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Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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[LB892 LB930 LB1045]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 18, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB893, LB940, and LB1045. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; John Murante; and Dan Watermeier. Senators absent: Beau McCoy.

SENATOR DUBAS: Good afternoon and welcome to the Transportation and Telecommunications Committee hearing. This afternoon we will be hearing three bills: LB892, LB930, and LB1045. Begin by introducing myself: my name is Senator Annette Dubas, Chair of the Transportation and Telecommunications Committee. To my far left, Senator Lydia Brasch from Bancroft. To my immediate left is Anne Hajek; she is the committee clerk. To my immediate right is Joselyn Luedtke; she is the committee counsel. And Vice Chair of the committee, Senator Jim Smith from Papillion. We will have other senators kind of coming and going throughout the course of the afternoon; they have bills to introduce in other committees. So please don't be offended if they get up and walk out while you're testifying. It has nothing to do with what you're saying. Like I said, there's just lots of things going on in the afternoon. So as the other senators come in, I will introduce them. We're fortunate in the Legislature...and speaking of which, there is Senator Galen Hadley from Kearney. We're fortunate in the Legislature to have a great page program. And these students help us during committee, as well as up on the floor of the Legislature. They do a lot of running errands and just things to help keep us organized and keep things moving smoothly. So we appreciate their service to the Legislature. And we are fortunate to be served by Jonathan Beck who is originally from Centreville, Virginia; currently resides in Seward, and is a senior at UNL majoring in political science with a minor in communications. So, thank you, Jonathan. The bills will be heard in the order as posted outside and as I read them off at the beginning of the hearing. We will go first with the introducer; then we will have proponents, opponents, and neutral. If you plan on testifying, the green sheets are on the table back there by the door. If you would fill that out and bring it with you to the table and hand it to the page when you prepare to testify. If you're here today, you would like to be on the record for any of the bills, but don't plan on getting up and testifying, there's also a pink sheet on the table back by the door. If you would please fill out the appropriate information on that pink sheet, we can get that into the record. When you come forward to testify, if you would state and then spell your name clearly for the record. This helps us keep an accurate record. Even if you have a simple name, and it might not seem to make sense to spell it, we ask that you do again just to help ensure the accuracy of the record. If you have anything to hand out, we would ask that you have 12 copies. If you don't have enough, you can give those to the page, and he'll make sure that we get enough copies for the entire committee to see. I'd ask that you silence your cell phones or any other electronic devices that you may have, just to keep

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

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---

from interfering with the electronics and distracting from the hearing, as well as any conversations that you may need to have, if you would take those out into the hallway we would appreciate that as well. I think we are...we will be using the lights today. So when the green light comes on, that means you have four minutes. Then, the yellow light will come on; that will give you a minute or so to kind of wrap up your testimony. And then, when the red light comes on, if you would wrap up your testimony and then, I'm sure, committee members will be following up with questions to allow you to, maybe, finish any thoughts that you didn't get said during the course of your testimony. So with that, I think we're ready to go with Senator Smith, LB892.

SENATOR SMITH: Thank you, Senator Dubas, and good afternoon, members of the Transportation and Telecommunications Committee. My name is Jim Smith, J-i-m S-m-i-t-h, and I represent District 14. I am here today to introduce LB892 which amends the One-Call Notification Act which governs the process by which utility facility locate requests are made by excavators prior to excavation. First, the bill creates a provision for injunctive relief which would allow an operator of an underground facility to bring an action in court to enjoin an excavator from violating the One-call Notification Act. Specifically, the injunctive relief would be possible if an excavator has repeatedly violated, is violating, or is threatening to violate any provision of the act. The bill also amends the act...the bill also increases the maximum civil penalty from \$5,000 to \$10,000 for a violation related to an underground facility other than a gas or hazardous liquid underground pipeline facility. As I'm sure you are aware, the natural gas industry has pursued legislation over the last several years to enhance the One-Call Notification Act. I introduced a legislative study this interim to consider these issues, and these two provisions were among those discussed during the hearing. Safety is of the utmost priority for this industry, and I believe these provisions will enhance the safety of excavators, operators, first responders, and citizens across the state. Furthermore, I believe these changes are both balanced and appropriate to the need. Thank you, and I'd be happy to answer any questions. [LB892]

SENATOR DUBAS: Thank you, Senator Smith. Are there questions? Seeing none, thank you, Senator Smith. [LB892]

SENATOR SMITH: Thank you. [LB892]

SENATOR DUBAS: We will have our first proponent. [LB892]

MICHAEL LOEFFLER: Good afternoon. Thank you, Senator. My name is Michael Loeffler, L-o-e-f-f-l-e-r, and I'm the senior director of external affairs for Northern Natural Gas Company out of Omaha. Just a very brief introduction, Northern Natural Gas was founded in 1930 and is headquartered in Omaha. It's owned by MidAmerican Energy Holdings Company. We provide natural gas and storage services to approximately 76 utilities and end users throughout the upper Midwest. We operate about 14,800 miles of

natural gas transmission lines extending from New Mexico and the Southwest all the way up into the market area that we serve. This includes the major markets of Omaha, Des Moines, and the twin cities, and into Wisconsin and the Upper Peninsula of Michigan. Of the 14,800 miles that we own and operate, approximately 1,660 of those miles are in the state of Nebraska. Since the start of 2013, Northern has been engaged in a multidisciplinary pipeline integrity initiative. Because third-party damage is the single most cause of pipeline failure, an important part of that initiative has been an examination into the adequacy and effectiveness of one-call laws in the 11 states within our operational footprint. Third-party damage resulted in 47 percent of Northern's pipeline damage over the last five years and has resulted in more than \$800,000 in damage to our pipeline since 2010. Significantly, almost all of this damage could have been prevented had excavators utilized the respective one-call systems to request a utility locate prior to excavation. Since this committee has heard many one-call proposals over the last couple years, you understand the importance of one call to safety. And I won't go over that here again today. You understand that it protects our infrastructure and protects the reliability of the services that we provide. That safety extends to the excavator, to first responders, to our employees, and to the public in general. Northern is a major proponent and sponsor of this legislation. LB892 has two provisions. The bill increases certain provisions for people who violate the state's one-call statutes, as discussed by Senator Smith. Under the bill, certain violations would be subject to a maximum penalty of up to \$10,000. The current maximum penalty is \$5,000. The second provision, which is very important to us, would allow an operator of an underground facility to seek an injunction against an excavator who repeatedly violates the one-call statutes by failing to make a one-call locate request prior to excavation. The bill also allows the operator of an underground facility to bring an injunction against that excavator who is threatening to violate the act. This would occur in those instances where an excavator is identified as conducting excavation near underground utility facilities and has been determined not to have made a one-call locate request. Northern routinely conducts aerial patrols to identify excavators who have not made a one-call utility locate request. Northern's on-the-ground personnel are also trained to identify excavators near our facilities and to determine if the excavator has made a one-call locate request. You might recall from prior testimony over the last couple years that, during our aerial patrols, we will safely drop Call 811 materials in the vicinity of excavators who have been determined not to have made a one-call. The airplanes also have under their wings "Call 811" as a message. The bill would allow Northern to enjoin a excavator who had not made the required one-call locate request by asking the court to restrain the excavator from continuing the excavation activity until the excavator had made the appropriate one-call utility locate request and after any underground utilities have been properly marked. This bill provides operators with another tool to protect its facilities and to prevent underground utility hits and endangerment to human life. We would ask you to advance the bill. We urge your support. [LB892]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR DUBAS: Thank you, Mr. Loeffler. Are there questions? I would have one. So, the second part of the bill that allows for that injunction. [LB892]

MICHAEL LOEFFLER: Yes, ma'am. [LB892]

SENATOR DUBAS: Do you see...you view somebody out in the field doing something, how soon would you be able to move forward and actually be able to stop them? [LB892]

MICHAEL LOEFFLER: We could actually move rather quickly. For instance, let's say we have a...our operation personnel, we know our facilities really well; they're like part of the community. And so they're out there, and they see a backhoe working near our facilities. They would call our legal department, and we would go to the appropriate county court or appropriate court and ask for an immediate injunction and have that served on the excavator. We're not trying to stop all excavation; we just want them to go and make the appropriate one-call and wait until the facilities are marked. [LB892]

SENATOR DUBAS: So if they were...I mean, a lot of that digging can take place in a very short amount of time; that's still going to take some time. So is this more for making the point about you need to call one-call, or we can get you stopped, or is it actually to stop them from excavation? [LB892]

MICHAEL LOEFFLER: Very good question. To actually...our on-the-ground personnel will go and talk to the excavators, and they'll say, you know, did you know you're near our facilities? And a lot of times when we do that the excavator will say, well, I didn't know or...and then we...our on-the-ground personnel are trained to tell them how to use the one-call system. As you all know from our testimony: it's free; it's a 3-digit number. But the actual court injunction would be to stop those people who at that point said either, I don't care, or I've got a busy schedule; I'm going to do it anyway. But if someone then stopped and said, I didn't know that, and I'll make a one-call, we would not go to seek an injunction. [LB892]

SENATOR DUBAS: Okay. All right. Other...Senator Brasch. [LB892]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you, Mr. Loeffler, for your testimony. I'm curious, if the excavators...are they commercial or private citizens? Do you...have you ever taken a tally of who is out there and who has the highest degree of incidents, or is that something that you've tracked or followed? [LB892]

MICHAEL LOEFFLER: It is. And it, actually, ranges all across the board. As you know, Nebraska has an exemption for agricultural tillage and those kinds of activities. This bill does nothing to that. That exemption remains. But the fact is is that some of the people that are out there excavating that have damaged facilities are, in fact, farmers. But aside

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

from that, there are people who are small excavators and larger contractors. Ironically, we've had the best success with the larger contractors because they have a heightened sense for safety and a heightened awareness of the liability that they would be exposed to if they were to hit an underground facility. But it goes all across the board. [LB892]

SENATOR BRASCH: And then the agricultural...the farmer is exempted from this, correct? [LB892]

MICHAEL LOEFFLER: Yes, ma'am. They are exempted by statute from one-call, and this bill does nothing to change that. [LB892]

SENATOR BRASCH: So it will only affect commercial... [LB892]

MICHAEL LOEFFLER: It would only affect excavators who are subject to the act. [LB892]

SENATOR BRASCH: Subject to the act. [LB892]

MICHAEL LOEFFLER: And the reason I make the distinction is if you're out there, and you're not being paid, and you're not commercial, then you're not...don't fall under the exemptions of the act, you would still be an excavator. [LB892]

SENATOR BRASCH: Okay. [LB892]

MICHAEL LOEFFLER: But generally, yeah, I understand your point. It would mostly be commercial excavators. [LB892]

SENATOR BRASCH: Correct, and... [LB892]

MICHAEL LOEFFLER: Contractors and things of that nature. [LB892]

SENATOR BRASCH: Very good. All right, thank you. I have no other questions. [LB892]

MICHAEL LOEFFLER: Thank you. [LB892]

SENATOR DUBAS: Other questions? So, if you saw someone who was soil sampling, and it was a commercial operation, would you follow this process if it was in place? Would you... [LB892]

MICHAEL LOEFFLER: I'm sorry, I didn't hear the first part. [LB892]

SENATOR DUBAS: If you had a soil sampler, a commercial soil sampler out there and you saw it, would you...if this bill was in place, would you... [LB892]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

MICHAEL LOEFFLER: If we had a soil sampler, you know, obviously, they're not, right now, according to the interpretation of the Attorney General under the provisions of the act, and they're exempt. It wouldn't stop our on-the-ground personnel from saying: you are very close to our facilities. You know, our primary objective here is not to punish or subject anyone to a violation of the act. Our primary and, really, singular objective is safety. So we would go up and say, you know, you are within X number of feet of our facilities, you know, and we would offer to mark our facilities, or we would do something very proactive. But we couldn't use this injunctive power because they're not under the act. We could...you know, I wouldn't say that we wouldn't try to stop them, you know, because we don't want them to hit our facilities. But I would think...one of the things that we talked about is you can't legislate communication. And in that circumstance, we would hope...and I would expect that a soil sampler or a farmer or gardener or anyone, a utility operator, anyone who knew they were about ready to hit an underground natural gas transmission facility would take all proper care. And I would expect they would do so if...just because it makes good common sense, not because of the law. [LB892]

SENATOR DUBAS: Very good. Thank you. Any other questions? Seeing none, thank you very much. [LB892]

MICHAEL LOEFFLER: Thank you. [LB892]

SENATOR DUBAS: And I would take the opportunity to introduce Senator Dan Watermeier and Senator...John Murante, sorry, just a lapse there for a moment, who joined us. Thank you very much. Next proponent. [LB892]

NICK PADEN: (Exhibits 1 and 2) Good afternoon, Chairperson Dubas and committee members. My name is Nick Paden, spelled N-i-c-k P-a-d-e-n. Today I'm here representing four of my telecommunications companies: Three River Teleco, Stanton Telecom, American Broadband, and Hartelco, who, I believe, you've received a letter from, spelling out as to why they, in particular, support this legislation. I thank the committee clerk for passing that out and bringing it to your attention. I also wanted to mention, though I'm not representing the NTA, that I was asked to mention that they did offer a letter in support of this legislation as well. Similar to what the previous testifier said, we support the two provisions brought forth in this bill, and we just encourage its passage. I'll try to answer any questions if there are any. [LB892]

SENATOR DUBAS: Thank you very much, Mr. Paden. Questions? Seeing none, thank you very much. [LB892]

NICK PADEN: Yes. Thank you for your time. [LB892]

KRISTEN GOTTSCHALK: Chairman Dubas and members of the Transportation and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

Telecommunications Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I am the government relations director and registered lobbyist for the Nebraska Rural Electric Association. And I'm here testifying on behalf of the Nebraska Rural Electric Association, 34 rural electric providers, both public power districts and electric cooperatives that have over 87,000 miles of distribution line in rural Nebraska. I'm also representing the Nebraska Power Association which is a voluntary organization representing all of Nebraska's public power providers, including municipal electric systems, public power districts, public power and irrigation districts, and rural power districts and electric cooperatives. That's the longest part of my testimony. We are here in support of LB892. One-call was created, and we've heard the testimony on one-call over and over, to protect both the excavator and the infrastructure that is underground. And feel very strongly that increasing the penalties, as well as providing an opportunity for injunctive relief against someone who repeatedly violates, who intentionally proceeds with excavations without making the proper notification, a free phone call that also provides them an exemption from liability simply by making it. With that, that concludes my testimony. I'd be happy to answer any questions you may have. [LB892]

SENATOR DUBAS: Thank you very much. Are there questions? Seeing none, thank you. Welcome. [LB892]

ANDY POLLOCK: Thank you. Chairperson Dubas and members of the Transportation Committee, my name is Andy Pollock. I'm here as a registered lobbyist...that's A-n-d-y P-o-l-l-o-c-k...I'm here as a registered lobbyist for Northwestern Energy, a natural gas utility in the state of Nebraska. And I'm also here on behalf of the Nebraska Natural Gas Association which includes Black Hills Energy and SourceGas as well. All three of those companies are distribution companies, companies mainly that serve communities in Nebraska. For example, Northwestern serves Kearney, Grand Island and North Platte. We serve...collectively, we serve all but about 17 utilities. And those other utilities would be operated by the cities where they're located or the metropolitan utilities district up in Omaha. So we serve the vast majority of cities across the state. Each one of the companies also has a little bit of high-pressure transmission line in the state as well. And we've been before you a number of times in past years. Last year, I was here with a bill that we had asked Senator Watermeier to introduce that the committee advanced and that the body passed. So one-call issues are not new to us. I just want to say that we appreciate Northern Natural Gas taking the lead in pursuing this issue. We view this legislation as an important public safety bill, and we want to thank Senator Smith for introducing the bill. With that I'd be glad to answer questions. [LB892]

SENATOR DUBAS: Questions? I would have one, and I...go ahead, Senator Hadley. [LB892]

SENATOR HADLEY: Senator Dubas, thank you. Mr. Pollock, you know, you've had a long service in Public Service Commission and such as that. Do you think raising the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

fine will cause change in people's attitude and how they will look at this...this kind of situation? [LB892]

ANDY POLLOCK: I think it will. And I think some of the examples that Mr. Loeffler, on behalf of Northern Natural Gas, gave you show you that, maybe, people aren't taking this as seriously as they should and those...we...would be commercial operators. Something needs to get their attention. Obviously, blowing up a pipeline is not enough. It would be, you would think, for most reasonable people. I think the increase in the fine will help bring the attention to those people who are excavating that they need to take these laws seriously. [LB892]

SENATOR HADLEY: Thank you. [LB892]

ANDY POLLOCK: Thank you. [LB892]

SENATOR DUBAS: Other questions? I'll ask this of you, and if you don't have the answer maybe someone coming up later will. Are there a lot of repeat offenders? Do you know is...are there people who...? [LB892]

ANDY POLLOCK: You know, that's probably a question better addressed to Mr. Loeffler. Based on my understanding, and this is not firsthand knowledge, Senator Dubas, I want to make that clear; based on my understanding of...there are many instances of repeat offenders. I have heard told by another utility, this isn't Northwestern, but that they caught somebody excavating without making a locate request, a one-call notification, and just a matter of weeks later, after this company failed to locate and were told by the utility that they had failed to locate and were pointed out that there was a pipeline in the area that presented a danger, they were back there again doing the same thing. So, are there a lot of examples of repeat offenders? I can't answer that, but I do know that there have been some. [LB892]

SENATOR DUBAS: And so currently the way the statute is now you can have someone who is a repeat offender, and there's nothing...nothing that allows you to...there's no recourse for you to take as a utility? [LB892]

ANDY POLLOCK: Well, I think we're trying to open up an avenue of recourse. Certainly, there's an opportunity to go to the Attorney General's Office. We all know that state government, including the AG's Office, is busy and has limited resources. This gives the utilities themselves an opportunity to go after injunctive relief. And I would point out, that's separate from the penalty provision. That's just seeking to stop the infringing activity. And I'm glad that Senator Smith, in drafting the bill, spoke directly to repeat offenders. [LB892]

SENATOR DUBAS: Very good. Any other questions? Seeing none, thank you. [LB892]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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ANDY POLLOCK: Thank you. [LB892]

ANDY HARTMANN: Good afternoon, Senators. I'm Andy Hartmann, A-n-d-y H-a-r-t-m-a-n-n. And I sit on the board of directors for the 8-1-1 call center for the state of Nebraska. And we as the board of directors endorse LB892 as written. And we do appreciate Section 3, the repeat offenders. If I may follow up on your question, during our meetings we have every quarter, the Attorney General's Office has...we have a representative sits on the board of directors with us, and she gives us updates of what's happening during that time period. And through the discussion with her, there are, not a lot, but there are some repeat offenders. And if...I guess I can say it, their excuse is, well, it's cheaper to pay whatever damage we've done than it is to quit working; we'll just keep on moving. That's something that the Attorney General's Office has heard, and some of the utility people that go out, they've heard that same statement; we'll just keep going. I think this would give the Attorney General's Office a little bit more muscle. So that's why we are in favor of that, especially Section 3. Are there any questions? [LB892]

SENATOR DUBAS: Questions? I had one; now it just flew out of my head. It was along...oh, how often are fines assessed, do you know, has the Attorney General's Office...? [LB892]

ANDY HARTMANN: I cannot tell you for sure. She gives us a case-by-case...or not a case-by-case, but every month...sometimes three during the three-months period, but sometimes they're ongoing. It may take a year to go through everything. I don't really know for sure. [LB892]

SENATOR DUBAS: Okay. [LB892]

ANDY HARTMANN: But if you need that information, I could find that out for you. [LB892]

SENATOR DUBAS: It would be helpful, I think, to know how often and...is it always for the full amount, or can they lessen the fine? [LB892]

ANDY HARTMANN: Sure. I'll try to find that out for you. [LB892]

SENATOR DUBAS: Okay. That would be helpful information. Thank you. [LB892]

ANDY HARTMANN: Okay. [LB892]

SENATOR DUBAS: (Exhibits 3 and 4) Any other questions? Seeing none, thank you very much. Next proponent. Any other proponents? We have two letters to go into the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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record for LB892 in support: one from the League of Municipalities and the second one from the city of Lincoln. If there are no further proponents, we will move to opponents. Anyone in opposition to LB892? Welcome. [LB892]

JOHN BACHMAN: Good afternoon, Senator Dubas and members of the committee. My name is John Bachman, J-o-h-n B-a-c-h-m-a-n. I'm here on behalf of the Professional Home Builders of Omaha and the Eastern Nebraska Development Council. In particular, we're concerned with the broad language that can be found in Section 3. It talks about a repeated violation. What is a repeated violation? Is that two or three times? Is it four or five times? Threatening to violate, what does that mean? Our concern is, we would like to have more definition put into Section 3 so that our members know exactly what they should or should not do rather than having it open ended to make a determination as to whether they're repeatedly violating or not. We may have some folks that need the enforcement that's in this particular bill, but I believe that our organizations would like to have some definitiveness put into Section 3 so that they know exactly what they need to do or not to do in order not to violate the provisions and the intent and the potential good intent of the bill. Our violations would not relate, primarily, to the gas lines or your major pipelines. We're home builders; we're commercial builders, so we're talking about the service lines to residences and to commercial buildings that are affected by this bill which can and may be different than if you're dealing with the larger pipelines. I'll be pleased to answer any questions. [LB892]

SENATOR DUBAS: Thank you very much, Mr. Bachman. Are there questions? As an association, is this something that you educate your members about, the one-call system? [LB892]

JOHN BACHMAN: Yes. They're very much aware of one-call. They do attempt to do their best to honor the one-call provisions. Sometimes it works; sometimes it doesn't work as well as it should. [LB892]

SENATOR DUBAS: Very good. Thank you. Any other questions? Seeing none, thank you for coming forward today, appreciate it. [LB892]

JOHN BACHMAN: Thank you. [LB892]

SENATOR DUBAS: Further opposition to LB892? Is there anyone in the neutral? Seeing none, Senator Smith, would you like to close? [LB892]

SENATOR SMITH: Thank you, Senator Dubas and members of the committee. I'm just going to be very brief. I just wanted to respond to the opponent that came representing the home builders. When we first looked at this piece of legislation, there was...it was a bit more broad, and the avenue for civil litigation against excavators and...what we wanted to make certain is that there was not an overreach in going around the Attorney

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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General's Office for prosecution and establishing fines and penalties for violators. So we pared back the legislation to be very specific to address repeat offenders. Now what is an offender? An offender would be someone who does not call and utilize the one-call act to call in their locates. If the locates are there and they follow the locates, and if there...and if something was mislocated and there is damage, there's a process for that. That is not what we're considering to be a repeat violator. A violator of this act would be someone who does not utilize the 8-1-1 service. They do not call in; they do not get their locates, and they proceed to excavate and dig, and then they damage properties of the utilities. When that takes place, we need to have a mechanism to send...to send a message to the excavators that you have to call in for the locates. I certainly am not an advocate for civil litigation. I don't like to promote that. But we do need to protect the properties of our utilities. They have a significant amount of investment in the ground, and we do need to protect that. And we've done so by creating the one-call act. I spent a number of years on the one-call board myself before I became a state senator. And I do believe that we as a state and the one-call board itself does work very hard to strike that balance between excavators and utility members and the public in creating a safe environment for everyone. So, once again, a repeat violator is not someone that calls in for the locates and beyond their control there is some type of a damage. That's not what we're considering a violator here. We're considering a violator to be someone that does not use the services that have been put into place for use in the one-call act. With that I'll answer any questions you may have. [LB892]

SENATOR DUBAS: Any questions for Senator Smith? Seeing none, thank you very much, Senator Smith. [LB892]

SENATOR SMITH: Thank you. [LB892]

SENATOR DUBAS: That will close our hearing on LB892. We will move on now to LB930. Senator Watermeier. [LB892]

SENATOR WATERMEIER: Good afternoon, Chairwoman Dubas. [LB930]

SENATOR DUBAS: Welcome. [LB930]

SENATOR WATERMEIER: (Exhibit 5) Members of the Transportation and Telecommunications Committee, my name is Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, and I represent Legislative District 1 in the southeast corner of the state. I'm here today to introduce LB930 which amends the One-call Notification Systems Act to require that a representative of an operator be present at any time excavation will occur within 25 feet of a natural gas transmission line unless otherwise agreed into by writing by the operator and the excavator. Additionally, into the provisions of the bills as introduced, other utility operators may deem their infrastructure as critical which would trigger the requirement for a representative of an operator to be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

present during excavation within 25 feet. I am offering an amendment today that strikes this provision limiting the bill to natural gas transmission lines only. The amendment also inserts language allowing the excavation to proceed if a representative of the operator fails to be present at the site when the work is scheduled to begin. The one-call statute enacted in 1994 provides safety protection for excavators, utility personnel, emergency responders, and the general public during excavations. I am proposing LB930 for additional safety protections. There are three major components of the bill. First, the bill would require that a representing of an operator of an underground natural gas transmission line, as defined by federal law, be present whenever an excavator was going to dig within 25 feet of a transmission line. This special protection would be afforded by operation of law to natural gas transmission facilities. By their nature, an underground natural gas transmission pipeline transports natural gas through large diameter pipelines at high pressures. Hitting an underground natural gas transmission line presents a unique, high-risk danger. But it is one that can be almost completely removed by an excavator making a one-call locate request and having natural gas company personnel at the scene of the excavation. By requiring the presence of personnel, the pipeline operator can use their specialized training, tools and equipment to pinpoint the exact location of the facility, thereby preventing an accidental hit. Requiring natural gas personnel at the scene of an excavation provides additional potential lifesaving awareness. Currently, most natural gas transmission companies request their presence on a voluntary basis, and most safe and reputable excavators are happy to voluntarily comply with this request. The bill limits this requirement to those excavations where a transmission line has been identified as being the site of proposed excavation. Secondly, the bill would allow natural gas transmission companies and excavators to waive their requirement in writing. Finally, the bill provides that the same penalties that attach to other violations of the one-call statutes would apply here with strict liability, original bill, and civil penalty amendment. I would also note that the state of Iowa is considering a similar provision in its legislative session, and the utility industries and the state one-call board have been very supportive of this change. I would urge you to look favorably on LB930 and the amendment of AM1978. I have been and will continue to be willing to work with the interested parties on this. I'd be happy to answer any questions, but I know there are parties behind me that are going to be much more qualified to answer some questions. [LB930]

SENATOR DUBAS: Thank you, Senator Watermeier. Questions? Seeing none, thank you. [LB930]

SENATOR WATERMEIER: All right. I've got another bill in Appropriations I want to participate with, but I'll stick around as long as I can. [LB930]

SENATOR DUBAS: Very good. First Proponent for LB930. [LB930]

MICHAEL LOEFFLER: Thank you, members of the committee, Senator Dubas. My

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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name is Mike Loeffler, spelled L-o-e-f-f-l-e-r, and I'm the senior director of external affairs for Northern Natural Gas Company out of Omaha, Nebraska. I've already testified once. I'm going to repeat just a couple of things, not the whole thing, just for the record. Just to remind you that Northern operates approximately 14,800 miles of natural gas transmission, about 1,660 within the state. That we've been engaged in a multidisciplinary effort and that amongst that is to look at the one-call laws in the state. I also want to remind you that third-party damage also is approximately the 50 percent cause of damage and that we've incurred more than \$800,000 of damage since 2001. Northern is a major proponent and supporter of LB930. The bill would place into law a voluntary process that Northern already practices with excavators who plan to dig near our underground facilities. LB930 provides critical and important protection for our underground infrastructure. In addressing the bill, I will be addressing the amendment that was proposed by Senator Watermeier today and thank him for his support and sponsorship of the bill. As he told you, the bill has..the amendment has several components. It requires that the operator of an underground natural gas transmission line and only those natural gas transmission lines, as defined by federal law, be present whenever an excavation is planned within 25 feet of underground facilities. It allows natural gas transmission companies and excavators to waive this requirement in writing in advance. And it provides the same penalties for violation of these provisions as those that attach to other violations of the state one-call act. The amendment addresses the concerns that have been raised by some stakeholders in that it allows excavators to proceed if the operator of the natural gas transmission company does not show up on time...on the agreed upon time at the commencement of excavation. I assure you that Northern has the resources and commitment that we will follow through and accept these responsibilities. The bill is needed because natural gas transmission lines are generally large diameter, high pressure natural gas lines and that hitting these lines can be a high-consequence event resulting in past...can result in significant property damage, personal injury and possibly death. These risks can, however, be almost totally mitigated through the provisions of this bill. By requiring the presence of the personnel from the natural gas operator, the operator can use its safety practices, training, equipment, and heightened safety awareness to ensure safe excavation near a high-pressure natural gas transmission line. Seeking compliance with the requirement for operator presence is a common industry practice. Whenever someone contacts us through the one-call system, we communicate them and ask them to call us when they're going to be within 25 feet of our marked line. As noted by Senator Watermeier, the Iowa Legislature is currently also considering such a statutory change as well, a change that has been embraced by contractors and excavators who understand the unique challenges and dangers of excavating near these high-pressure pipelines. This bill, through adoption of the proposed amendment, protects lives, property, and enhances public safety. Further, the provisions of the amendment mitigate impacts and potential project delay to excavators. Northern asks you to support and advance the bill in the amended form. [LB930]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR DUBAS: Thank you, Mr. Loeffler. Are there questions? So the process...Senator Brasch. [LB930]

SENATOR BRASCH: Whenever...I'm sorry... [LB930]

SENATOR DUBAS: Go ahead, Senator Brasch. [LB930]

SENATOR BRASCH: Thank you, Madam Chairman. I do have a question, and maybe we're on the same question, but what is the response time? A person calls you; they're going to excavate, and then what? [LB930]

MICHAEL LOEFFLER: There's 48 hours. [LB930]

SENATOR BRASCH: So, is that the minimum or maximum? [LB930]

MICHAEL LOEFFLER: That is maximum. Whenever there is a utility locate request, the operator has 48 hours to go and respond to the emergency request. In the vast majority of cases, the operator will probably clear an area. For instance, our high-transmission lines are located only in the western third of the state and doesn't even reach all the counties. We don't go through major population areas. We're generally located in rural areas. So in most instances, at least in Northern's case, if we get a request for clearing, we can...we could usually respond to that rather quickly and say that a whole area is cleared. But by law we're required to do so within 48 hours. Under the provisions of this bill, when that excavator contacted us, and One-call contacted us, and there was notification that there was these transmission lines in that vicinity of the excavation, then we would call the excavator, find out when they were going to commence construction, and when they told us when they commence construction we would have a responsibility under the act to have our personnel there. If our personnel did not show up under the provisions of this bill, they would let us know, hey, your guy didn't show up, and we're going to proceed with excavation. [LB930]

SENATOR BRASCH: Okay. [LB930]

MICHAEL LOEFFLER: So there would be absolutely no necessary delay in excavators. Someone has asked Northern, you know, are you sure you're ready to commit the resources and the personnel necessary? The answer is: absolutely, we do so today and we will continue to do so under the provisions of this bill. What we want to do is turn a voluntary practice into a mandatory practice because we've seen its benefits and because we know that the additional value that we provide by having our trained personnel, equipment, and our heightened safety awareness can make a difference. [LB930]

SENATOR BRASCH: Very good. And one more question is, as you look at adding more

pipelines, are you doing anything differently in your construction, in your...or is it a pipeline is a pipeline is a pipeline that...or is there...that you look for certain areas where someone may not be able to excavate...unexcavatable geography? [LB930]

MICHAEL LOEFFLER: There are whole chapters of federal law that are devoted to that, but let me try to give you a short answer. [LB930]

SENATOR BRASCH: Okay, all right. [LB930]

MICHAEL LOEFFLER: First of all, when we construct or when we site a line, we are required to meet certain expectations of the Federal Energy Regulatory Commission which governs our industry. Second, we're also governed by safety regulations of PHMSA, under the Department of Transportation. So between the combination of those two sets of laws, we, first of all, we bury our pipe at a significant depth, between 36 and 48 inches. We're required to meet certain tensile strength and diameter of steel pipe and a lot of other safety regulations that are imposed upon us by the federal regulators. So before we even put pipe in the ground, there is a tremendous amount of safety that's put around them. But all of those safety regulations mean nothing if someone is going in, and they, for instance, with equipment go and strike our pipeline. And the only way to stop that is through one-call. And the only way for us to make that work is to dedicate the resources to make it work. [LB930]

SENATOR BRASCH: Okay. Very good. Excellent answer. Thank you. I have no other questions. [LB930]

MICHAEL LOEFFLER: All right. [LB930]

SENATOR DUBAS: Any other questions? Senator Hadley. [LB930]

SENATOR HADLEY: Thank you, Senator Dubas, Mr. Loeffler. Just for my own information, what are the dangers if an excavator hits the pipeline? Are there explosions? Fires? What kind of consequences do we look at when this can happen? [LB930]

MICHAEL LOEFFLER: I want to talk about two types of damages. First of all, there is types of damages where an excavator may hit our line and not rupture it. Because our pipeline has special coating to prevent corrosion, if you went out and hit our line, you said, uh-oh, and you just reburied something, and you walked away, because you've hurt that corrosion, that pipeline is susceptible to rupture and to failures at some later date. So that's why it's important that they can't even hit our pipeline, even if you don't rupture it. The second and more catastrophic is if you actually rupture our pipeline. Natural gas naturally dissipates to the atmosphere vertically, so it goes up. If there is an ignition source from these high-pressure natural gas pipelines, there can be a significant

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

explosion. Last year when I addressed this committee, I brought pictures of an explosion near Hinton, Iowa. In that instance, we were told by people who witnessed the explosion that the flames went 300 or more feet into the air. The crater that was left by the explosion was almost a hundred feet long. It threw the backhoe that ruptured our pipeline, threw it 125...a backhoe, and you...that's a pretty big piece of equipment, 125 feet away, and it was still rolling on fire when people saw it. Two people were severely injured in that incident and had to go to the hospital because they were thrown from the equipment. It doesn't happen often. And a lot of times, sometimes, someone may hit our facilities, and they hear the loud hiss, the hissing of the pipe...or the gas exploding, and they'll call us, and we can address it at that point. But if there is an ignition source, unfortunately the consequences can be rather high. [LB930]

SENATOR HADLEY: Thank you. [LB930]

SENATOR DUBAS: Other questions? [LB930]

MICHAEL LOEFFLER: Senator, would it be out of line for me to address your question that you asked previously? [LB930]

SENATOR DUBAS: I was going to ask that question, so please do. [LB930]

MICHAEL LOEFFLER: Okay, thank you. I can only speak for Northern, but let me tell you anecdotally what I know. First of all on repeat offenders: since 2009, we have been tracking...we have a track of what we do in terms of what we submit to the Attorney General in Nebraska. There have been repeat offenders. The thing that complicates that is sometimes excavators might go under different company names, or a company might fold and they start another excavation, so there might be even more than we see. But there are, unfortunately, repeat offenders. Anecdotally, I could tell you it's not the majority, but I can also tell you that it does occur. Also from Northern's perspective, I wanted to let this committee know that we did visit with Senator...excuse me, with Attorney General Bruning, and we talked about the issues of, you know, that we turn in...when there is an incident that it ruptures our pipe whether it results in explosion or whether it doesn't, we conduct a full post-incident investigation. And it's a very thick document that has about every single set of data and pictures that could possibly be done, and we turn that over to the Attorney General's Office. From Northern's perspective, there's only been one fine that has been leveled against any of these people that we've turned in since 2009. Now, we understand, and this is not an indictment of the Attorney General, we know there is a lot of things on their plate and that this doesn't get a lot of funding, and after he visited with him, he did go and, in fact, impose a penalty on one of the repeat offenders that we brought to his attention. So, is there repeat offenders? Yes. Are there fines leveled? They are leveled, in our opinion, infrequently. And do we think that if the fines were raised would that be a deterrent? Absolutely. [LB930]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

SENATOR DUBAS: Another question I would have in relation to this bill is, so the process...someone calls in, now would you have someone go out and mark the locate and then also send someone out at the time of the dig, or would it just be someone goes out at the time of the dig? [LB930]

MICHAEL LOEFFLER: Again, it's going to rely on the communication from the one-call system. We're required to go out and mark our lines within 48 hours, and that will occur. But what we traditionally do, or what we do in practice, is we'll call the excavator and try to determine when they're going to begin their excavation, because they have a certain time, they may be calling way ahead. So let's say they say, well, we're going to start our excavation, and we're going to be in this part of the land on Sunday, and on Tuesday we're going to be on this part of the land which is closer to your pipeline. We would say to them, and this what we do in practice now, we say, will you call us when you're going to be in that area where our pipeline is. In about 60 percent of the cases we have voluntary cooperation from excavators. In a small...a little bit more cases, they say they're going to do it, and they don't. But we still have about 60 percent voluntary cooperation. We go out there, and then we meet them at the commencement of the excavation near our pipeline. Now if that can't be determined, we'd rather err on the...of sending our resources and our personnel out there so that we're there during the entire excavation near our facilities. [LB930]

SENATOR DUBAS: So you would do both then? You would mark the locate and then... [LB930]

MICHAEL LOEFFLER: Yes, ma'am. [LB930]

SENATOR DUBAS: Okay, very good. Any other questions? Seeing none, thank you. [LB930]

MICHAEL LOEFFLER: Thank you, Senator. [LB930]

SENATOR DUBAS: Next proponent for LB930? Welcome. [LB930]

MARSHA BABCOCK: Thank you. Senator Dubas, members of the committee, my name is Marsha Babcock, M-a-r-s-h-a B-a-b-c-o-c-k. I'm a registered lobbyist for the Mechanical Contractors Association of Omaha. And then also here representing the Nebraska Building Chapter of the Associated General Contractors. Mechanical contractors are those that are involved in the piping industry. So, the water, sewage, gas would be done by the specialty contractors that I represent. It's the members of our organizations that are largely called upon to provide excavation, installation, and repair services for underground facilities, as well as perform these same services for new construction and the renovation of projects throughout the state. It's not unusual for our

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

members to find a situation where multiple operators bundle their pipes, cables, transmission lines, etcetera, into one underground facility. For example, at 10th and Dodge, where nearly every type of personal property identified in the statute is present. It's for that reason that, initially, our intent was to oppose LB930, but after working with Northern Natural Gas and Senator Watermeier's office, we are prepared to endorse the amendment that has been proposed. Without this amendment, it's possible that each of these operators could identify their facilities as critical, triggering a situation where excavating contractors are waiting on multiple operators to show up at a dig site prior to being able to move forward. There could be more operators present than workers necessary to perform the task. This could result in a scheduling nightmare that will cause costly delays for the excavation and the project as a whole. Our contractors appreciate the dangers associated with natural gas transmission lines and understand the need for particular safety measures and caution. Caution that is not necessary with respect to other underground facilities. Northern Natural has assured us that the operators will be there to assist with the detection of potential leaks, make sure that the lines have been marked correctly, and help determine whether another method of digging is recommended in what has been determined to be a tight spot, all of which are reasonable. However, we are hopeful that this assistance does not result in situations where the excavator is required to absorb unreasonable costs and time delays due to a disagreement as to whose means and methods expertise should be relied upon in most circumstances. We'd also like to see a report issued after the observation period, documenting the activity and then signed by both parties to add to our project file. This will assure the project owner that all parties are in compliance with the statute and will also give the owners valuable information regarding the transmission lines on or adjacent to their property for future reference. We want to thank Northern Natural Gas and Senator Watermeier's office for working with us to address our concerns and offer our support for the amendment, AM1978 to LB930. [LB930]

SENATOR DUBAS: Thank you. Questions? Seeing none, thank you very much for coming forward today. [LB930]

MARSHA BABCOCK: Thank you. [LB930]

JOHN LINDSAY: Senator Dubas, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing as registered lobbyist on behalf of SourceGas and Black Hills Energy, who along with Northwestern Energy are members of the Nebraska Natural Gas Association. And I'm speaking on behalf of the Nebraska Natural Gas Association in support of the bill. The number one reason why we support the bill is that pipeline safety is our number one concern. Third-party damage, like you heard from Mr. Loeffler with Northern, third-party damage is our number one risk to our infrastructure. And as you heard in the colloquy between Senator Hadley and Mr. Loeffler, when those line hits happen, it's not a good thing. We take safety very seriously. And the 8-1-1 laws, the one-call laws, do a large part in helping to maintain the safety of that infrastructure.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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When you hear line cuts don't happen, at least the catastrophic line hits, don't happen very often. When they do, they make the news. And when they make the news, that's what you see, and that is exactly why we do take it so seriously. When you have a line hit, it's taking our personnel away from their other activities to go deal with that line hit. And if those aren't...if that can't be recovered from the person who caused the damage, who was liable for that damage, then all of you, through your rates, pay for that. So it's a...we would rather have our people providing the service that we like to provide rather than being taken away to deal with the...any sort of a line hit. And, of course, the number one concern is that...the threat to human life. When it happens it...people's lives are put in danger, and we would rather not have that. We would rather have somebody we're willing to commit the resources to put people on location to watch and to assist the excavator when they're getting near the pipe so that they know exactly what they're...the two parties are working together to make sure that infrastructure is preserved. We would urge that you advance the bill with the amendment. And be happy to answer any questions. [LB930]

SENATOR DUBAS: Thank you, Mr. Lindsay. Are there questions? Seeing none, thank you very much. [LB930]

ANDY HARTMANN: Good afternoon, Senators. I'm Andy Hartmann, A-n-d-y H-a-r-t-m-a-n-n, and I sit on the one-call board of directors for the state of Nebraska. In general, the one-call board verbally supports LB930 which would require an excavator...that an excavator cannot dig within 25 feet of a critical facility without the operator's presence. However, several board members suggested an inclusion that includes reference to scheduling. No specific language was proposed or approved, but discussion centered around keeping the current requirement of responding within two business days and then allow two extra business days to conduct the standby. A longer time frame would enhance the process to conduct the standby and would be acceptable if both parties agreed verbally or in writing. But the one-call board would support LB930. And is it possible to maybe give my point of view as a contractor on something that was said? Is that possible here? About the stand by? [LB930]

SENATOR DUBAS: Is it in reference to this LB930? [LB930]

ANDY HARTMANN: Oh yeah, oh yeah. [LB930]

SENATOR DUBAS: Yes. [LB930]

ANDY HARTMANN: I'm also a contractor, heavy dirt work, that type of stuff. And this reference to having somebody stand by, I think, is needed. On a project on West O Street several years ago...at that time you did not need a standby. And I can't remember the...it's a different company right now, but at that time we...I was standing by one of the machines as my brother was running one machine and another guy pushing him with a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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dozer, and we called in. We said, we are close to your line, gas line, because the yellow tape was coming up. And the guy on the other end of the telephone said, don't worry about it; it's an abandoned line; the other one is moved further to the north. Okay, that's fine. So we kept digging. About a minute later, we heard this roar; it was no hissing; it was a roar, and the back engine on the scraper accelerated immensely, RMP wise. I waved at, Kevin was his name, to get the heck out of there, and my brother was backing the dozer out at that time. And I was standing in the gas as it was roaring out of the ground. Luckily, by the grace of God, and, yes, there is a god in this world, he saved me and my brother and my friend. We hit a four-inch gas line, plastic thing, thank God it was plastic, that supplied Emerald and Shoemaker's and everything west. We put a three-foot gash on the top of that line, and it was spewing gas into the atmosphere. We ran out of the way. You know, it was...luckily it was a south wind so everything was going toward the interstate. But like I said, I don't know why that didn't ignite to tell you the truth, but I'm glad it didn't. When I did call the company back up to tell them, there's gas coming out of the ground, he nonchalantly, because it was...again, it was 4:30 in the afternoon Friday, and he wanted to get home. Yeah, yeah, well I'll be out there in a little bit. Well, when he got out there, he about...well, filled his drawers. I don't know how else to say it. If this law would have been intact at that time and there would have been a representative from that gas company there, I think that would have saved a little consternation. So are there any questions? [LB930]

SENATOR DUBAS: (Exhibit 6) Any questions for Mr. Hartmann? Seeing none, thank you very much. Further proponents for LB930? Opposition? Any opposition to LB930? I will back up. We do have one proponent for the record for LB930, the Nebraska Telecommunications Association. No opposition? Anyone in the neutral? Welcome. [LB930]

MATT SCHAEFER: Chairwoman Dubas, members of the committee, my name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r. I represent AT&T in a neutral capacity. Our office had spoken to Senator Watermeier about one concern with the green copy of the bill in that, if an excavator followed the requirement to the bill, but the transmission line owner never sent a representative, it could effectively put the project on hold indefinitely. But with the amendment, I think our concern is taken care of. So we are okay with the bill. [LB930]

SENATOR DUBAS: Very good. Questions? Seeing none, thank you. [LB930]

MATT SCHAEFER: Thanks. [LB930]

SENATOR DUBAS: Further neutral testimony? Seeing none, Senator Watermeier, would you like to close? [LB930]

SENATOR WATERMEIER: (Inaudible). [LB930]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR DUBAS: Very good. That will close the hearing on LB930. And we will move to LB1045, Senator Harr. [LB930]

SENATOR HARR: Chair Dubas, members of the Transportation and Telecommunications Committee, I have not been here before last week, and now I'm here two weeks in a row. So, thank you for having me back. My last name is Harr, H-a-r-r. LB1045 amends the One-Call Notification Act, specifically the Nebraska Revised Statute 76-2317 to include the following language "a depth of at least twelve inches" for underground facilities. The Nebraska Legislature passed a law called the One-Call Notification System Act in 1994. The intent of the Legislature was to establish a means by which excavators may notify operators of underground facilities in an excavation area so the operator has the opportunity to identify and locate the underground facilities prior to excavation and so that excavators may then observe proper precaution to safe ground (sic-safeguard) the underground facility from damage. Its goal was to aid the public by preventing injury to persons and damage to property and the interruption of utility services resulting from accidents caused by damages to underground facilities. The law states that everyone who excavates or disturbs the surface of the ground in the state of Nebraska must first contact Nebraska 8-1-1, formerly Diggers Hotline. The notification must be two days in advance to have all underground utilities located. The legislation includes but is not limited to contractors, homeowners, and personal property owners. If the goal of this act is to prevent injury to persons and to damage property, we need to make sure everyone is playing by the same rules and follow the rules. With that, I would be happy to answer any questions. [LB1045]

SENATOR DUBAS: Questions for Senator Harr? None right now; will you stay for closing? [LB1045]

SENATOR HARR: I plan to, yes. Thank you. [LB1045]

SENATOR DUBAS: Good. Thank you. Do we have proponents for LB1045? Welcome back. [LB1045]

JOHN BACHMAN: Good afternoon again. Senator Dubas, members of the committee, John Bachman, J-o-h-n B-a-c-h-m-a-n. I'm appearing on behalf of the Professional Home Builders of Omaha and the Eastern Nebraska Development Council. I am a member of both of those organizations, as well as their attorney. The root of the problem that we're experiencing, particularly in the Omaha area, now that construction has once again on the up tic, and we're having more home builders constructing homes, is that we're finding that particularly the cabling from the boxes to the residences are not being placed at a sufficient depth that even...not if you excavate, but even if you're fine grading your yard in order to prepare it for sodding, or you're just doing some general

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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construction activity on the...for the resident or the commercial facility that we're running into cables that have not been placed much more than, if you will, below the sod line. And we just believe that at this point in time we need to have those companies be responsible to place their cabling at a sufficient depth so that in the normal routine operation of a yard or green area that really isn't considered excavation, doesn't interfere with their cabling. We've had problems with someone planting gardens which go down a few inches, and then they've hit a cable. And I will personally tell you that my aeration company, a number of years ago, in the fall aeration, clipped my cable for my cable TV. And it wasn't much more than two inches below the surface of the ground. We believe there needs to be a better standard for the cable companies, particularly from your service boxes to the residences, that would allow this not to happen, and it would not damage their particular facilities. We have had conversations recently with CenturyLink. We are in conversations, hopefully, to help resolve some of these issues. When OPPD places its service lines, they are now using conduits and then stringing their service lines through the conduits. That's something new that we just worked with OPPD this past fall. Maybe that's an alternative for some of these other service lines for the cable and telephone companies. We're willing to work with them, but we do have an issue, particularly in the Omaha area, of cables that are not at sufficient depth that do get clipped and do get damaged with minimal work or processing of gardens or plants in someone's yard. And with that I'll be pleased to answer any questions. [LB1045]

SENATOR DUBAS: Are there questions? So when something like that happens to the cable, who is responsible for the fixing of it? Who gets charged for it? [LB1045]

JOHN BACHMAN: The cable company comes out and replaces it. [LB1045]

SENATOR DUBAS: So there's not a charge to the homeowner? [LB1045]

JOHN BACHMAN: No. [LB1045]

SENATOR DUBAS: Okay. [LB1045]

JOHN BACHMAN: No, but in many instances, at some time, depending upon their scope of work, and it's happened to me personally, that new cable is just placed on top of the ground until they can find someone to come and bury the cable so that it would be out of the way. [LB1045]

SENATOR DUBAS: So there's typically not an industry standard, then, for burying those cables? [LB1045]

JOHN BACHMAN: Not to my knowledge, no. OPPD does have a standard that, I believe, is a three-foot trench that they dig. Now they're going to be placing conduit in that three-foot trench so that their facilities are clearly out of the way and are not going

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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to be interfered with, with normal yard maintenance. And the back...what I'll call the backbone, which is your main transmission lines, those have not, generally, been the issue. It's been the issue from the box into the residence. [LB1045]

SENATOR DUBAS: Very good. Any other questions? Seeing none, thank you for coming forward today. [LB1045]

JOHN BACHMAN: Thank you. [LB1045]

SENATOR DUBAS: Next proponent for LB1045. Is there any opposition? [LB1045]

PATRICK HAGGERTY: (Exhibits 7 and 8) Good afternoon, Chairman Dubas, members of the Telecommunications and Transportation Committee. My name is Patrick Haggerty. I'm here as a registered lobbyist testifying on behalf of CenturyLink, as well as Nebraska Telecommunications Association. I do believe the Nebraska Telecommunications Association may have submitted a letter as well. I'm here testifying in opposition to LB1045. As noted, LB1045 proposes a change to the One-Call Notification Act by changing the definition of what constitutes an underground facility in Nebraska. Under the proposed change, a facility resting below the surface, at a depth of less than 12 inches would no longer be considered an underground facility. The purpose of the One-Call Notification Act is to protect underground facilities, excavators, and the general public. While I believe the proposed legislation is intended to enhance the statute, the result actually diminishes the current law. A couple of examples: the depths of an underground facilities vary by type, location, and installation method. A "one depth fits all" requirement exposes difficulties in the realistic ability to comply with the proposal. Also, recognizing post-installation depths vary due to uncontrollable variables such as erosion, weather, grading and landscaping, the law would be difficult, if not impossible, to enforce. And finally, and most importantly, the proposed exception does not strengthen the proposal of the act, but lessens the act by diluting the act and increasing the risk to public safety. That concludes my testimony, and I'm available for any questions. [LB1045]

SENATOR DUBAS: Are there questions? Senator Smith. [LB1045]

SENATOR SMITH: Thank you, Madam Chair. Do you know if someone is going to follow you that has some expertise in the law itself? And what I'd like to do is try to, at least for everyone here, to have perspective as to how (Section) 76-2317 fits in with the rest of the statute. When we're talking about at a depth of at least 12 inches, what is this doing in terms of the excavators' responsibility in the law and what the risk is to the facility operator? Is that something you can...if I ask you some specifics...? [LB1045]

PATRICK HAGGERTY: I'm willing to give it a shot. I don't know who is following me, Senator Smith, to be honest. [LB1045]

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Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR SMITH: Okay. So, if an excavator calls in and gets locates, and so everything is marked, but it's too shallow; it was installed too shallow and it gets damaged, that's not what this law is applying to. It's applying to exemption of having to make the locates initially. Is that correct? [LB1045]

PATRICK HAGGERTY: I think...I've looked at it both ways. And I don't know the actual answer to it, but I've had both of those questions myself. [LB1045]

SENATOR SMITH: So, does this, basically, create a situation where the excavator does not have to get locates? [LB1045]

PATRICK HAGGERTY: That's the assumption I'm testifying with... [LB1045]

SENATOR SMITH: That's your assumption. [LB1045]

PATRICK HAGGERTY: That anything above 12 inches, but underground would now be exempt from the one-call act. [LB1045]

SENATOR SMITH: So if someone does not call in and get locates, and due to erosion, there are some facilities that are now less than 12 inches...let's say it's electric utility lines, and they're damaged, and they don't call and get a locate, if this law were in place, they would have been exempted from that entirely. [LB1045]

PATRICK HAGGERTY: Yes. I'm testifying with that assumption. [LB1045]

SENATOR SMITH: Okay. All right, thank you. [LB1045]

SENATOR DUBAS: Other questions? Senator Hadley. [LB1045]

SENATOR HADLEY: Thank you, Chair Dubas. Mr. Haggerty, if I'm reading this right, would a law that says you must put them at least 12 inches underground when the initial installation, would that solve some of the problems? [LB1045]

PATRICK HAGGERTY: I don't think it would, only because, really, the depth of the facility is driven by the type of facility it is, by the location the facility is being placed. I'll give an example that came through internal discussions at CenturyLink, Senator Hadley, and that was, we're currently trialing a technology in which we can cut into the surface of pavement, insert our conduit with the facility inside it and then seal back over the top of the pavement; not disrupt an entire roadway, not having to go back and rebuild the road, but simply placing it an inch and a half within the pavement and being done with it. The language in the act currently doesn't clarify if there is a difference between soil, if there's a difference between pavement. [LB1045]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR HADLEY: I guess...the reason I ask...that we had some information about...first we had a newly built home, and there were concerns that normal gardening activities were getting...were hitting underground utilities and lines. And I just wonder what kind of protection do we need from a homeowner that they're not hitting one that's three inches under...you know, they take a normal spade and go out and try and do some work and hit their cable TV line or something such as that. [LB1045]

PATRICK HAGGERTY: Yeah. And as was mentioned in previous testimony, I am sitting down and working with the home builders to understand what some of their specific challenges have been, and collaboratively we're trying to solve that. I don't know the answer to it, though. The practice around facilities is once they're marked, once they've come through the one-call process and they're identified on the surface of the property that you then respect a certain distance on either side of that line. Respect meaning you could hand dig, you would just be cautious. So in the case of a garden, I think what would be suggested is that you definitely call, and you have one-call come out, identify the facilities, and then you cautiously approach within, you know, a certain number of inches away from either side of that line. And I think that's the safest way to go about it as well. As we always talk about there is no safe underground facilities, for the most part, because most people can't identify whether it is a facility such as ours that's very low voltage and probably doesn't bring the kind of significant personal danger that an electric line would. So don't try to identify it yourself, have the professionals come out to identify them. [LB1045]

SENATOR HADLEY: Thank you, Mr. Haggerty. [LB1045]

SENATOR DUBAS: So if someone makes a one-call for a locate request, is that cable line from the box to their house, is that identified? [LB1045]

PATRICK HAGGERTY: Yes. [LB1045]

SENATOR DUBAS: That's identified, so they can come out and mark that then. [LB1045]

PATRICK HAGGERTY: Yeah. All the facilities across the yard would be located. [LB1045]

SENATOR DUBAS: All right, thank you. Senator Smith. [LB1045]

SENATOR SMITH: Thank you, Madam Chair. And just for clarification, it's marked, but the depth is not marked. The depth is not indicated. [LB1045]

PATRICK HAGGERTY: That is true. [LB1045]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

SENATOR SMITH: So the homeowner or the excavator has to use some reasonable amount of judgment in how they are approaching that. If they are planting a tree or putting in a fence post, it's not a wise idea to put that hole directly over where that line is; you should go off to the side. Let's say it goes directly under a plot of the ground that someone wants to till the soil and put in a garden. In that particular case, probably some...again, having...you know, making some initial digs to know the depth there before they run their tiller over the top of it would be prudent. If there is damage, and it's at a very superficial level indicating either there's been erosion or it was not installed at a reasonable depth, who is responsible for that damage? [LB1045]

PATRICK HAGGERTY: If it...I guess the question would then be, was it blue staked or was it...were the facilities marked or were they not? Was a one-call call placed or was it not? [LB1045]

SENATOR SMITH: Let's say the one-call was made; it was marked, but the...there was a dig in, let say, with only three inches of the surface of the ground, indicating it was fairly shallow. Is that the excavator's fault? Or is that the facility operator's fault for not installing it deep enough? [LB1045]

PATRICK HAGGERTY: In sitting down with Northeast Nebraska Developers, I asked that same question. I don't, personally, have what I believe a competent answer around it. But what Northeast Nebraska Developers shared with me is the burden would be placed on them, that they would assume the cost of that, regardless of the depth of it, if it had previously blue staked, and they damaged it. [LB1045]

SENATOR SMITH: That would be the facility operator? [LB1045]

PATRICK HAGGERTY: Yes. [LB1045]

SENATOR SMITH: Okay. [LB1045]

PATRICK HAGGERTY: But again, I preface that with that was a question I asked, and that was the response I got. [LB1045]

SENATOR SMITH: Okay, thank you. [LB1045]

SENATOR DUBAS: Any other questions? Seeing none, thank you. [LB1045]

PATRICK HAGGERTY: Thank you. [LB1045]

ANDY POLLOCK: Chairwoman Dubas and members of the Transportation Committee, again, my name is Andy Pollock, A-n-d-y P-o-l-l-o-c-k. I'm before you on LB1045,

opposing it on behalf of Northwestern Energy for whom I'm a registered lobbyist, and also on behalf of the Nebraska Natural Gas Association, which, in addition to Northwestern, includes Black Hills Energy and SourceGas Energy, all of which operate natural gas distribution systems across the state. We come before you in opposition to LB1045. I think the issues raised by the bill and by Senator Harr, and in particular by Mr. Bachman with the Home Builders of Omaha, are legitimate issues. I think this is just the...not the right way to skin this particular cat. I'm encouraged by the fact that the home builders are having discussions with CenturyLink and with Cox Cable up in Omaha. It sounds like it's, at least at this point, a uniquely Omaha issue. But the bill itself would have ramifications across the state. And I would submit to you that it is probably better and wiser and more prudent to let those negotiations work their way through and, hopefully, there will be a solution reached. We don't believe that this bill is the right solution, and it will create public safety issues, certainly that are not intended but will happen. With that I'd be glad to try to answer questions. [LB1045]

SENATOR DUBAS: Questions? Senator Hadley. [LB1045]

SENATOR HADLEY: Chair Dubas, Mr. Pollock, gas lines that are run to a home, is there some standard depth that these are put underground or...? How is the depth determined when they run it from the main to my meter on my house? [LB1045]

ANDY POLLOCK: I think the standard depth, Senator Hadley, is four feet. And if that's not correct, I will get back to you and the chairperson of the committee with that. [LB1045]

SENATOR HADLEY: Okay. [LB1045]

ANDY POLLOCK: I think that's industry standard. So it would be well below the 12 inches. Maybe there won't be a lot of erosion that occurs in somebody's yard. But as you heard previous testifiers, in particular Mr. Haggerty for CenturyLink, testify erosion happens. It happens all over the place, more to some degree in places than others, but that issue has to be taken into account. [LB1045]

SENATOR HADLEY: Thank you, Mr. Pollock. [LB1045]

SENATOR DUBAS: But if I'm just putting in my garden or tilling to sow some seed, I don't have to call One-call, is that correct? [LB1045]

ANDY POLLOCK: My understanding, Senator Dubas, would be that you would if you're excavating. Now, if you're conducting an agriculture activity, you don't. I don't know if gardening falls under that. I tend to think it might in some places, and it would not in other places. Having done some excavation work in our own backyard, I know how simple it is to make the one-call. I think that's our message that it's simple; it's

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Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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convenient. For me, the homeowner, it's free. And the prudent way is to always make the call. I won't speak to the issue of things being buried at three inches. Obviously, I...I will speak to it a little bit, just to say that there's a disincentive to do that for the utility. For Northwestern Energy to do that would be counterproductive because the number of issues that you'd have would be significant, and you'd spend your time worrying about those issues rather than doing a business and providing service to ratepayers. Hopefully that answers your question. [LB1045]

SENATOR DUBAS: Any other questions? Seeing none, thank you. [LB1045]

ANDY POLLOCK: Okay, thank you. [LB1045]

MICHAEL LOEFFLER: Good afternoon, Senator, members of the committee. My name is Mike Loeffler, my last name is spelled L-o-e-f-f-l-e-r. I'm the senior director of external affairs for Northern Natural Gas Company out of Omaha, Nebraska. Northern Natural Gas opposes LB1045. Northern opposes in principle any proposal that would weaken the effectiveness or scope of the One-call statutes. The One-call statutes are meant to protect underground utility infrastructure and the safety of excavators, emergency responders, utility employees and the public. Although natural gas transmission facilities are generally buried at a depth of 36 to 48 inches, Northern does have some facilities, such as farm taps, that are buried at lesser depths. Northern provides natural gas service to more than 500 farm taps in the state. In addition, Northern operates crossovers, valves, pig launchers and receivers, and other appurtenant facilities that can be located in the top 15 inches of soil. For those reasons Northern would oppose LB1045. I'm open to questions. [LB1045]

SENATOR DUBAS: Any questions for Mr. Loeffler? Seeing none, thank you. [LB1045]

KRISTEN GOTTSCHALK: Chairman Dubas, members of the Transportation and Telecommunications Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the registered lobbyist and government relations director for the Nebraska Rural Electric Association, testifying on behalf of the Nebraska Rural Electric Association as well as the Nebraska Power Association today. We understand the dilemma expressed by the proponents of this bill. But, unfortunately, changing the definition as to what qualifies as an underground facility is kind of counterintuitive to that. What that does in the process is it says that the 12 inches of free zone...it doesn't prohibit burying at three inches, it just says that you no longer have to register something at that three inches under the one-call act. So that does open itself up to some problems. The bill talks about placement, not about the potential changes to depth and activity. And that's where I get a little concerned. As Mr. Loeffler indicated, they bury their lines 36 to 48 inches. Now our lines, electric power lines, typically are buried in that same zone. Depending on where they are, migration may occur. Calling the one-call allows you to mark the location of that line and avoid any conflict with it

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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whether it's 12 inches, 18, 24, 48 or deeper. So the one-call is important. And I should emphasize, too, I heard a question asked is, are all the lines that run through your yard subject to the one-call? And that...at least with electricity, the answer is--it depends. Now where I live, the utility will mark the lines up to my meter. Well my meter is in the middle of our farm yard. So there may be lines that run to the barn, that run to the house, that run any other directions. Those lines belong to me; those lines would not be marked by one-call. So those would be exempt under this and would not be affected by this change in statute at all. With that I do conclude my testimony. I would be happy to address any questions you may have. [LB1045]

SENATOR DUBAS: Are there any questions? Senator Hadley. [LB1045]

SENATOR HADLEY: Thank you, Chair Dubas, Ms. Gottschalk. Electrical utilities that are buried, is there a standard from the...whatever box it is to the box at my house, the depth? [LB1045]

KRISTEN GOTTSCHALK: You mean for the secondary line, the line that you may own? [LB1045]

SENATOR HADLEY: Yeah. [LB1045]

KRISTEN GOTTSCHALK: There are standards. Now for ours, which are your distribution lines, 36 to 48 inches, depending on the capacity of the line. [LB1045]

SENATOR HADLEY: Okay. Thank you. [LB1045]

KRISTEN GOTTSCHALK: But I don't know the exact depth for the secondary lines. [LB1045]

SENATOR DUBAS: Other questions? Senator Smith. [LB1045]

SENATOR SMITH: Thank you, Madam Chair. In your experience, have you seen enough erosion to where electric facilities could be within 12 inches of the surface, perhaps around a pad-mount transformer? Sometimes there will be runoff that occurs and erosion that occurs. [LB1045]

KRISTEN GOTTSCHALK: And that's a very good point. Yes, we have seen erosion that does occur, runoff. And actually, agricultural activities may also have impact on the depth of facilities as well. Now whether or not, you know, we...I don't know that we've seen them peeking out of the ground, but on occasion if the erosion is bad enough the potential is there. [LB1045]

SENATOR SMITH: There's potential. Okay, thank you. [LB1045]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR DUBAS: Any other questions? [LB1045]

KRISTEN GOTTSCHALK: And I do have an answer to the question: any gardening, tilling, movement of soil for planting is exempt under the one-call. [LB1045]

SENATOR SMITH: I'm sorry, say that again. [LB1045]

KRISTEN GOTTSCHALK: Normal gardening, tilling, and your...on your property is exempt from one-call. [LB1045]

SENATOR DUBAS: Thank you. [LB1045]

KRISTEN GOTTSCHALK: Um-hum. [LB1045]

SENATOR DUBAS: Further opposition to LB1045. [LB1045]

AMY PRENDA: Good afternoon, Senator Dubas and members of the Transportation and Telecommunications Committee. My name is Amy Prenda. It's A-m-y P-r-e-n-d-a, and I am testifying in opposition to LB1045 on behalf of the Nebraska Cable Communications Association. I don't have anything to add. I only would like to say that I'm empathetic to the problem at hand, but I'm not sure touching the one-call statutes is the correct response to the circumstances. And I'd be happy to answer any questions you might have. [LB1045]

SENATOR DUBAS: Senator Hadley. [LB1045]

SENATOR HADLEY: Senator Dubas, Ms. Prenda, we've heard from the electrical and the gas as to what the normal depth is, is there a normal depth that they place a cable line from your outside box to your house? [LB1045]

AMY PRENDA: I don't know that there's a industry standard. I know that there is a company standard. And for example, I did hear back from Cox, and they try...their protocol or procedure is at least between 12 and 16 inches. So normal erosion or other occurrences within their control, it is possible that that line then would be above that 12 inch level. [LB1045]

SENATOR HADLEY: I'm just wondering, if I was a cable company, the trade off between making it a little deeper and not having to go out every time somebody takes a spade for some reason and cuts it, does that make sense? [LB1045]

AMY PRENDA: Um-hum. [LB1045]

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Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR HADLEY: The cost of making it a little deeper versus...but that's another question for another time. [LB1045]

AMY PRENDA: Yeah. [LB1045]

SENATOR HADLEY: Thank you. [LB1045]

SENATOR DUBAS: Other questions? Senator Smith. [LB1045]

SENATOR SMITH: Thank you, Madam Chair. Ms. Prenda, in your understanding of this change in the statutes, do you see that it exempts an excavator, whether it's a homeowner or a developer or any other excavator, that it exempts them from having to call in a locate? [LB1045]

AMY PRENDA: Yes. And when we initially read the legislation, our concern was that it would jeopardize the integrity of the one-call statutes because it would provide an exemption for calling. And the purpose is public protection and also, obviously, protecting company infrastructure, and so, yes, we did see as an exemption of calling one-call. And after hearing the testimony from the proponent, I'm not sure that this is the correct statutory change that needs to be done within the statutory framework. [LB1045]

SENATOR SMITH: So it kind of provides a false sense of protection for the excavator against any type of a penalty. [LB1045]

AMY PRENDA: And I'm not sure it provides any protection whatsoever because there still could be damage done or harm done to the person digging. [LB1045]

SENATOR SMITH: Okay. Thank you. [LB1045]

SENATOR DUBAS: Any other questions? Seeing none, thank you. Further opposition. Is there any neutral? [LB1045]

ANDY HARTMANN: Good afternoon, senators. Andy Hartmann, A-n-d-y H-a-r-t-m-a-n-n, and I sit on the One-call Notification...or board of directors, excuse me. The one-call board maintains that LB1045 has nothing to do with the One-call Notification System. We, the board, feel someone could use this as justification not to call for a locate if the facility is not buried 12 inches in depth; or if not digging or probing to a depth of 12 inches. We believe this should be a mutual agreement between the provider and the installer. Again, installing a utility has nothing to do with the one-call notification system. [LB1045]

SENATOR DUBAS: Questions? Senator Brasch. [LB1045]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

---

SENATOR BRASCH: I just have one...thank you, Mr. Hartmann, and I'm curious if homeowners association could help regulate this rather than legislate it if...to prevent cables from...wandering around a neighborhood or... [LB1045]

ANDY HARTMANN: Well, like I said, we, the board, and I also feel that that's really between the provider and the installer. [LB1045]

SENATOR BRASCH: Okay. And along that line, that's what made me think of the homeowners... [LB1045]

ANDY HARTMANN: Um-hum. Sure. [LB1045]

SENATOR BRASCH: ...because they regulate what may or may not be done to the landscape or the... [LB1045]

ANDY HARTMANN: Um-hum. Covenants. [LB1045]

SENATOR BRASCH: Exactly. I have no other questions. Thank you. [LB1045]

SENATOR DUBAS: Any other questions? Seeing none, thank you. [LB1045]

ANDY HARTMANN: Thank you. [LB1045]

SENATOR DUBAS: (Exhibit 9) Further neutral testimony? Senator Harr, would you like to close? I would like to read into the record that we do have a letter of opposition to LB1045 from the city of Lincoln. [LB1045]

SENATOR HARR: Thank you. As you can see, the problem is real and the question is: what is the proper length? Is it one-half inches? Is it six inches? Is it a foot? I don't know. It's the eternal question. We have a problem, and I'm glad to see that the parties are working to resolve it. And maybe we don't need legislation. I would say to Senator Brasch's recommendation, the only problem with that is, my district is an older district, and we don't have any HOAs. So while that would work in new subdivisions, it wouldn't always work in some of the older divisions. Although, you know, you heard the complaint was in the newer home divisions. [LB1045]

SENATOR BRASCH: Um-hum. [LB1045]

SENATOR HARR: So, it could work out there, but it wouldn't work everywhere. But I do think there needs to be some conversation and, hopefully, we started the conversation today about what is the proper length? And so with that I would thank you for your time and entertain any questions you might have. [LB1045]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Transportation and Telecommunications Committee  
February 18, 2014

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SENATOR DUBAS: Any further questions for Senator Harr. Senator Hadley. [LB1045]

SENATOR HADLEY: Yes, Chairman Dubas. Senator Harr, this is a real-life situation. My wife is digging her garden next to the house, and she cut the underground sprinkler line eight times in doing it, that I had to repair all eight times. Then we got that fixed and the flowers grew very nicely, and she decided to use clippers to take them down in the fall. The next spring I found out that she cut the electrical line to the underground sprinkler system. Would she come under this bill from a one-call standpoint? (Laughter) [LB1045]

SENATOR HARR: No, but she's lucky to have a loving husband. [LB1045]

SENATOR HADLEY: Okay. [LB1045]

SENATOR DUBAS: Any other questions? Senator Watermeier. [LB1045]

SENATOR WATERMEIER: I guess just a question, maybe, on the side. Where does the housing building codes come into something like this? Everything we do internally into a home, what is the outside parameter of it? [LB1045]

SENATOR HARR: You know, that's definitely another option. [LB1045]

SENATOR WATERMEIER: I didn't know. That's when you look at it through Health and Human Services. I mean, through (inaudible). [LB1045]

SENATOR HARR: Yeah, you know, this isn't the only, but it's probably the easiest solution. It does have some unintended consequences that have come to light today. But I will continue to work on this issue though. Thank you. [LB1045]

SENATOR DUBAS: Seeing no further questions, thank you, Senator Harr. [LB1045]

SENATOR HARR: Thank you. [LB1045]

SENATOR DUBAS: And that will close our hearings for LB1045 and the hearings for today. (See also Exhibit 10). [LB1045]