]

SENATOR WATERMEIER: Okay. [LB358]

SENATOR SMITH: All right. One additional question, Mr. Shank, so do you have an idea as to what impact this would have on your business? [LB358]

TODD SHANK: It would be very time consuming. If we had to call every week

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throughout the summer, we'd basically have to have someone calling every day, calling in all the fields for, you know. On Monday we would have to call, Thursday's, I mean, and then, you know, Tuesday call in Friday's just to be able to comply with the 48 hours, and it would be...and the One-Call System is not really set up to handle the amount of calls that we're going to have and the areas that we're covering. You know, it's more for a small area, not whole quarters at a time and... [LB358]

SENATOR SMITH: Okay. How predictable is your schedule? So, for example, you call in, and they provide the locate in 24 hours, are you...do you have a great deal of certainty that you will then be able to be out there while that marking is still fresh? [LB358]

TODD SHANK: During the summertime when we're probing for moisture, yes, because we're in the...you know, we have a set route for every day of the week. So we're in the same fields every Monday or every Tuesday. When we're taking soil samples in the fall, it has a lot to do with what's harvested and what's not, the weather; like this fall, for example, where it was hot and dry, whenever it was windy anything with cornstalks we couldn't be in because of the fire danger. So that's a little more up in the air when we're doing soil samples in the fall. [LB358]

SENATOR SMITH: All right. Thank you for your testimony. [LB358]

TODD SHANK: Thank you. [LB358]

SENATOR SMITH: (Exhibit 10) We continue with opponents for LB358. I see no further opponents. I do have a letter to read into the record, and this is from Dale Spencer of the Nebraska Cattlemen. We now move to those that wish to testify in a neutral position. Welcome. [LB358]

SUSAN LYNCH: Thank you, Senator Smith and members of the Transportation and Telecommunications Committee. My name is Susan Lynch, it's S-u-s-a-n L-y-n-c-h, and I'm here on a neutral stance representing the actual One-Call Center and what the process entails. Because it basically involves the whole process, I just wanted to start from the beginning to end for those of you who have not had the privilege of understanding how the One-Call System works. The way it works from beginning to end is anybody who is excavating in the state of Nebraska will contact the One-Call Center to notify them of their upcoming excavation. They will provide the estimated depth and the type of work, where they will be working, the general location, and then the call center will take that information and will send it out only to those utilities that have registered their lines within that proposed area of excavation. At that point, the utilities are required to respond no later than two business days from the time in which they receive that notification. That response can come instantly via a phone call, or it can take up to two business days for them to locate. And any time after that, if the

excavation will continue beyond a 5- to 10-day period, and the marks become unclear, then they would be asked to refresh those marks at which point the utilities would be required to respond again to remark the site. The service is free to the excavators that call for the locate. And it is funded by the member utilities who want to protect the integrity of their underground lines, and they funded the service. With that I wanted to clarify a couple questions...or a couple parts that were brought up and speak only from the operations point of the center. I know that there's been a lot of comments regarding whether we would...the call center was not formatted to handle such volumes that would come from the soil sampling. The call center is also under a statutory obligation, as is everybody else who is a stakeholder in the One-Call System. We would be obligated by the statutes to handle those volumes that would come in from any type of industry that would begin calling that has not called in the past. There's been a lot of reference to...I know two years ago when this was also an item for discussion of the calls that were placed, although those calls had not been coming in, and I think any business staffs based on the needs of the business, and when those calls started coming in then we will staff, you know, as a response to those volumes that are coming in. I think Jessica Kolterman placed it...said it best, you know, even their industry is doing more soil sampling than ever. And I would assume that they also have had to increase their staffing and their technologies to respond to that, as would the One-Call to respond to any influx of volumes. With that I would take any questions. [LB358]

SENATOR SMITH: Senator Price. [LB358]

SENATOR PRICE: Thank you, Senator Smith. Thank you for coming down and testifying again. I do remember two years ago. So there was some question that said fields were checked and lines were missed. Without calling into the voracity of the One-Call call center, what is the path...how much right...how leeway is given to a line? So if a technician comes out and paints a line, how many...how far either side of that line, if the excavator is supposed to respect that line? So is there like a zone that...there is a central line 3 feet of either side, 4 feet? [LB358]

SUSAN LYNCH: Yes, sir. It's called the tolerance zone, and you can...you'll find it in the excavating manual. But, basically, what it entails is...the tolerance zone is going to be 18 inches on each side of that mark plus half the distance of the facility. So if you were talking about a 36-inch pipe, it would be half the distance to that plus another 18 on each side, which is called the tolerance zone, which is basically: dig with care, you know; hand dig, that's where that line is located. [LB358]

SENATOR PRICE: And then does...do you keep records of times where the One-Call had to take responsibility for laying...or service, I should say, of any kind that has been interrupted due to...your team went out...I see you work in the...in general, someone went out, they painted a line, and then an excavator came in and...we heard testimony... [LB358]

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SUSAN LYNCH: Right. [LB358]

SENATOR PRICE: ...and something inadvertent happened, and then your organization was...the organization taking responsibility. [LB358]

SUSAN LYNCH: Since the statutes were in place...went into place, part of the statutes require that anytime a line is damaged or disturbed in the process of excavation, that they're required to contact the call center and report that damage or disturbance of the line. And so therefore there would be what's called a Damage One-Call ticket on file. [LB358]

SENATOR PRICE: How many One-Call...how many tickets like that do you think you get in a year? [LB358]

SUSAN LYNCH: How many damage tickets do we get in a year? [LB358]

SENATOR PRICE: Yeah. [LB358]

SUSAN LYNCH: You know, I wouldn't want to throw a statistic out there without being accurate on that, and I want to say that we had a damage ratio, and I'm going two years back, you know, I'm not going to...I know that it's less than 2 percent damage ratio. [LB358]

SENATOR PRICE: So that would be available if we wanted to...as a committee, we want to get the exact numbers. [LB358]

SUSAN LYNCH: Absolutely. Absolutely. [LB358]

SENATOR PRICE: Okay, great. Thank you. [LB358]

SUSAN LYNCH: And just to follow up on that, statutorily we're required to keep information for five years. [LB358]

SENATOR PRICE: Oh, you're not required to report it to anybody though? [LB358]

SUSAN LYNCH: To report... [LB358]

SENATOR PRICE: For like...you don't have to do an annual report that said, this is the number of damage-call tickets we have in this one year? [LB358]

SUSAN LYNCH: No, we report to the One-Call board of directors who reports to the Fire Marshal's Office. [LB358]

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SENATOR PRICE: Okay, great. Thank you so much. [LB358]

SUSAN LYNCH: You betcha. [LB358]

SENATOR SMITH: Miss Lynch, I have a question for you. Roughly, how many calls a day does the Nebraska 811 center receive? [LB358]

SUSAN LYNCH: It's seasonal. During our busiest peak hours, I would say that we can average anywhere from 1,500 to 1,700; busiest day that I know of on record was about 2,300 calls. During, you know, the frozen months of January, that we haven't seen for awhile, you know, it can be anywhere to maybe less than 500 a day. And I also want to emphasize: we keep focusing on calls. Understand the technology is not just a phone call; there's also an Internet application; there's a touch-tone key pad application, and we've even had people walk into the center and provide their locate requests in person. So they can be received in a manner of different ways. [LB358]

SENATOR SMITH: Okay. So in terms of contacts, total contacts, you're 1,500 to 1,700. Now someone...in prior testimony...it said that they thought this could generate as many as 3,000 calls per day in addition during the peak...during their peak season. And assuming that that...their peak season, I'm trying to think, probably somewhere in a shoulder peer, maybe not with your normal peak season, but that could create anywhere from 15...that's a 15 to 20 percent increase in your call volume per day. [LB358]

SUSAN LYNCH: Yes, sir. [LB358]

SENATOR SMITH: So that would be...that would require an increase in your staffing. [LB358]

SUSAN LYNCH: We would be required to respond accordingly, yes, sir. [LB358]

SENATOR SMITH: Right. And then that would increase your member costs? [LB358]

SUSAN LYNCH: Every time a member receives a notification, they're billed for that individual notification. So it would increase the member cost, specifically for those in those areas, obviously, that are receiving that extra volume. [LB358]

SENATOR SMITH: So that would create an increase in cost for member utilities: your power companies, your gas companies, your telecommunication companies. [LB358]

SUSAN LYNCH: That is correct, to fund the center to help...the additional staffing that would be required. [LB358]

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SENATOR SMITH: All right. And I know you've been a strong advocate for, you know, dig safely. And we know, you know, our own individual properties, homes, we always say, you know, if you're planting a bush, planting a tree; you're doing kind of maintenance around your house; you're going to be digging, call in for a locate; don't take a chance. [LB358]

SUSAN LYNCH: That's correct. [LB358]

SENATOR SMITH: We even say, if you're going to go out, and you're going to put in a really strong, solid, political sign, dig, right, I mean call in, right? [LB358]

SUSAN LYNCH: And we are watching. [LB358]

SENATOR SMITH: Yeah. So if we're doing that, why are we allowing for this exception for persons when there's no fee charged? Is that a good idea to allow for any exception to the rule if we're...if we're pinning down political signs? [LB358]

SUSAN LYNCH: I'm a proponent that the service is free; the call is free. I think everybody should call. It costs you nothing, whether you're exempted or not. [LB358]

SENATOR SMITH: All right, all right. Senator Watermeier. [LB358]

SENATOR WATERMEIER: Thank you, Chairman Smith. And, Miss Lynch, thanks for being here. As I listen to the questions from my own committee members here, I think I'm going to ask a question and let you just answer it and the process that happens. [LB358]

SUSAN LYNCH: Okay. [LB358]

SENATOR WATERMEIER: Okay, let's just say I have a piece of property, and I call One Diggers Hotline, and I'm going to just have the property located. You're going to get the call, and let's just say you're going to send it out...you're going to look at your map, and you're going to send it out to all utilities that are in there. Let's say, I got the unlucky call today. I got water line, telephone line, two high-pressure pipelines, and another telecommunications line. You're going to make that call to those five companies; those five companies are going to send out people, and they're going to do the locate. [LB358]

SUSAN LYNCH: That's correct. [LB358]

SENATOR WATERMEIER: I wanted to explain that, because I think the committee is thinking that you're going to somehow provide this extra 3,000 calls. You're just the in-between call to the utilities. [LB358]

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SUSAN LYNCH: That is correct. [LB358]

SENATOR WATERMEIER: Okay, just to make that for the record. Is there anything else, I mean, as far as the process so we can get behind the scenes, we talk about this, that you could probably help us out with because...I mean, would there be anything else that... [LB358]

SUSAN LYNCH: No, I think we've covered it all. Obviously, I'm available for any additional questions that would come up behind the scenes, but it's a three-part process: make the call to the call center. We're the messenger to the utilities. [LB358]

SENATOR WATERMEIER: Right. Right. Right. So if you did have 3,000 extra calls, you're going to be sending out e-mails or faxes to all these utility companies stating, there's been a call made, you got to get that on the list. [LB358]

SUSAN LYNCH: That's correct. [LB358]

SENATOR WATERMEIER: And that's the process that happens. You don't have employees that go out and do the locate. [LB358]

SUSAN LYNCH: No. [LB358]

SENATOR WATERMEIER: You're just that in between. [LB358]

SUSAN LYNCH: Our staffing would involve answering the calls. [LB358]

SENATOR WATERMEIER: Yep. [LB358]

SUSAN LYNCH: Yes. [LB358]

SENATOR SMITH: Any further questions for Miss Lynch? Seeing none, thank you for your testimony. [LB358]

SUSAN LYNCH: All right, thank you. [LB358]

SENATOR SMITH: Do we have additional neutral testimonies? Seeing none, Senator Dubas for closing. [LB358]

SENATOR DUBAS: I'd like to thank everybody who came forward and testified today. I think if you're new to this issue, you see where we're at. Is soil sampling excavation or is it an ag purpose? And I think when One-Call was set up, it was not set up with the thought of soil sampling because that just wasn't a real common practice in the '90s.

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You know, and it was a practice that if it was done, probably farmers were doing it. And we have evolved far past that at this point in time, and it has become a very sophisticated technology and is much more widely used by farmers just in light of, you know, our very narrow profit margins. We can't afford to just be going out and putting on chemicals and fertilizer all across the field. We've got to minimize our expenses so we can maximize that profit. So anybody that I've talked to, no matter what side of the issue they're on, are not in disagreement that we need to be safe. But how do we bring soil sampling into this discussion and how do we create a system that will take into account the very important work that soil samplers use, the very narrow window of time that they have to do it, and then, you know, make sure that they're doing it in a safe manner? So as I said in my opening, and I will say in my closing, I will continue to work with all of the stakeholders to see if we can find some common ground to address the safety issue, as well as address the very real economic issues that our farmers and our agronomy people are facing. So, with that I would answer any questions you may have. [LB358]

SENATOR SMITH: Any questions for Senator Dubas? Senator Dubas, thank you for bringing this bill forward. I know this is a really tough issue. [LB358]

SENATOR DUBAS: Thank you. [LB358]

SENATOR SMITH: Appreciate it. That concludes the hearings for today. Thank you all for your testimony. (See also Exhibit 11.) [LB358]