

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Good morning and welcome to the Transportation and Telecommunications Committee. My name is Senator Suzanne Geist. I represent the 25th District here in Lincoln and Lancaster County. I serve as Chair of the Transportation and Telecommunications Committee. We will start off having members of the committee and the committee staff do introductions, starting on my right with Senator Fredrickson.

FREDRICKSON: Thank you, Chair Geist. Good morning. My name is John Fredrickson. I represent District 20, which is in central west Omaha.

MOSER: Mike Moser, District 22. It's Platte County and parts of Stanton County.

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

DeKAY: Barry DeKay, District 40, representing Holt, Knox, Cedar, Antelope, northern part of Pierce, and most of Dixon County.

GEIST: We also have Mike Hybl, our committee counsel, and Caroline Nebel, who is our committee clerk. Also assisting us are our pages, Caitlyn from UNL and she's a history major. And then Mataya, who is also from UNL and she is a political science major. This, this morning, we'll be hearing-- we'll have a confirmation hearing and one bill and we'll take them up in the order that's listed on the outside of the room. On the table near the entrance of the room, you will find blue testifier sheets. If you're planning to testify today, please fill one out, hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify, but would like to record your presence at the hearing, please fill out the gold sheet on the table near the entrance. Also, I would like to note the Legislature's policy that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you have any handouts that you please bring ten copies and give them to the pages. If you need additional copies, the pages will be able to provide those for you. Understand that senators may come and go during our hearings. This is common and it's required, as they may be presenting bills in other committees. Our hearing will run with testimony for each bill, beginning with the introducer's opening statement. After the opening statement, we will hear from any supporters of the bill and then any in opposition followed by those speaking in the neutral capacity. The introducer of the bill will then be given the opportunity to make

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

closing statements if they wish to do so. We at-- excuse me, we ask that you begin your testimony by giving us first your name and please spell it for the record. We will be using a five-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light comes on as your one-minute warning and then when the red light comes on, we ask that you would wrap up your final thoughts. I will remind everyone, including senators, to please turn off your cell phones or put them on vibrate. And with that, we will go to the confirmation hearing of Vicki Kramer for the Department of Transportation. Good morning.

VICKI KRAMER: Good morning, Chairwoman Geist and fellow members of the Transportation and Telecommunications committee. My name is Vicki Kramer, V-i-c-k-i K-r-a-m-e-r. I'm appearing before you to seek confirmation for my appointment by Governor Pillen as the Director of the Nebraska Department of Transportation. I've appreciated the opportunity to meet with the majority of you over the last week to discuss your priorities and expectations for the department. Based on our conversations, our team pulled together the binder before you to provide details on the scope of the mission of the department, as well as some project timelines. A little bit about me. I'm a Nebraskan. I've spent my career working towards the needs of our state. I was raised in Yutan, received my bachelor's degree from the University of Nebraska at Kearney and my master's degree in public administration from University of Nebraska at Omaha. I served our country as a-- and our state as a chemical and human resources officer in the Nebraska Army National Guard. The last 13 years of service have taught me leadership, sacrifice and strategic thinking. I have 15 years of policy experience at the local, state and federal level, going back to my days with the Nebraska federal delegation, taking the issues of constituents and crafting policy to positively impact the quality of life of constituents. My portfolio has included everything from economic development, outreach and transportation to military and veterans affairs. I've gained experience with federal and state agencies, creating an understanding in motivators on how to influence action. I've learned how to leverage knowledge and relationships to create opportunity for Nebraskans. After leaving the U.S. Senate, I served as a senior policy advisor to the Nebraska Adjutant General, where I had the opportunity to work closely with the military department and NEMA, experience that was highly valuable during the 2019 flooding. When I joined the Department of Transportation in 2016, it was in the final development stages of the Transportation Innovation Act. Over the next several years, the Legislature, this committee continued to provide more opportunity for the department to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

streamline processes and improve the efficiency of the project delivery process. Then came the 2019 flood. We in the department, the state were tested. I'm incredibly proud of the work we did to restore the connectivity. It tested every pocket of the organization and touched every aspect of our mission. Coordinating the public outreach and managing the communications to cities and counties while working with our engineering and construction teams on innovative solutions to safely restore the transportation system was one of the highlights of my career. My time at the department fostered personal growth and provided a foundation of knowledge. It also created a curiosity of how infrastructure owners were tackling the challenges of the industry. I joined Kiewit, a North American-wide, Nebraska-based engineering and construction company, in 2020. That curiosity and my experience with project delivery drove me to further explore how transportation policy considerations influence the ability for DOTs to operate efficiently. I quickly gravitated towards using the resources of one of the country's most sophisticated firms to identify best practices and innovative options. A key role of mine was helping infrastructure owners and agencies determine the most efficient way to deliver projects and collaborately [SIC] assess and mitigate risks that impact project schedule and cost. I work closely with local governments, DOTs, USDOT, Federal Highway Administration, Corps of Engineers on issues that plague procurement and impact the ability to manage infrastructure development across the country. All of this provided me with a solid foundation to help further transportation, not only in Nebraska, but nationally. At my core, I'm a policy expert that's developed a knack for creative problem-solving and program execution. I thrive best in collaborative environments and am familiar with the internal and external stakeholders in the department. Though I'm not a licensed engineer, I have the advantage of more than 65 years of engineering experience on my executive team. I've spent my life driving the roads in Nebraska and much of my career listening to the needs of communities. I understand the department's impact on the livelihoods of Nebraskans and how much they depend on the services provided by the department. I will build on the initiatives of the last eight years to ensure partnerships and collaboration efforts continue to improve the customer experience. The areas where I expect to send-- spend most of my attention include safety, workforce development, relationship building and customer service. All of these areas feed into the overlaying key tasks of project delivery. Safety is the foundation of our mission and how we design roads and how they're maintained and education for users and how we protect our teammates and construction partners in work zones. Safety leads the conversation. While I'm hopeful that technology will continue to yield

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

positive impacts on safety, we must exert significant energy on improving the safety of our roads. An effective, safe system approach requires strong partnerships with locals and FHWA. As we look to maintain and modernize the system to reduce risk and minimize potential impacts, these partnerships are paramount to ensuring NDOT provides safe and reliable systems. Every major crash fatality comes across my desk. When I get in the car with Jackson [PHONETIC] and Oscar [PHONETIC], their safety is my utmost concern. Drivers today face more distractions and temptations than ever before. And I believe modeling a culture of prioritizing safety is paramount to ensuring we work toward zero deaths. Investing in attracting and retaining employees is a crucial component of project delivery. Our NDOT teammates possess critical skills and knowledge and all roles are necessary to contributing to the department's success. To meet the needs of our industry, we must start competing for talent in grade school, to start the curiosity to develop tomorrow's engineers and construction professionals at an early age so they understand the impact they can have. Partnerships are vital to this concept and I plan to work closely with Nebraska's engineering and construction community to flesh out a plan on how we can improve mentoring and outreach to grow talent. Taking our partnership efforts and expanding on them with more deliberate efforts will be necessary over the next eight years. The bipartisan infrastructure law, coupled with Build Nebraska and Transportation Innovation Act, provides an unparalleled opportunity to improve Nebraska's transportation system. A coordinated approach between NDOT, local and federal partners will be necessary to fully realize the potential benefits. NDOT's local assistance division continues to support local organizations with the execution of federal funds. In the short time I've been with the department, discussions have already been held in multiple areas on where, to what extent, how we can provide support and where we need more resources to do more. This is an area I expect to work closely with the Governor and this committee on how we can be impactful. I don't think I fully appreciate how personal transportation is until I had the opportunity to come to the department. Everyone uses the transportation system. Efficient mobility is vital to the quality-- good quality of our system and our life. Our system serves Nebraska. Whether it's providing reliable routes to hospitals or improving freight corridors to support economic growth, NDOT works to exceed the expectation of communities in which we serve with the goal of providing a safe and reliable system. After safety, safety and-- linked to safety asset preservation, maintaining our system is our bread and butter. It's an area we know well. As with system modernization, we need to continue to stay in tune with the industry on ways to leverage technology and innovation to get the most

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

out of the pavement and structures. All of these areas come together as the department looks to support the broadband office in Governor Pillen's vision of providing affordable, accessible, dependable and high-speed broadband to Nebraska. Again, many of these concepts are areas the department's been focusing on for years. I understand they've been the focus of previous leadership, but I believe we must continue to engage industry and our peers on resources available and technology advances to leverage new ways to deliver the system capable of supporting Nebraska's growing and evolving needs. This is a big challenge, but the pieces are there and this body helped put them there and we have an opportunity. The next ten years in transportation and broadband deployment will be pivotal. We've been given the resources and allies on the shoulder of the DOT to deliver. So I'm thankful, thankful to Governor Pillen's trust, the support of the department, the partnerships with industry and the relationships with our federal and state partners. Thankful for the opportunity to leverage a unique skill set that I've been cultivating over the last 15 years for an opportunity such as this. We have work to do and I'm committed. I'll be open and transparent with this committee and bring you the extent-- bring you in to the extent you want to be involved. Our team will be collaborative. I'll value your feedback. This approach and emphasis on partnership and collaboration will be what we-- I lean on as we navigate the next eight years. You'll see me apply my policy knowledge and experience, coupled with my ability to navigate project delivery and innovative finance options, while bringing people together to enhance innovation for creative problem-solving. I'm thankful and humbled by the trust Governor Pillen has put in me to lead the DOT. It's a pivotal time in transportation and to have the opportunity is an honor. With that, thank you for the opportunity to appear before you today. I'm happy to answer any questions you might have.

MOSER: Do members of the committee have questions for the applicant?
Senator Bostelman.

BOSTELMAN: Thank you, Vice Chairman Moser. Thank you, Ms. Kramer, for being here. The question I have-- and you visited about this before is obviously, there's contracts [INAUDIBLE] that are light-- licensed engineers, PEs, their stamp. Those drawings come in that that's something that DOT is responsible for. Not being a licensed engineer, how do you plan to handle that within the department?

VICKI KRAMER: Senator, what we've done is created a, a memo that, that actually gives that authority to the deputy director for engineering so it'll be a delegated task. So I'll still be able to provide this--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

the leadership and the policy support while that engineering requirements will be held by the deputy director of engineering.

BOSTELMAN: Thank you.

MOSER: Senator Cavanaugh.

M. CAVANAUGH: Oh, sorry. Thank you. Thank you so much for being here and your willingness to serve our state.

VICKI KRAMER: Thank you.

M. CAVANAUGH: You don't have to answer this question if you don't want to, but it seems like every-- all of your work touches on so many things that Department of Transportation doesn't quite feel like an appropriate name. It seems like it's more of a department of infrastructure. And you don't have to say if you agree with that or not because that maybe is more political than you want to get, but do you feel like your department-- like you said, not a engineering background, but you do touch on so many different aspects. And the policy background, I think, is, is really an interesting approach to this. I love public policy so I'm a big fan. How do you deal with the broadband piece of things? I mean, you can't be an expert in all things, so maybe you could speak to that a little bit.

VICKI KRAMER: No. So I think in terms of infrastructure, it's really mobility is our main goal, right, the movement of people and service-- people and goods. When it comes to broadband, it's connectivity and it's also looking at the resources we have within the department. And we are experts when it comes to executing federal funds. We have quite a bit of outreach. Most of our federal pro-- all of our federal projects require NEPA, which has a public involvement aspect of it. So when you look at the resources and the talent already within the organization, there's an opportunity to leverage those in order to provide support for Nebraska in other ways.

M. CAVANAUGH: And just a follow-up question, so we have the Department of Administrative Services. Do you work closely with them on these contracts that you're bidding out?

VICKI KRAMER: We do. We do. And procurement is a specialty of mine and so, yes, we work with DAS on a lot of our procurements for oversight. But also we have an entire department that's been doing this for, for decades.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

M. CAVANAUGH: I may want to talk to you outside of here more about procurement because it's an interest of mine, so.

VICKI KRAMER: Absolutely, Senator.

M. CAVANAUGH: Thank you.

MOSER: Senator Fredrickson.

FREDRICKSON: Thank you, Vice Chair Moser. Thank you for being here and again, for your willingness to serve. I, I think you summarized the department well, mobility and connectivity. I think that's a, a great way to summarize things. I really appreciate your focus on, on safety specifically and that you highlighted that. That's a, that's a big concern of mine personally. But I know you and I spoke previously about this as well, the workforce development piece. And, you know, I think this is an issue that we're seeing statewide across multiple industries and I'm curious if you can speak a little bit more to your thoughts on how do we best, how do we best approach that issue as a state?

VICKI KRAMER: It's not just statewide, it's nationally.

FREDRICKSON: Yeah.

VICKI KRAMER: And that's why in order to keep the talent in Nebraska and also continue to recruit the talent to the state to be able to fill the needs, we've got to be creative. It's got to start young. There's a shortage of engineers. There's a shortage of skilled craft. So we have to be able to work at multiple different levels to make sure that we do have the engineering capabilities as well as the construction capabilities. That's an important aspect and something that I feel strongly about. I don't think the department can do it alone. I really want to work with this body in understanding at the tactical level, how do we retain our teammates and at the more strategic level, how do we lay out a foundation so that for 20 years from now, we're not dealing with the same issue? So we've got to develop as well as retain.

FREDRICKSON: Yeah. I really appreciate that that's on your radar and I think that's going to be really essential for our state's future and I think that ties directly into broadband as well, so.

VICKI KRAMER: Absolutely.

FREDRICKSON: Yeah, so thank you.

VICKI KRAMER: Thank you, Senator.

MOSER: Other questions? Senator DeKay.

DeKAY: Thank you, Vice Chair Moser. Ms. Kramer, we've talked previously. When it comes to the infrastructure, roads, bridges, etcetera, in the state of Nebraska, is there kind of a specific blueprint or outline that you go by to prioritize or is it based on needs, safety or all of the above? Or how do you guys--

VICKI KRAMER: That's a good question. When we went-- we did the TIA prioritization, it was a economic development, safety, prioritization process, right? So we introduced a new way of kind of thinking about that that had a public involvement aspect of it. So we went out and talked to the different communities to understand what the need is while we also did a formula with some consultants to understand where it was and the level of service the current system was providing. And so as we look at this, IIJA gave us an opportunity to potentially have a bigger impact. And so we're going through things right now-- for example, I know that bridges are a big topic, bridges and structures, and so understanding that the bridge formula funds that we have within the department are going to make a dent in what we can do going forward. We're looking at that prioritization process and how that applies to our current process. There was about a 30-40 percent increase in our overall formula funding on the whole transportation system. So we're working through it, we've been working it for the last year. I think we'll have more to come. The one thing I've heard from this body is more transparency with that project process. The other thing I think I owe you is what were the impacts? How could I potentially impact that ex-- that project and expedite it? So we'll look forward to working with the, with the committee as well as the Governor's Office on getting that information available.

DeKAY: Thank you. I look forward to future conversations with you.

VICKI KRAMER: Thanks, Senator.

MOSER: OK. Other questions from the committee? When you came by to talk to me just the other day, we talked a little bit about the completion of the expressway system. And I don't-- I didn't hear Senator DeKay's question. I hope this isn't a repeat of his question because he's got a bill on completing Highway 81. But how can we streamline that process to try to get that completed the very quickest that we can possibly do?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

VICKI KRAMER: The expressway system or the one-- the one corridor? Because I can address the expressway system. I think we're already working through it. So when we originally started out, we were in the 2040s, right? We've brought that down to 2036 and now 2033 for when we expect everything to be under construction, all elements of the expressway system. And so where we're working right now is with the new resources in terms of IIJA funds and potential other resources that may be coming through this body, how would that influence and how would we expedite those projects? We've got some plans. If you look at the documents that I provided to you, the Highway 81 will go into planning this year. And so we'll continue to work towards that 42 miles of corridor. I think that there are some innovative options that we can look at in terms of project delivery models that may expedite that process. We're probably six months from having a better plan and so I'll work with you over the next couple months to-- so you understand what elements come into that and play a part and a-- what can influence it. And I think the--

MOSER: Well, I appreciate that. I think in the past, we had kind of parallel universes when we were talking about expressways and what the Department of Roads took as their mission and then what the Legislature was kind of jerking at the leash, trying to lead their-- the direction. So I hope we can work together to accomplish those goals more quickly. And I think that I and I'm sure many others would be willing to give you what you think you need to get this done. You know, you know, we've got permitting, funding, political questions, you know, there's just no end to the-- all the loose ends that you have to get tucked away before you can buckle a briefcase shut, you know? And there's always something hanging out that delays us and sometimes I feel like, you know, there's an 8 ball somewhere, you know, that they-- Magic 8 Ball and they turn it over and the answer is ah, permitting is a problem. Then you turn it over and you come back up and oh, there's local jurisdictional problems and, you know. It's just really frustrating. So you've worked in that kind of a environment where things are ethereal and not always, not always objective, I guess. All right, thank you. Any other questions? Oh, yes, Senator DeKay.

DeKAY: Thank you. I would just like to say again that from our prior conversations and stuff, I really appreciate your insight on what we talked about. I look forward to our conversations. I-- as a legislator, I don't want to impede any progress. I'd like to be able to move projects forward. And however we can work and collaborate going forward, I relish those conversations so thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

VICKI KRAMER: Department does too. Thank you, Senator.

MOSER: All right. Thank you very much for your testimony. Is there anyone else to speak to the-- in support of Ms. Kramer's nomination? Anybody to speak in support? Is there anyone to speak in opposition? Seeing none, is there anyone to speak in the neutral capacity? OK, that should conclude our hearing on the nomination of Vicki Kramer. Thank you very much. Now we'll open the hearing on LB122 by Senator Bostelman changing provisions relating to the One-Call Notification System Act. Senator Bostelman.

BOSTELMAN: Thank you. Good morning, Vice Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Bruce Bostelman. Spell that B-r-u-c-e B-o-s-t-e-l-m-a-n and I represent Legislative District 23. I'm here today to introduce LB122, which is intended to improve enforcement of violations on the Nebraska's One-Call System. Our one-call system has two goals, two goals. The first goal is to ensure the safety of Nebraska's contractors and citizens who work around underground utilities. The second goal is to protect Nebraska's underground utility infrastructure from damage. To make sure we're meeting both of those goals as best as we can, we need an efficient and effective enforcement system for violations. For those of you that have served previously on this committee, one-call is a familiar topic. We've had bills over the last several sessions aimed at improving the time between the filing of a one-call complaint and the time it is resolved. Right now, the time period can be two or three years, if a complaint is resolved at all, and that is far too long. What I have learned from previous hearings is that there are two main problems that cause this delay. First, there is no staff dedicated to investigating the complaints that are filed. Second, there is no model-- there is no modified process, excuse me, for, for small first-time violations to be dealt with quickly, a small claims court of sorts. Why is it important to have such staffing for investigators? Right now, one attorney in the Attorney General's Office dedicates a portion of their time to doing all the-- all of the following: receiving complaints, investigating those complaints and prosecuting those complaints that read the-- that require it. As we have heard, there is simply not enough bandwidth there for all of these things to be done. So it is an issue of staffing. It is also awkward that our current system makes the Attorney General's Office both the investigator and the enforcer. We have heard from them in the past that this makes it difficult to prosecute complaints because it is difficult for an attorney to be their own witness. LB122 provides-- proposes to fix this problem by having one-call complaints filed with the State Fire Marshal's Office. Once filed, the complaints would be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

investigated by staff in the Fire Marshal's Office. In other contexts, State Fire Marshal staff already has the responsibility to investigate underground excavation accidents. It makes sense to have experienced staff investigate complaints once they are filed and to give the responsibility to someone other than those charged of prosecuting violations. That should free up time for the Attorney General's Office to focus on resolving complaints and violations more efficiently. As to my second point, the need for a modified small claims type of process: what we have heard in the past is that with the limited time and manpower that we have to spend on them, the Attorney General's Office focuses their attention on the large, significant, most serious complaints and violations. That makes sense. But what it also means is that many of the complaints that are filed for more minor first-time violations are never addressed. LB122 seeks to solve that problem by creating an Underground Excavation Safety Committee, a hit court in shorthand, and gives it limited authority to resolve these types of complaints and violations. As drafted, LB122 would cap the committee's authority to levy fines at \$10,000. It would also give the committee the authority to assess non-monetary penalties like continuing education. The concept in creating the committee and at the same time limiting its authority is to have a small claims type of forum where minor violations can be dealt with quickly. I want to make it clear that for those complaints and violations where the consequences can be severe, where penalties can be more than \$10,000, LB122 keeps the enforcement mechanism the same. Only the Attorney General can prosecute those types of violations in district court, just as they do currently. With the other changes LB122 proposes, it makes sense to have the Attorney General keep the responsibility to handle those kinds of cases. Again, the goal of all of this would be to speed up enforcement and free the Attorney General's Office to focus on the most serious matters. With that, I'm looking forward to the testimony of-- on the bill-- this bill. And if there are concerns, we'll be happy to see if we can correct some of those things or all of those things. And I know that there are several testifiers behind me that have much more experience with this system than I do. I would be happy to attempt to answer any questions that you may have. Thank you.

GEIST: Are there any questions from the committee? Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you, Senator Bostelman. So as it is right now, these all go to the Attorney General. They're all--

BOSTELMAN: Correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

M. CAVANAUGH: They're all under the Attorney General purview.

BOSTELMAN: All go to the Attorney General.

M. CAVANAUGH: OK, that's what I thought. We've had a few hearings on this. So this is just the small claims. Have you worked with the Fire Marshals on this? Are we going to hear from them in--

BOSTELMAN: I believe--

M. CAVANAUGH: --support?

BOSTELMAN: I believe the Fire Marshal will have some comments to that and the fiscal note addresses that as well.

M. CAVANAUGH: OK, OK. All right, thank you. I'm interested in hearing from people. Thanks.

GEIST: Any other questions from the committee? Yes, Senator DeKay.

DeKAY: Thank you, Chairman Geist. Senator Bostelman, with this committee, who will that be made up of and who-- is that through the Fire Marshal's Office? And who are the people on-- how big of a committee is and how many-- who are the-- what's their capacities there?

BOSTELMAN: So composition of the committee, I'll let those behind me speak to that--

DeKAY: OK.

BOSTELMAN: --but I believe it's for operators, for diggers and then the Fire Marshal will have-- they have a fiscal note here for two additional personnel-- people to do that.

DeKAY: That will work. Thank you.

BOSTELMAN: Um-hum.

GEIST: Yes, Senator Fredrickson.

FREDRICKSON: Thank you, Chair Geist. I had a question just to clarify. Senator Bostelman, you mentioned-- so up to two to three years for some of these complaints to be investigated, which is concerning. Then also, you said minor first-time offenses aren't, aren't addressed at all. So is that two-to-three-year period, is that for these, these bigger issues? It takes that long for those to be addressed?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BOSTELMAN: So it does both. That's why some of the big issues don't get it-- you know, for two to three years and some smaller issues perhaps, not at all.

FREDRICKSON: OK.

BOSTELMAN: So again, I think those behind me will, will talk more about that.

FREDRICKSON: Sure.

BOSTELMAN: But this has been an issue we've dealt with in this committee probably-- I know for the six years we've been here. And I think this bill, as we have it now-- and we'll hear the testimony from those behind us and it'll be interesting to see that testimony. But I think this is probably the closest opportunity we have to, to try to put something in place that may not be perfect, but to get it started and make adjustments for there. But we'll see what those behind us-- because right now, the Attorney General's Office does the investigation then does, does the prosecution and that's, that's difficult for them to do that. So this is an attempt, once again, to try to find a process and place for our minor complaints to be handled and then the more serious one to go to the Attorney General, that it's already been investigated by someone other than the Attorney General.

FREDRICKSON: Just one follow-up question as well, you mentioned up to-- if I understood correctly, up to \$10,000 in fines for these. How does that compare to the current structure for, for fines?

BOSTELMAN: The current ones that are out there?

FREDRICKSON: Yeah.

BOSTELMAN: I'll have to defer that to someone that's following me.

FREDRICKSON: Sure.

BOSTELMAN: OK.

FREDRICKSON: Thank you.

GEIST: Any other questions? You staying for closing?

BOSTELMAN: Yes.

GEIST: Great.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BOSTELMAN: Thank you.

GEIST: Thank you. OK, are there any proponents for LB122? Good morning.

BRAD WAGNER: Good morning, Chairwoman Geist and fellow members of the Transportation and Telecommunications Committee. I'm Brad Wagner. I'm an owner of Midlands Contracting in Kearney and today I'm here to represent 110 members of the National Utility Contractors Association of Nebraska. We are the excavators when it comes to the one-call law. I'm currently the chairman of our one-call committee and I've been a past president of our chapter. Our members build the sewer, water main, put in the broadband for you and your constituents across the state so we deal with the system every day. I'm here to ask for your support for LB122 as we try to improve the enforcement system and the law overall. I'm going to reiterate a little bit of what Senator Bostelman said about safety. That's the number one goal of one-call, safety for our employees and the public when we have to dig, but also safety for the facility owners, the utilities. They need safety that their stuff is going to be where it was originally put. We're not going to damage it. And that safety goes on to your constituents. They have a safe, warm house. They have 911 service when they need it. They have water that-- water and sewer service and businesses aren't interrupted because of loss of Internet. So we've got to keep fighting to keep that safety. Right now, there's two problems. One is our contractor members don't trust the system. Every day, they're dealing with locates not being done, not being done on time and also being done incorrectly. So they don't expect things to be done right. They've lost trust completely. So that's one issue. The other issue is they don't trust the enforcement system. So as has already been said, it takes two, three, four years to get a one-call complaint heard. My company currently has three complaints that are three and four years old and I don't file complaints anymore. It's a waste of my time. I pretty much do the investigation to protect myself from the insurance side, but going-- running it into the system, into the one-call system enforcement is, is futile. So how do we fix the system? Obviously, we've got to start with enforcement and that's what LB122 will do. We have to create a timely and efficient and fair manner to get the one-call violations looked at, taken care of. And violators, you know, of all kinds, not just one side or the other, but all stakeholders, all users of the system need to be held accountable. That'll take care of the problem with the case not getting done, not getting done on time. We've got to get people to understand that there's repercussions and right now, there are none. So it's a Wild West out there. One thing I want to hammer home is the hidden cost of what happens when

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

the locate system doesn't work. We created this system back in '94. Contractors rely on it now to get locates done quickly so they can start their jobs on time and get them done. When this doesn't happen, that cost of delay, that cost of me having to go out and do extra digging to make sure the locates are right, gets into my productivity rates. It gets into my hourly rates. When I bid the next job and I used those rates from the past jobs, my price has gone up. So the constituents, your taxpayers of Nebraska, are paying a premium because the system's not working. I've had to buy equipment to vacuum excavate utilities to make sure they're where they say they are. I have three vacuum excavators. I didn't own those three vacuum excavators about seven, eight years ago. So I have to have that equipment to protect myself. Again, that's in my hourly rate. So don't underestimate what that hidden cost is when the system doesn't work. We, we rely on it. We expect it to work and it's not so we have to come up with other ways to get the job done because the owners of our projects don't care if we're having that problem. They simply have a date to get done. So with that, I ask if you have any questions on the system, on what this bill has in it, feel free.

GEIST: Are there any questions from the committee? Yes, Senator Moser.

MOSER: So your three cases that you have pending, are they cases you brought against somebody else or is it someone else questioning work that you did?

BRAD WAGNER: No, it's my cases brought against others, against the facility owners.

MOSER: So-- and it's against the owner of the property, the city or whoever it is or--

BRAD WAGNER: No, it's against the utility owner. They did not mark their, their utility correctly. I hit it and had a delay. But mainly it's the violation of the law. I'm not going for the cost of the delay. What I'm saying is they did not mark their utilities correctly and follow the law so that's a violation of the one-call law. That's really all the--

MOSER: Well--

BRAD WAGNER: --Attorney General has.

MOSER: --the law requires you to be within 18 inches or something like that?

BRAD WAGNER: Right. They got to be within 18 inches, yes.

MOSER: That's left or right--

BRAD WAGNER: Either side, either side--

MOSER: Yeah.

BRAD WAGNER: --of the edge of the utility.

MOSER: Yes and how do they indicate the depth of them?

BRAD WAGNER: They do not. They're not responsible in the law for depth. That's--

MOSER: So your-- in your cases, you're saying that they missed it by three feet.

BRAD WAGNER: In a couple of my cases, they didn't mark it at all.

MOSER: They never showed up to mark it?

BRAD WAGNER: No, they showed up. They just did not know that it was there. It wasn't-- the excuses are-- run the gamut. It's, it's not-- it wasn't on my maps. I don't know why we missed it, but in a couple of cases, yes, they flat did not put a mark on the ground and we dug and, and hit the line.

MOSER: And so then you had to repair what you hit and you--

BRAD WAGNER: No, I did not. They did.

MOSER: You hit the utility's--

BRAD WAGNER: Yes.

MOSER: --line and they fixed it.

BRAD WAGNER: Right.

MOSER: They didn't bill you then?

BRAD WAGNER: They tried. In a case or two, they tried.

MOSER: So they dispute the fact that it wasn't marked right or--

BRAD WAGNER: Yes, yes. So one instance, they told me there's-- they sent me a bill and I said I have all the documentation. I have video.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

I have witnesses that this wasn't marked. And the comment was, well, our insurance company will just have to fight it out with your insurance company and that's what happened.

MOSER: And how is the bill going to settle those kind of disagreements?

BRAD WAGNER: Well, the bill isn't going to settle the cost side and the insurance side. The bill's going to settle the fact that they didn't mark it correctly and they violated the law. How that works into my insurance company, going back and saying, look, we have a claim that was filed with the one-call hit court and you lost that so now don't try to bill us for it. That's the only way I can see it working through. But this isn't going to directly try to transfer that cost of repair on the contractor or away from the contractor, any of that. This is strictly to say if you violate the law, we're going to hold you accountable for violating the law.

MOSER: Thank you.

GEIST: Any other questions? Yes, Senator DeKay.

DeKAY: Go ahead.

M. CAVANAUGH: No, you go ahead.

DeKAY: With this, are there sometimes third-party locating companies out there that are doing the marking for the utility companies?

BRAD WAGNER: Yes, that's, that's a common thing that a handful of the utilities use a third-party locator to do their locating. And that's a subcontract agreement between the utility and that third-party locator.

DeKAY: This might be a question for somebody-- another testifier, but with those third-party contractors, does the responsibility then lie with them rather than the utility companies or does it go back to the parent--

BRAD WAGNER: According to the law, it's strictly is with the facility owner. It does not transfer to the third-party locator. So the-- whoever the facility owner wants to use, whether it's their own people or anyone, that's their business. But it all comes down to the utility owners are responsible to get it marked in whatever way they decide to, their most economical way.

DeKAY: Thank you.

GEIST: Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here, Mr. Kramer. It's nice to-- Kramer. I have the director's name in my mind, sorry-- Wagner. So I kind of have a complex question, I think. So currently, this authority is with the Attorney General's Office.

BRAD WAGNER: Right.

M. CAVANAUGH: But you have cases pending with them over multiple years.

BRAD WAGNER: Right.

M. CAVANAUGH: And this bill seeks to create a committee. I don't-- I'm not sure how they would have the same authority as the Attorney General to, to seek legal action on your behalf.

BRAD WAGNER: Well, it would be through the State Fire Marshal's legal--

M. CAVANAUGH: OK. So if the-- not trying to change Senator Bostelman's bill, but if we took the resources that we're putting in this and forced the Attorney General to hire a team to handle these smaller claims, would that be the result that you're looking for?

BRAD WAGNER: Oh, it would be a result. But the problem is, again, you still don't have investigators versus judge. You don't have that investigative part. That's not what the Attorney General does.

M. CAVANAUGH: OK.

BRAD WAGNER: And so we're trying to use-- and the other part is the one-call law is currently under State Fire Marshal's jurisdiction. So we're just trying to use their investigative experience and they already have investigators. So we're just trying to use that. We think that would be more efficient.

M. CAVANAUGH: But they don't have enforcement authority. Is that the issue?

BRAD WAGNER: No, they do have some. Yeah, they do because of their-- I mean, they enforce already underground laws when it comes to gas and fuel so this--

M. CAVANAUGH: So what is--

BRAD WAGNER: --would be--

M. CAVANAUGH: Like you said early on in your testimony that this needs enforcement, which I don't think any of us would disagree with. But what, what does enforcement look like to you? Is it, is it fines? Is it losing licenses?

BRAD WAGNER: No. It'd be-- to us and the bill wants to try to say that we want to start with education. So look at did the person cause this problem because they weren't educated in the law or in what they were expected to do? And then beyond that, if it's a repeat offender, somebody that should have known better, then you look at fines. Again, we're trying to change behavior through education and then second, through penalties.

M. CAVANAUGH: And are there currently no fines assessed beyond-- I mean, paying for damages, but there's not any fines assessed in addition to paying for--

BRAD WAGNER: When they do rule on them, they have assessed fines. The Attorney General has assessed fines.

M. CAVANAUGH: OK.

BRAD WAGNER: It's on the 811 website. They do have Attorney General's reports.

M. CAVANAUGH: AG can assess fines.

BRAD WAGNER: Yes.

M. CAVANAUGH: OK, thank you. That's very helpful.

GEIST: Yes, Senator DeBoer.

DeBOER: I'm sorry. I'm coming in a little bit in the middle of the movie because I was in a--

BRAD WAGNER: You're all right.

DeBOER: --in another committee. So what you would like to do is just have sort of a smaller-level enforcement mechanism and then still have the larger hits within the Attorney General, is that right?

BRAD WAGNER: That's right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

DeBOER: OK and that allows these smaller hits to basically get some playtime, is that right?

BRAD WAGNER: That's right.

DeBOER: Because otherwise, what we have right now is a situation where the lesser-damaged or damage-producing hits are not getting followed up on, are not really having an adjudication within the Attorney General's Office, is that right?

BRAD WAGNER: That's correct.

DeBOER: OK. So here's one of my questions for you. Do you know ahead of time if there's going to be a small amount of damages or a large amount of damages when you're sort of marking or when you accidentally hit something? Is that something you could predict?

BRAD WAGNER: Well, predict it, no, but at the time you hit it, I mean--

DeBOER: Yes, then--

BRAD WAGNER: --you'll know-- yes.

DeBOER: --then you know real quick.

BRAD WAGNER: Right. But no, I guess trying to predict it, what are you trying to accomplish with predicting it before it happens?

DeBOER: I'm just saying I think having these small cases get big results, get fines, get, get some adjudication will help to prevent the big problems from happening as well by sort of generally across the board, making sure that you're not just gambling with oh, I'll probably not have a big hit this time.

BRAD WAGNER: Right. Yeah, that's-- again, I can't speak for all the contractors out there and people that are digging of what kind of chances they're willing to take. I mean, I will tell you that right now, with the system not working as efficiently as it should, people are taking chances, you know? Because if you, if you don't mark our utilities within two days, the law says we can start digging. Now, it's got some gray area in whether we're responsible for what happens or not. But at the same time, that's when contractors have to go out and start doing some exploratory digging. You know, for us, we might start vacuum excavating in areas that we wouldn't have to if they just marked them. But we just go out and make sure something's not right in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

our way and we're spending that time. So other contractors may just say, what the heck, I'm going to go for it and if I hit something, I'm going to, I'm going to have some legal recourse saying you didn't show up for two days like you're supposed to. So that's the Wild West that's happening out there.

DeBOER: Got it.

BRAD WAGNER: I don't know if I answered your question, but--

DeBOER: No, that really does.

BRAD WAGNER: OK.

DeBOER: So what we're trying to in general, writ large prevent is the Wild West of well, they didn't mark it when they were supposed to. I don't have this marked now so I'm just either going to take my chances or I'm going to be inefficient and do that exploratory digging--

BRAD WAGNER: Right, right. That's what we're at.

DeBOER: Thank you. That clears that up for me.

GEIST: Yes, Senator DeKay.

DeKAY: Thank you, Chairman Geist. Just a quick follow-up on a couple questions. When you request a locate, how many days do the locators have to come to mark those lines and how many days after their mark do you have to be able to do your digging?

BRAD WAGNER: Right. So the law says that the day that I request a locate, starting at midnight, they have two days. So if I, if I call in today, they would have two days from now. So it would be Thursday-- through the day Thursday to mark. At that point, the ticket is worth-- is, is alive for 17 days. What that does is that gives us two weeks that we can use it and then we need to refresh on that 14th day to have a live ticket on the 17th day. That's kind of the map they tried to set up with that. So if we need a refresh because we lost the marks due to weather, somebody came in and graded the area and took the marks out, whatever might happen, or they just wear out in the sun, traffic runs them over, whatever, we, we can then refresh it day 14 to get them ready again.

DeKAY: That's what I was going to ask about. If you have 14 days to refresh, there could be a lot of natural things that could happen to the markings, whether it's neon paint or flags or whatever.

BRAD WAGNER: Right.

DeKAY: That does happen. So-- but one, one more question, if I may. When it comes to the cost, is there different utilities where you know if there is a, a hit that-- like, in case of fiber versus water versus gas lines, which ones are potentially the most expensive to--

BRAD WAGNER: Well, electric and gas is the ones we're scared to death of because of the danger--

DeKAY: Yes.

BRAD WAGNER: --but all of them. I mean, you know, people rely on, on fiber on, on their Internet. Hospitals have been taken out by, by fiber hits. So right now, you know, the guy-- my guys obviously have fear of gas and electric because of their, their inherent danger to them. But from a company standpoint, I mean, we treat them all the same. There's no good, there's no good utility hit, you know? Our goal in our company is zero and unfortunately, you know, zero that are our mistake. We, we give our guys a little leeway when they did everything they could and they accidentally catch something. But I hope that answers your question.

DeKAY: It does. How often, how often do those hits occur--

BRAD WAGNER: Well--

DeKAY: --on, on a project? I, I visited your facility in Kearney--

BRAD WAGNER: Right.

DeKAY: --on a project like that street system you was working on.

BRAD WAGNER: Right.

DeKAY: How often does a hit occur on a--

BRAD WAGNER: I would say there's probably a hit on every other project. But, you know, again, our projects are lasting three, you know, 3 to 8 weeks. I mean, the project you were on in Keaney, we had hit that utility that the owners didn't realize that it went underground where it went underground. They didn't mark it. So we had an example there of just it wasn't on the maps for whatever reason. So-- but the bigger thing that we run into is the near misses. We have near misses every week. And, you know, there's things out there we can do to see the utilities are on the street. You know, if we're in a, if

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

we're in a small town and we're digging down the street, we can go look for the pedestals. You've seen telephone pedestals sitting in the corners of the-- or at the ends of the blocks and we can see where the electrical comes down off the pole and, and what building it might go to. You know, typically, electricians don't run things all over the place. It's all straight line. So we can have that. We have to spend that time surveying the area to make sure that things aren't missed. And that's one of the steps we take now is because, you know, we used to trust the locates more, but now we really spend some time surveying and looking around. But those near misses are the ones that, that drive my guys crazy because, you know, they call me up and they say I almost hit an electrical secondary line, you know, that wasn't marked. And, and then we have to figure out if it's-- if it was really the public power's issue or if it was the owner's issue to mark. You know, there's all those kind of things that enter in, so. But the other part you got to remember is a lot of utilities have flags over top of them. We put marking tape, warning tape over top of them so we'll hit that a lot of times. Of course, my guys are always looking for marking tape: yellow if it's gas, red if it's power, orange if it's telecom. And so we have a lot of that. So we save the day. You know, that's-- I told the guys your job is to save the day. You know, you're out there trying not to hit things. You can't use the one-call violations as an excuse. That's my company and that's what we try with NUCA members to say is we're still trying to be professional excavators and do the right things to work around the system problems. But again, this is adding to our cost and I don't think that's understood enough out there in the world of the cost that it's added to what we do.

GEIST: Yes, Senator Moser.

MOSER: When you say they didn't mark the utility, they forgot to or they never showed up or they, they came out and marked some things and not all?

BRAD WAGNER: That-- they came out-- in the case-- in Grand Island, we directional drilled. You know, without digging, we ran a directional drill under the street and as we pulled back, we caught a telecommunications cable and they never marked it. Now, they-- others marks had been done for other cables, but in that specific area, they forgot that they ran a fiber through there a few years ago and so it just didn't get marked.

MOSER: So somebody didn't get it put on a map somewhere so they didn't--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BRAD WAGNER: That, that's-- I never got an answer, to be honest with you. But I mean, it either didn't get on the map or the locator didn't see it. And I, I don't have an explanation. I don't have a good answer for you on that.

MOSER: That's something that has to be determined by the investigation.

BRAD WAGNER: Right. And again, you're trying to change behavior by holding them accountable for that if they broke the law, whether that's through education or through a fine.

MOSER: Well, I would hesitate to accentuate breaking the law. I think everybody is trying to dig their lines in and not hit things and I think the utilities would rather that you didn't hit their stuff--

BRAD WAGNER: Sure.

MOSER: --you know? And, and to say that, you know, oh, they broke the law. Well, we're all digging in the same space, trying to connect things and we need to work together to get those things figured out.

BRAD WAGNER: Sure.

MOSER: Thank you.

BRAD WAGNER: You bet.

GEIST: I have a question for you. So when you, when you file with your insurance company, do they also have to do an investigation?

BRAD WAGNER: Yes, depending on the size of the claim, there's usually-- their safety person will be coming and looking at the evidence. Either I have-- and I-- you know, again, it depends on how much effort I put in and what--

GEIST: Sure.

BRAD WAGNER: --I can provide them. A lot of it's provided by me in my specific case. But if not, I know the-- that their safety person would come out and, and see what the details are of the damage, yes.

GEIST: So in situations where you're filing with an insurance company and you're filing with the one-call, do they ever collaborate or are they--

BRAD WAGNER: No.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: --just two totally separate--

BRAD WAGNER: Yeah, they do not collaborate because, again, the one-call system, we're trying to say the law was violated. But now what happens is that same package of information I give to the one-call complaint, to the Attorney General in this case, I give it to my insurance company. It's the same--

GEIST: OK.

BRAD WAGNER: You know, typically a video of what we've got is the, is the main witness in all of this.

GEIST: OK.

BRAD WAGNER: So but yes, they do not collaborate.

GEIST: OK. I was just curious how that works.

BRAD WAGNER: Yeah, two separate issues.

GEIST: OK. Any other questions from the committee? I don't see any. Thank you for your testimony.

BRAD WAGNER: You bet, thank you.

GEIST: Any other proponents for LB122?

BRENT SMOYER: Good morning--

GEIST: Good morning.

BRENT SMOYER: --Madam Chair, members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, and I'm here to testify in support of LB122 on behalf of NorthWestern Energy. NorthWestern is a natural gas company serving Alda, Grand Island, Kearney and North Platte. Given the number of questions that came before me, I will keep my testimony exceedingly brief. NorthWestern supports improving and streamlining the process for adjudicating complaints for One-Call Act/Diggers Hotline/811. This process was, of course, clearly explained before me in the extensive testimony and the question was excellent. We trust the Legislature can and will establish an efficient, fair process, and an adjudicated body will be balanced between excavators and operators. We believe that LB122 is an excellent start, especially as it builds on the committee's previous work on this matter last year. We'd be glad to engage in discussions to accomplish Senator

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

Bostelman's goals and objectives, as we know there will likely be changes to this bill. And of course, the number of I assume neutral testifiers behind me will certainly have discussions about that. We're happy to be a part of the overall solution regardless of how it ends up and are happy to inspire further solutions based on LB122. With that, I'll conclude my testimony.

GEIST: Thank you, Mr. Smoyer. Any questions from the committee? I don't see any. Thank you.

BRENT SMOYER: Thank you.

GEIST: Any other proponents? Seeing none, how about opponents? Are there any opponents to LB122?

JOHN BUCKLEY: Good morning, Chairman Geist--

GEIST: Yes.

JOHN BUCKLEY: --and members of the committee. My name is John Buckley, J-o-h-n B-u-c-k-l-e-y. I'm director of work management at Omaha Public Power District and I'm testifying on behalf of OPPD. I am also testifying on behalf of Nebraska Power Association, NPA. The NPA is a voluntary association representing all of Nebraska's approximately 165 consumer-owned public power systems. Thank you for the opportunity to submit testimony to the Transportation and Telecommunications Committee on this important legislation. I want to express OPPD's opposition to LB122, a bill change to the provisions of the One-Call System Act. OPPD is both an excavator and an operator with regards to this bill. And I just want to point out, whenever somebody digs and hits one of OPPD's facilities, our claims department has a team that goes out immediately. We have a system set up with the one-call that we get immediate notification. We're out there right on site. We interview, we investigate and we come to a decision on whether the excavator was at fault or we were at fault for not properly locating our facilities. So those go both ways. Sometimes we, we have a miss, sometimes the excavator has a miss, but those are clearly identified and rectified and we seldom have any follow up on those. The decisions are mutually agreed upon between the excavator and OPPD. We've been reviewing the one-call bills for a number of legislative sessions. I believe we are getting closer to a compromise on this, but some concerns still remain. For example, the cost of implementing this bill will more than likely be recovered, possibly by a ticket charge paid by utility members. You know, creating a third party to help solve claims would create potentially additional settlement costs. Other

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

issues as we've reviewed this have come up is the makeup of the committee. We would like to explore alternates to the Underground Excavation Safety Committee to prevent potential conflicts of interest. Also looking at increasing the number of members on the safety committee to maybe prevent some of those conflict of interests. Also at issue for us is-- with the one-call system is excessive refresh tickets by excavators, including multiple refresh tickets requested before an excavation is initiated. So we're working on these. We're working on these with, with, with other stakeholders and, and your committee. Hopefully get a resolution so we can move to neutral on this bill at a minimum. So with that, I just-- a couple of kind of statistics I'd like to throw out there from a, you know, operation of the system. So for 2022, 99 percent of all tickets were located correctly based on status reported back to the Nebraska One-Call System. So that's our call center that records all, all activity and tickets and so incorrect ticket row-- locates where an excavator has called in and said the marks are not correct represented 1 percent of all tickets last year. Also, you know, I think we've talked about this about the tolerance zone. State statutes allows that, plus or minus-- within 18 inches plus or minus half the width of the facility. So just want to highlight that, you know, as an operator of a facility, locating is part art, part science. And so that tolerance zone is in there to reflect the fact that, you know, you're not going to get exactly on that line every time. And as a, as a excavator that OPPD is also, I'd like to point out, you know, in Title 152, Chapter 2, there's provisions for hand digging within that 18 inches plus half the width of that facility. So excavators-- and we're one of those too-- where you take care as you're in that tolerance zone, you have to hand dig and not mechanical digging when you approach the location of that facility to provide, you know, extra caution there to prevent those damages. Just on refresh tickets, in Nebraska last year, 18 percent of all tickets were refresh tickets. And for OPPD, for the tickets we had to locate for excavators, 24 percent of our tickets were refresh tickets. And as I mentioned earlier, sometimes those tickets are refreshed multiple times without any excavation beginning. So when to refresh a ticket, the marks are gone, weather-- you know, you heard that testimony earlier, but also the statute as far as when notification is required for excavators, it's between two and ten business days before commencing that excavation. So excavators are supposed to call in two days and initiate that excavation within that ten-day period and then that ticket life is, is 17 days. But we're seeing a big problem with people kind of using the ticket system as a appointment system, right? They put tickets in and then might get to that ticket eventually. So I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

would thank you in advance for considering our position at this point. And just want to clarify that we are open to, to additional discussion and talk on, on the bill. With that, any questions?

GEIST: Yes, Senator Bostelman. I'm sorry, Moser.

MOSER: I take that as a compliment. Thank you.

GEIST: You should. Sorry.

MOSER: So you don't get paid for the first ticket or subsequent refreshes.

JOHN BUCKLEY: So we pay-- so OPPD pays to the One-Call System for that ticket to be recorded and then we pay for that ticket to be relocated again.

MOSER: So-- but the, the contractor doesn't have to pay anything.

JOHN BUCKLEY: It's free to the excavator. So the excavator can call in as many tickets as they want. You know, the idea for it to be free is we don't want cost to prevent or prohibit--

MOSER: Yeah, if it's \$200 charge, maybe he's going to start digging and then he hits something and you got a \$5,000 damage.

JOHN BUCKLEY: Right. So there's no charge for an excavator. The facility owners bear the cost of the One-Call System on a per-ticket price. And then facility owners have the cost to locate the facilities for the tickets that are called in.

MOSER: So charging for subsequent refreshes probably is still not a good idea because--

JOHN BUCKLEY: I--

MOSER: --they might let it slip and--

JOHN BUCKLEY: Yeah, I don't think we should have any barriers to excavators calling in a ticket and charging them for extra refreshes, you know? They get behind or they forget. Next thing you know, they're out and--

MOSER: Yeah, if they're not sure, it's better to look again before you crash into something.

JOHN BUCKLEY: Exactly.

MOSER: Thank you.

GEIST: Yes, Senator DeBoer.

DeBOER: That-- thank you, Senator Geist. That sounds like a-- kind of a separate problem. The problem of multiple refreshes sounds like a-- kind of a separate problem than the one that's being addressed by the One-Call System and trying to figure out, like, the four corners of this bill doesn't seem to address-- but you can help me understand how it does.

JOHN BUCKLEY: Yeah. So, so, you know, one-call is a, a multilayered onion, I would say. And so, so one of the concerns in the excavator community and it was mentioned earlier was the timeliness of locate tickets. So we've got two business days to locate as a facility owner and operator. So if-- in my case, if I'm chasing 24 percent of tickets at a refresh and maybe they haven't been dug on and maybe they're just being refreshed, you know, and no work is going, that diverts my resources from getting new tickets. And so that kind of spirals out of control where, you know, we're out marking tickets that already have paint flags in the ground where we could be marking new tickets. And so it's a challenge from a resource perspective to keep on time throughout the year.

DeBOER: And that's actually-- I don't know that we've really talked a lot about that aspect of that in our one-call hearings over the last couple of years when I've been on this committee. So what would you suggest? Because obviously we don't want to penalize anyone for saying, hey, come, come help us out, let's make sure we got the right spot. So how would you suggest limiting the number of refreshes that we have?

JOHN BUCKLEY: Yeah. So, you know, it's a behavior piece, right? So whether a fine would be appropriate or not, I'm not sure. You know, maybe it's education. Maybe it's, you know, reaching out. We do track by excavator how many late tickets or how many refreshes they have per ticket, right? So we have done-- OPPD has done some outreach on some-- a few excavators in the Omaha area to say, hey, you guys are really refreshing a lot of tickets, you know, can we help you out here? Do you need some education? So I'm always on the education side versus the-- you know, the carrot versus the stick. You know, can we educate the impact of these refreshed tickets on the system and the ability for owners to locate in a timely manner?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

DeBOER: Well, that's something that-- yeah, I mean, I-- being a teacher, I'm also into the education side of things too, but. So your objection to what we have here with the Bostelman bill is primarily you don't like the makeup of the committee.

JOHN BUCKLEY: Yeah.

DeBOER: Am I understanding that? And what-- any other specific things that would sort of get you to yes?

JOHN BUCKLEY: You know, I think, you know, having a, a better understanding of how the Attorney General's Office is going to interact with that and, you know, kind of the ability of that large and small and how that would work. And, you know, I brought up the refresh idea-- the refresh concern just to give the committee a perspective on some of the other impacts there are to the successful operation of the One-Call System.

DeBOER: Yeah. That's helpful. Thank you.

GEIST: Thank you. Any other-- yes, Senator DeKay.

DeKAY: Thank you, Chairman Geist. Talking about the refresh and initial locate, you have 48 hours or two days to locate. If that's not located within that time period, is there a fine levied or how does that work if the locators aren't there within that 48 hours? And I guess to go off of that, so that-- the refresh part of it, is there any fines levied if they don't conduct the work in the 14-day time period that they have? Our how is, how is that leveraged out so that everybody is accountable for where they at on the initial locate and on the refresh part of it too.

JOHN BUCKLEY: Yeah. So, so today, if a facility owner-operator does not locate their ticket within the two-day period-- so basically it's, it's if I called a ticket in today, I've got 24 hours on Wednesday and 24 hours on Thursday. So it would be 12:01 on Friday that that ticket is good, right? So from a, from a complaint perspective, there are complaints in the Attorney General's Office both for, for ex-- facility operators that haven't located their tickets on time. And so those are-- those have been in place. They still-- I think facility-- or operators have not. That's the issue we're like-- I would like to see enforcement on those habitual late ticket facilities. You know, from a standpoint of refreshes, we've just started at least-- I've started on, from my perspective, started gathering data. I haven't really filed a complaint against an excavator for excessive refresh,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

just trying to get a picture of, of what that looks like at this point. Does that, does that help?

DeKAY: Yeah. That-- you know, when it comes to the-- when I'm asking about fines or anything on all these projects, time is money and refreshes, the operators or the excavators want to get it done in a timely manner because they're under constraints on a time frame to do that. The initial locate, if it's not located within the first 48 hours, there's probably a time constraint, a little more pressure put on the excavators to start digging so-- to offset any potential extra expenditures. I was just curious how those were handled so that--

JOHN BUCKLEY: Yeah.

DeKAY: --who's ever responsible for bearing the brunt, regardless of it's in the initial locate or if it's in the refresh process, who, who's responsible for bearing the brunt of those expenses-- expenditures due to time?

JOHN BUCKLEY: Yeah. So from OPPD as an excavator's perspective, the biggest impact for us is on our customers. So a lot of work is, you know, their cable falls to their house, a cable falls in the neighborhood. But more often than not, it's, like, backyard cable falls and we're waiting on, on telecom to come locate. So we call in a ticket. Two days pass, five days pass, 14 days pass and we still haven't got a locate on that. So the cost is the customer has a piece of cable that's faulted out. We've got a temporary fix and they're waiting for us to come back. And so, you know, from our constructive perspective, it's more of the impact on our customer. And then also my team balances all the work, we schedule all the work, and it just makes it a lot harder to juggle because you're waiting for facility owners to locate their tickets.

DeKAY: Thank you.

JOHN BUCKLEY: The other cost is, is on refreshes, if we go five or six times and just put paint on paint, you know, that's costing me five times as much as it should have cost, you know, if it's five refreshes, if it's six, you know, for example.

GEIST: Thank you. Any additional questions from the committee? I don't see any. Thank you for your testimony.

JOHN BUCKLEY: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Are there any other opponents? Any opponents? How about those who wish to testify in a neutral capacity? Good morning.

JILL BECKER: Good morning. Chairman Geist and members of the Transportation and Telecommunications Committee, my name is Jill Becker, J-i-l-l B-e-c-k-e-r, and I'm a registered lobbyist for Black Hills Energy. I'm appearing before you today in a neutral capacity on LB122. And as several people have noted, this committee has considered numerous one-call bills since the inception of the One-Call Notification System Act in 1994. So we've had plenty of time to think about things like this, but things have certainly changed over that amount of time. Senator Bostelman began his comments with the intent of the act and I would emphasize one portion of it. It is to prevent injury to persons and damage to property. And we can always pay for the damage to property. We can't undo when injuries to people are caused. So from our perspective, any changes of the One-Call Act should be viewed through the lens of that intent. Does it increase the opportunity for notice and safety? Does it prevent injury to people and to damage? Sometimes what that means is that excavations can't happen as fast as people would like because we have to get those locates done. Over the 29 years or so that the One-Call Act has been in effect, the sheer number of locates has increased exponentially. This will increase even more with the further deployment of broadband. And so as this committee considers all of our broadband legislation, please know that that deployment is going to have a very significant impact on utilities. A few comments regarding LB122 specifically: Black Hills Energy is open to the creation of a safety committee or what is sometimes referred to as a hit court. I would recommend some potential changes. First, removing the State Fire Marshal from the board. It would seem to be a conflict of interest to have the State Fire Marshal investigating the complaints and then serving on the board-- if I read the bill correctly-- and then determining whether to take action and fine someone. Secondly, if the intent is to provide a swift and effective determination of complaints, I would recommend that the board should meet monthly. The board should also be-- or the bill should be clarified to see-- I'm sorry, the bill should be clarified to ensure that the \$10,000 penalty limitation applies to a single incident or to multiple incidents and just to make sure that that aligns with the current statute regarding penalties. One of the questions that we have had over several years is whether the Attorney General has sufficient resources to handle the anticipated caseload of one-call cases. And I think it's fair to say that we really don't know what that caseload would be if people assumed that it was a process that worked. Is the time and effort of an investigation worth it?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

That, that is always going to be something that the AG has to weigh. And potentially with, as Senator Bostelman described as small claims type of situation, perhaps the safety committee could look at every complaint brought, brought before it. It could identify the potential habitual violators early on, even if the damages were small. Other things for this committee to consider, just based on the conversation that we've had over the other testifiers: limiting how many locates could be called in, limiting the amount potentially to reasonably excavated it within the validity period of the markings. That is a huge issue for us. There is no limit on what somebody could actually call in as a locate. If somebody called in the entire city of Lincoln to-- for us to do locates, we would have 48 hours to do it. And there's nothing to really allow us to say to somebody we actually can't do that. We would encourage the committee to look at making the bar-- at making the board a little bit larger, in part due to potential conflicts of interest, but also to make sure that they have a quorum that they can take action. We encourage the committee to consider violations for failing to locate a ticket even after it is late. We also need to recognize that the ability of a city to impact actions like this through the permitting process could also be part of the discussion. That's pretty much all my comments. Given the range of comments that you've heard today, I'm sure that you have questions. I hope that the committee will strongly consider some of the recommendations to improve the bill and I'd be happy to continue working with other interested parties to work on this piece of legislation. I'd be happy to answer any questions.

GEIST: Thank you for your testimony. Are there any questions from the committee? Yes, Senator Fredrickson.

FREDRICKSON: Thanks. Thank you for being here. You kind of-- you outlined a number of different potential suggestions for the bill to improve it. I'm curious, have you had the opportunity to share these with Senator Bostelman's office?

JILL BECKER: I did talk with Senator Bostelman. None of them are in writing.

FREDRICKSON: OK.

JILL BECKER: But Senator and-- Senator Bostelman and I did speak yesterday and we knew that there would be a-- there would be several ideas today.

FREDRICKSON: OK. All right. Just want to confirm that.

JILL BECKER: Sure.

FREDRICKSON: Thank you.

GEIST: Is it common for you to get requests to do a large number of locates by a company? For instance, you said you would have to have 48 hours for a whole city.

JILL BECKER: Yeah.

GEIST: Is, is a large area request common?

JILL BECKER: I would not say it is common, but I will say that when we had a large fiber project start in Lincoln, those requests were huge. We-- and, you know, if you think about Nebraska weather, our locating cycle is generally-- depending on the weather-- March, April, heading into maybe October, right? That's your construction season. We definitely had to increase our staffing and work as best as we could with that project. But ultimately we ended up hiring more people, dedicating a person to that project, really increasing the workload of our people and the number of them on that project because the law said we had 48 hours. And despite efforts to, you know, work with that company, the law says 48 hours.

GEIST: Yeah. Do you get forewarning from companies about a project coming or is there a planning period so that you know what you have to staff up for?

JILL BECKER: Yeah. Realistically, no. We would love that. Some states do require something like that. If a project falls within certain parameters, there is a required planning period. In most cases, the answer is no. And it's kind of a matter of scope. A big project in a small town could-- you know, we might only have one person in that town.

GEIST: Right.

JILL BECKER: That would be enough to max out our resources, so. But we-- I mean, as much as we can, if we hear about those projects, we certainly try to reach out. I think John said a lot of this is about behavior and relationships. And all of you can legislate all you want. It's up to us also to make that legislation work. And part of that isn't legislation, it is in part relationships and having that willingness of both parties-- because we are both an excavator and operator-- to make the system work. Frankly, I am, I'm terrified of what fiber projects could mean for us in the sense of hitting a gas

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

line is incredibly dangerous. You don't get to decide what the results are. They could be devastating.

GEIST: Yeah.

JILL BECKER: And we want to do everything that we can to ensure the safety of everyone. So as we have millions of dollars deploying broadband for wonderful reasons across our state, third-party damage is the number-one risk. That risk has increased.

GEIST: Yeah. OK. Any other questions? Thank you for your testimony.

JILL BECKER: Thank you so much.

GEIST: Any other neutral testimony? Good morning.

KEN YOHO: Good morning, Chairwoman Geist and members of the Transportation and Telecommunications Committee. My name is Ken Yoho, K-e-n Y-o-h-o, and I'm here on behalf of the Nebraska Attorney General to speak in a neutral capacity on LB122. I am an Assistant Attorney General in the Attorney General's Legal Services Bureau. The One-Call Act provides primary enforcement obligations to the Attorney General's Office and my responsibilities include enforcement of that act. If passed into law, LB122 would transfer the bulk of the Attorney General's enforcement authority for one-call violations from our office. My testimony today is intended to provide the committee insight into the current enforcement process and the bill's changes to that process. There are two primary ways the Attorney General's Office receives complaints for one-call violations. Most investigations begin with a complaint filed directly with our office via mail. The bulk of these complaints are against an operator for mismarking or failing to mark utilities within the required time frame or an excavator digging prematurely or failing to file a dig ticket at all. The other sorts of complaints are referrals from the Fire Marshal's Office. These are related incidences involving gas facilities and account for about one-quarter to one-third of all received complaints. Overall, my office usually filled about 40 to 60 complaints each year from the thousands of reportable violations that occur, occur. After receiving a complaint, the Attorney General's Office becomes solely responsible for investigating, enforcing and resolving these-- those complaints. For investigation, we either review the reports from the Fire Marshal's Office in the case of damages to gas facilities or we reach out to the parties for supporting and mitigating evidence. After investigation, a decision as to how to proceed is made, which depends on the nature of the violation and the factors laid out in the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

One-Call Act. Many complaints against excavators are resolved either with an informational or a warning letter, as they often involve first-time offenders or a respectful history of compliance with the act. And where a letter is insufficient, such as in cases involving damage or repeat offenses, the Attorney General's Office will usually extend settlement terms to cooperating excavators and operators who acknowledge those violations. Through the settlement agreement, we collect civil penalty and close the complaint. In these cases, the typical timeline from start to finish might run two to five months. And again, that's with cooperating parties. When this fails, going to court becomes the only option. The current process outlined in the One-Call Act is an outlier in terms of how administrative violations are typically handled in the state. In contexts other than one-call, investigation enforcement occurs at the agency level, for example, the Department of Banking or the Department of Health and Human Services, and is subject to appellate review under the Administrative Procedures Act, or APA. In contrast, the One-Call Act places that burden outside the agency responsible for regulating the conduct and places it on the Attorney General's Office. It also requires the general's-- Attorney General's Office to bring the enforcement action in court rather than an action proceeding before an agency in the first instance. The existing process is a departure from the typical administrative procedure used in most contexts. LB122 changes the one-call complaint process to conform more closely to administrative enforcement processes used by other state agencies with a distinction that the Attorney General will continue to bring actions for violations that exceed \$10,000. LB122 has a second impact on the current system, which has an impact on the cost benefit analysis of filing a suit. As a historical matter, the Attorney General does face, at times, uncooperative parties. If a party is unwilling to work with our office as part of a settlement, then the Attorney General has only one additional option and that's to bring a civil action for the violation in the appropriate court. Filing a court action is a resource-intensive process, which takes time. And even for minimal, minimal damages claims, for instance, a claim in Arthur County for \$100 in damages, presents a difficult cost benefit analysis, especially when there are a significant volume of claims that involve small damage that fall in that small damage range. Under the process proposed by LB122, this analysis would shift in favor of bringing enforcement in all crimes. Thank you for your time and attention and I'd be happy to answer any questions the committee might have.

GEIST: Thank you for your testimony. Are there any questions from the committee? Yes, Senator DeKay.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

DeKAY: Thank you, Chairman Geist. Paragraph four, you said after receiving a complaint, you investigate it either through a review or report or you reach out to the parties involved. Do you have anybody that is a field person that goes out to the job sites and see firsthand--

KEN YOHO: No.

DeKAY: --what possibly could have taken place?

KEN YOHO: We do not. Usually, our goal is to collect that information from the parties involved. And part of what we've done in the past-- during the past, education sessions or whenever we have the chance to talk with the excavators, is to encourage them to get that evidence as they're preparing to make a claim, take pictures so that we have something to work with. Our complaints range from just a simple description: here's the ticket, they failed to mark it to here's pictures, here's video, here's everything that happened. Here's the history. So it varies on the parties involved, but no, no one from our office goes out to investigate unless it involves gas facilities, at which point, the State Fire Marshal addresses it.

GEIST: Senator Cavanaugh.

M. CAVANAUGH: Thank you. On the back page of your testimony, you said for minimal claims, your only option if people aren't cooperating is to take them to a civil suit, correct? Or for any claims, I suppose that would be--

KEN YOHO: Correct. For any enforcement action under the act, the only formal method that we can pursue that is in court.

M. CAVANAUGH: So under this legislation, would that be an option available to the Fire Marshal or this committee-- the committee that it would be forming, that they could seek civil action?

KEN YOHO: So it would transition-- as far as I understand it, it would transition the action to the agency level so they would conduct their hearings, their process, and at which point, it would be subject to the APA. And if they were-- they didn't like the opinion that came out of that hearing, then they could appeal it according to the Administrative Procedures Act.

M. CAVANAUGH: They-- I'm sorry, what was the last part of that?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

KEN YOHO: They could appeal it according to the APA, the Administrative Procedures Act. And so basically that's filing with the district court and having them review the record de novo.

M. CAVANAUGH: So does this give them more avenues for resolution or the same avenues for resolution?

KEN YOHO: A different avenue, I would say.

M. CAVANAUGH: A different avenue.

KEN YOHO: As in it would replace the current avenue where I have to bring an action to court to the-- whoever is responsible for bringing that enforcement under this bill would be bringing the action to the committee formed by this bill.

M. CAVANAUGH: And then if they were uncooperative to the committee, then they'd have to take them to court.

KEN YOHO: Well, the committee would still have to have their-- make their decision--

M. CAVANAUGH: Right.

KEN YOHO: --their findings. And then that hearing would be their opportunity to challenge those findings. But they could appeal it to the district court and the district court would be looking at the record formed by the agency.

M. CAVANAUGH: OK. Thank you.

GEIST: Yes, Senator DeBoer.

DeBOER: Thank you, Senator Geist. So full disclosure, I didn't take administrative law in law school and it was misprinted on our Barbri book that it was even going to be there. It wasn't on the list. I found out it was going to be on the bar exam two days before and spent two days studying everything you could possibly want to know about administrative law, which is to say, my remembrance of that is a little bit cloudy. So the way in which this works in other administrative capacities is that in another-- if there's a complaint, then they will have an administrative proceeding, which is a quasi-judicial proceeding, is that correct?

KEN YOHO: Correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

DeBOER: And then because I don't remember what happens in the APA-- so you, you have some sort of resolution regardless of whether or not the parties agree to the resolution. It's like a, a quasi-judicial proceeding in which they are a party, whether they want to be or not. And then once that is decided, then that's an appealable action which can go into the district court. Is that how it works?

KEN YOHO: Yes, typically.

DeBOER: OK. And so then from that point, if there was some sort of appeal made of these small incidents, they would go through the district court process. But typically in other APA instances and other committees-- other departments, how often are those administrative proceedings-- how often do they tend to be brought in the district court?

KEN YOHO: I would say it varies dramatically by the agency.

DeBOER: Sure.

KEN YOHO: Some more than others, certainly. But oftentimes, the agency has-- after a certain point, establishes a certain level of authority and knowledge in their field that they're going to be making recommendations that the court will ultimately agree with. And so except in the rare instances where there's a weird issue that pops up, I would say most parties would probably recognize when they can and cannot, but the arguments they might make above. I don't know if that quite answered the question, but--

DeBOER: No, it did.

KEN YOHO: --it's hard to say in this space.

DeBOER: Yeah. So when there, when there would be questions, because there are some questions some people have brought to me that I think make sense about whether or not in the aggregate-- for \$10,000 in the aggregate refers to per incident or, you know, whatever, some of those sorts of things can be worked out through administrative rules and regulations and also through proceedings. Is that--

KEN YOHO: Not so much in proceedings. Clarity on that would be useful. But I don't know-- the agency isn't necessarily the one that's interpreting its-- the statutes. So if it were to be challenged at the district court, it probably be reviewed fresh there, if that makes sense, regardless of the rules and regulations that occur at the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

agency level. That isn't to say that it won't be considered. It's just not binding.

DeBOER: So if there's ambiguity in the statute and the agency proceeds with it in a particular direction, the district court could say ah, it's not that direction, or they could affirm what the agency does in terms of the direction that they interpret something in the statute.

KEN YOHO: Correct.

DeBOER: OK.

KEN YOHO: But of course, rules and regulations are going to be reviewed through our office and we'll be looking at that if-- you know, when that comes for for those sorts of issues--

DeBOER: To help them out, to make sure that they--

KEN YOHO: --to see what the most likely interpretation would be and things like that.

DeBOER: OK All right. Thank you for that review for me. It's been a long time.

GEIST: Yes, Senator Moser.

MOSER: It would seem to me that the contractor who's digging the hole or boring or, you know, whatever construction they're undertaking is held liable for a lot of things beyond their control. And so I-- you know, I have some appreciation for what they're worried about. But we keep talking about the utility contractor and then the utility, say it's a phone company or a gas company or whatever, that those two have to work out the problem. What about the owner of the property, the guy that's actually responsible for bringing the construction forward? I mean, you know, say it's a Internet provider that, that-- you know, they're investing millions in a community. Do they sometimes pay for these just to get the thing solved? Or would there be some reason for us to bring them into it to pay for part of it?

KEN YOHO: So in terms of violations of the One-Call Act, which is strictly my role in this, we're not looking at necessarily the extent of the damages caused by the violation, i.e. how much damage that Black Hills suffered when whatever excavator damaged a pipe. We're looking for--

MOSER: Whose fault it is?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

KEN YOHO: Not necessarily whose fault, but whether there was a violation of the act itself. And then looking at the factors defined in the act to determine if that's a violation. And so, for example, which part-- was there a failure to mark? In that case, it would fall on the operator, the owner of the utility. Or was it the fact that the excavator never filed a dig ticket and so the utilities were never notified and they never marked because of that? At which point, enforcement would go towards the excavator. And then we-- I'd look at the factors lined out within the One-Call Act to essentially determine an appropriate assessment.

MOSER: Is there a minimum amount of claim you can file with the Attorney General on this?

KEN YOHO: There is no minimum requirement per say, but there is a practical concern in terms of--

MOSER: So the little ones, you just kind of let--

KEN YOHO: It depends. Lawyer answer there, but if say you have a repeat offender and we're seeing a bunch of issues from the same excavator or operator--

MOSER: Fifty \$100 tickets.

KEN YOHO: Correct. We can bring all those actions if they're in the same court. If they're all in Lancaster County, that makes it easy. We can bring those actions if we need to. But if we have this excavator who's had the one-off issue, but otherwise is compliant, usually we just go with a letter in that case.

MOSER: So would you rather get rid of this one-call stuff? Is it a headache for the Attorney General's Office?

KEN YOHO: I would say that's a matter of policy for the committee here.

MOSER: It's-- for somebody else's policy, not yours?

KEN YOHO: Correct.

MOSER: So who do we ask then--

KEN YOHO: I--

MOSER: --the Attorney General?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

KEN YOHO: --believe the one board would be your--

MOSER: Yeah.

KEN YOHO: --one-call board.

MOSER: OK. Thank you.

GEIST: Any other questions from the committee? I don't see. Thank you for your testimony. Any additional neutral testimony? Good morning.

DOUG HOHBEIN: Good morning. I almost said good afternoon, but here we are.

GEIST: It's hard. It's hard to switch that, isn't it?

DOUG HOHBEIN: Right. Yes. Well, good morning, Chairperson Geist and members of the Telecommunications and Transportation Committee. My name is Doug Hohbein, D-o-u-g H-o-h-b-e-i-n, and I am the Interim State Fire Marshal. I'm here to testify in a neutral capacity on LB122. The bill work-- will create the Underground Safety Excavation Committee, which will have the authority to hear complaints, render decisions and issue civil penalty amounts of less than \$10,000. The role of the State Fire Marshal agency will expand to include investigative authority for violations of certain one-call laws and Title 155, Chapter 2 regulations for all parties to the system instead of being limited to violations only related to pipeline facilities. For the State Fire Marshal agency to fully carry out the requirements of LB122, the agency needs clarification regarding language within the proposed bill. On page 3, lines 12 to 14, it is stated that quote, no member of the committee may sit in hearing upon question in which such member or any business with which such member is associated is a party, unquote. The State Fire Marshal or his/her designee shall serve on the committee and every complaint that comes to the committee will have been investigated by the State Fire Marshal staff members. Clarification is needed to ensure "party" doesn't include the investigation so there won't be a conflict in every case brought to the committee. On page 3, lines 19 and 20, it states that, "notice of investigation" shall be given when the agency initiates its own investigation into possible violation of the one-call requirements or after determining a complaint may have merit. There is no clarifying language describing how this notice will be delivered. Other sections of the bill require communication with the parties of the investigations to be given either through personal service or service by certified mail. Clarification is needed to determine what kind of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

notice is needed to the parties to initiate an investigation and the possible costs associated with those actions. On page 4, lines 18 to 20, it states that quote, not later than 30 days after the date of the committee's written determination, any party may submit a written request for a hearing on the matter, unquote. The agency seeks clarification on when the 30 days start to run. It is on the date-- is it on the date a determination is put in writing or from the date the parties received notice of written determination. Further, the agency needs clarification on whether the request for a hearing will be submitted to the agency or to the committee, which is only required to meet quarterly. If the request for a hearing goes to the agency, a process and time frame for the agency to notify the committee needs to be outlined. On page 4, lines 29 through 31, the bill states the assessed civil penalty, penalty shall be paid within 30 days. Later on page 5, lines 23 through 26, it is stated that upon the issuance of a final order, the committee can assess costs to the appeal hearing against the parties. On page 7, lines 4, 4 and 5, it states the civil penalty shall be remitted to the State Treasurer, but there is no language detailing how the costs of the appeal shall be collected or remitted. Also, there is no language that addresses what actions are to be taken or by whom if a party refuses to pay the civil penalty. Finally, the bill states that when the agency has reason to believe that any person has committed any violation, notice and an investigation shall be performed and all complaints and investigations shall be referred to the committee. The agency currently has discretion in determining which investigations are referred to the Attorney General for structured enforcement actions based on the level and nature of violations. Because of this discretion, the agency currently utilizes less-formal techniques such as one-on-one person trainings, group education classes, or referrals for the one-call center for advanced training on ticketing issues. If this discretion is removed and all violations must be referred to the committee, it will, it will dramatically increase the caseload for the committee, as well as limit the ability to use violations as learning opportunities. Thank you for your time and attention. I would be happy to attempt to answer any questions you have from the committee.

GEIST: Thank you. Thank you for your testimony.

DOUG HOHBEIN: Thank you.

GEIST: Thank you for being here. Are there any questions from the committee? I do not see any. Thank you very much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

TIP O'NEILL: Senator Geist, members of the Transportation and Telecommunications Committee, my name is Tip O'Neill. I represent the Nebraska Telecommunications Association, which is a consortium of, of-- representing the majority of companies that provide landline and broadband services in Nebraska.

GEIST: Tip, would you spell your name?

TIP O'NEILL: It's T-i-p O'-N-e-i-l-l.

GEIST: Thank you.

TIP O'NEILL: I think we had to remind me last year, first hearing---

GEIST: I'll stay on you.

TIP O'NEILL: Sorry. You know, we have, we have been in opposition to this bill in the past. And again, this is one that's, that's been around. The members who've been on this committee probably for six years remember the interim study hearing that we had in the east chamber of the, of the Capitol where we used to have hearings while this, this room was under renovation. And, and so it's been, been around a while. And we are concerned basically with, with three issues, but, but again, you're never going to have a perfect bill that's going to take care of, of some of these issues. So, so we are neutral this year and we are not opposing. First of all, we, we opposed the bill last year because the issue of cost went to the ticket. And this year, the cost, as I read the fiscal note goes to the General Fund. So that's a difference and that probably is one of the reasons we're neutral rather than against. Second, we do agree with Jill Becker, who testified earlier. And some of my members are concerned about the State Fire Marshal acting as both the investigator and a member of the hit court. So, so that's an issue I think at least there ought to be some discussion on. And finally, the, the, the, the section that is outright repealed in the bill is the section that requires the report from the Attorney General regarding the number of complaints filed and the number of complaints resolved. We think that was helpful at least that, that that report shows, shows what progress is being made in, in terms of how, how, how issues are being resolved and we think that should be maintained. But I'd be happy to answer any questions.

GEIST: Any questions from the committee? I do have one.

TIP O'NEILL: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: So I am interested that you're testifying neutral because I remember those past few years. And so in concept, do you like this concept that Senator Bostelman has brought forth better than what has been in the past, just overall?

TIP O'NEILL: Well, I think the concept is somewhat the same. The issue was who was going to pay for the concept in the past. And when it was going to go to the tickets, that meant the operators were going to pay for it. And now it means the General Fund is going to pay for it so we have less concern now.

GEIST: OK, OK. I just wanted to clarify that--

TIP O'NEILL: Sure.

GEIST: --that was the issue. Thank you.

TIP O'NEILL: OK.

GEIST: Yes, Senator DeKay.

DeKAY: Thank you, Chairman Geist. Testifying in a neutral position as being opposed over the last few years, maybe this isn't a fair question, but how close are we to having a bill, particularly this bill, that's both beneficial and not detrimental to any of the parties involved?

TIP O'NEILL: This is a, this is a complex issue, the issue of, of excavation. You know, you've got the locators who are generally contracted with the operators and you've got a lot of, a lot of moving parts in terms of who is at fault when there, when there's a problem. And so I think that-- and again, we're talking not, not about the liability of a hit. We're talking about the act that, that becomes a violation of the law. So it does-- you know, if the hit causes \$500 million worth of damage, that doesn't mean necessarily that the slight negligence of a locator in, in missing it by a few inches is going to be a major violation of the One-Call Act. And so that's, that's one of the, one of the issues. I think for smaller issues or repetitive issues where continuing education would, would be the best solution, the education would be the best solution rather than trying to, trying to find someone for every, every act or omission, I think this bill is, is as good as we're going to get, so.

GEIST: Any other questions? I don't see any.

TIP O'NEILL: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Thank you for your testimony. Good morning.

MIKE LOEFFLER: Good morning. Good morning, Chairman Geist and members of the committee. My name is Mike Loeffler, spelled M-i-k-e, last name is spelled L-o-e-f-f-l-e-r. I am the senior director of certificates and external affairs for Northern Natural Gas, which is headquartered in Omaha, Nebraska. I'm going to be testifying in a neutral capacity, highlighting one major issue and that is the advisory committee. I'll get to that in a second. Northern Natural Gas was founded in 1930. We have about 14,300 miles of pipe extending from the southwest corner of New Mexico all the way up to the Upper Peninsula of Michigan. Most of those lines are high-pressure, large diameter lines, so that we take a very strong interest in one-call because that's a protection for that-- for those pipelines. We'd support LB122 if an amendment was provided that would require all the votes of the committee to be majority vote only and not a supermajority. We believe in strong one-call laws. They help prevent third-party damage, which is the most common cause of pipeline failure. Any line hit on any of our lines puts at risk not only the excavator, but the first responders, our employees and the public. It also increases the risk of loss of service to communities. To appreciate the need for strong one-call enforcement, I want to bring up the situation that happened in Hinton, Iowa, a couple of years back. If you go to the back page of your testimony, you'll see a fireball that resulted when a, a party was doing deep chiseling in a farm near Hinton, Iowa. They did not make a one-call utility locate request. When they hit our high-powered line, there was an explosion and a fire that went several hundred feet in the air. To give you some example of the force of that explosion, they were on a backhoe, which is a large piece of machinery, and it was thrown 200 feet, which is about the distance of a very long field goal. So it's a very-- it was a very strong explosion. Fortunately, no one died. But I will tell you, two weeks later, our air patrol, which is one of the things that we used to help enforce one-call, found these same two gentlemen in another field doing the same thing without having made a one-call. So that's why one-call is important because it serves as a deterrent to people going out there and doing excavation without making a one-call. Incidentally, these people were eventually fined \$25,000 by the Iowa Attorney General. We have worked for harder one-call laws in every state in which we operate. For example, the Nebraska Legislature passed a bill at our suggestion that required that any time you're operating within 25 feet of a high-powered natural gas transmission line, that we have to be there. We made a commitment to the Legislature that we would dedicate those resources and we would be there every time that request was made and we have

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

kept our promise. I just wanted to make sure that you knew that we understand the importance of one-call. We really feel that this is a bill that provides an alternative to help enforce one-call laws. But with-- we want to make sure that in the law, there is a requirement that any advancement of any complaint require only a simple majority. You've heard of other issues that have been raised here today. We stand ready to work with any party that wants to make this bill stronger and successful this session. With that, I'm open to any questions.

GEIST: Thank you for your testimony. Are there any questions from the committee? I don't see any. Thank you very much.

MIKE LOEFFLER: Thank you.

GEIST: Any other neutral testimony? Senator Bostelman, you're welcome to close.

BOSTELMAN: Thank you, Chairwoman Geist. First, I'd like to thank all the testifiers who came in today. I thought that was good testimony. I would like to ask that if they did not provide their comments and if they could give that to me when they walk out so I know what-- so hard to hear so I know what their thoughts were on it. So we can work on that because we're committed to, to work on that. I thought the committee asked some very good questions. This is an issue that we have dealt with in committee for years. I think we've come a long ways with this bill. I think we've come a long ways in answering a lot of the questions and opposition that we've had on the bill previously. To Senator DeKay's question before on members, page 2, lines 12 through 15, will answer your question. That's where they're specified on. And Senator Frederickson, I think we talked about \$10,000, why the \$10,000? Talking with those in the industry, that's kind of the breaking point. If you get more say-- no disruption is minor, but if you get the more serious ones, that's kind of the "deparation" up there, that \$10,000. That's why it's at that point right now. This is a-- maybe I can categorize or state it in this way, if I may. It's a responsive process. As I was listening, it's a-- what we're talking about is a responsive process for corrective or adjudicative resolution. That's something we haven't had before and that's what we're moving for is to try to eliminate-- I think the Fire Marshal mentioned 200, potentially 200, if you look in the fiscal note, potentially 200 calls. The whole point of this is to, to reduce or eliminate that. And we're already looking at, I think, the Attorney General and there was 20 to 40 calls that the Fire Marshal already does. So that means gas lines are being cut. That means power lines

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

being cut. That means significant risk to life to those around that area and that's the point of what we're working at, I think, one of the things we're dealing with. I think everyone understands that and recognizes that. The Fire Marshal already investigates those so that investigative arm is already there, makes sense to have them investigate this whenever we have these type of, of issues that arise. And, you know, before in testimony, what we've heard in this bill, if you remember, is sometimes they don't even file the complaint. Ain't worth it. No one's going to look into it. No corrective action. So this really puts something in place now that maybe will start addressing a lot of those issues that we do see happen that may not be reported across the state. As the Attorney General representative spoke, and this is an outlier. DHHS, everybody else in the state has something similar to this. This is the only part of the state that we don't. You know, the only agency, the only department, the only area in the state that we don't have some type of-- something similar to this commission, this committee is being set up to handle these type of things. So I think it's a great opportunity to move things forward within the state. I look forward to working with those who have comments and questions, concerns with the bill as it is and then working with the committee to move this bill out for General File. So with that, I'll end my testimony on LB122 and be glad to answer any other questions you may have.

GEIST: Well, I thank you for what you've done. We have heard this for many years and it does seem like we're closer than we've been so you're doing good work. Are there any other questions? Yes, Senator DeKay.

DeKAY: Just a quick comment. Senator Bostelman, I appreciate you bringing this bill forward. I'm new to this process, but I have been aware of what's been going on over the past several years with this. I-- like I said, I appreciate you bringing it forward. I think that every party involved here wants the same end result. I think we're getting very close to where we need to be, that everybody is going to be happier with where we are at the end of the day with this bill. So where we can go from here to tie up any loose ends, I appreciate your efforts in doing-- going forward and thank you.

BOSTELMAN: Thank you.

GEIST: Thank you. Are there any other questions from the committee? I do not see any. That will end testimony and the hearing for LB122. There are letters actually, six opponent-- proponents, two opponents,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

and one neutral for LB22 [SIC, LB122]. And with that, we will end the hearing. Thank you very much.

GEIST: OK. We will go ahead and get started. We're going to go ahead and get started. Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Senator Suzanne Geist. I represent the 25th Legislative District in south Lincoln and Lancaster County. I serve as Chair of the Transportation Committee and we will start off having members of the committee and the committee staff do self-introductions, starting on my right with Senator Fredrickson.

FREDRICKSON: Good afternoon, I'm John Fredrickson. I represent District 20, which is in central west Omaha.

MOSER: Mike Moser, District 22. I represent Platte County and most of Stanton County.

BRANDT: Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster County.

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

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

DeKAY: Barry DeKay, District 40, representing Holt, Knox, Cedar, Antelope, northern part of Pierce and most of Dixon County.

GEIST: We also have as committee counsel, Mike Hybl, and Caroline Nebel, who is our committee clerk. Assisting us as well, and our committee, are the pages, Delanie and Logan. Delanie is studying political science at UNL and Logan is studying international business at UNL. And this afternoon we will be hearing five bills and we'll be taking them in the order listed on the outside of the room. On the table near the entrance of the room, you will find blue testifier sheets. If you're planning to testify today, please fill one out and hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify but you would like to go on record with your presence here at the hearing, please fill out the gold sheet on the table near the entrance. Also, I would like to note the Legislature's policy that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We ask if you have any handouts, please bring ten copies and give them to the page. If you need

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

additional copies, the pages will be happy to provide those to you. Understand that Senators may come and go during our hearings, this is common and required as they may be presenting bills in other committees. For our hearing, the testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from any supporters of the bill, then from those in opposition and then from those in the neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving your first and last name and spelling them for the record. We will be using a five-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the red light comes on, we ask that you wrap up your final thoughts. I would like to remind everyone to, including Senators, to please turn off your cell phones or put them on vibrate. And with that, we will begin today's hearing with LB465. Senator Moser, you are welcome to open.

MOSER: Thank you, Chair Geist, and good afternoon, fellow members of the Transportation and Telecommunications Committee. My name is Mike Moser, M-i-k-e M-o-s-e-r, and I represent District 22, which consists of Platte County and parts of Stanton County. I'm introducing LB465 at the request of the Department of Motor Vehicles. The bill reallocates document fees currently directed to the state General Fund to the DMV cash fund. Increased costs for fixed operational expenses are outpacing the increases in revenue. This bill does not increase document fees nor change the amount of fees being allocated to the county General Fund. Section 1 of the bill reallocates from the General Fund to the DMV cash fund the portion of the document fee for issuance and replacement of state identification cards, issuance and replacement of Class O and Class M operator licenses, issuance and replacement of provisional operator's permits, issuance and replacement of learner's permits, issuance and replacement of school permits, issuance and replacement of commercial driver's licenses, issuance and replacement of commercial learner's permits, issuance and replacement of farm permits and adding or removing restrictions, endorsements, or classes on any operator's license or permit. Section 2 provides for an operative date of July 1, 2023. I appreciate the opportunity to come testify before you today and I would be glad to answer any questions. There is a copy of the bill, I believe in your folder, and it has stricken the amounts that used to go to the General Fund and now, if this bill is approved by our committee, and of course, the Legislature, then those funds will go into the cash fund to help operate the DMV. So right now, they're a cash agency and they

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

were actually charging enough in fees to put some of that into the General Fund and we've had this discussion before. Senator Cavanaugh brought that up in previous sessions. So this would take some of that money that's now going into the General Fund and putting it into the DMV cash fund because their cash fund is projected to have a deficit in the new budget that they're proposing if we leave things the same, that they will have a deficit, so this hopefully will offset that. And frankly, Director Lahm would have much better technical information than I do. I'm introducing the bill to help the DMV, and so, if you want to pick on somebody, go ahead and pick on me, but, but if you want to know something, you can ask Director Lahm. (LAUGHTER)

GEIST: Are there any--

MOSER: Any questions?

GEIST: --any questions from the committee? I think you're in the clear.

MOSER: OK.

GEIST: Nobody's going to pick on you. Are you going to stay for close?

MOSER: Oh, sure. I'm here for the duration.

GEIST: All right.

MOSER: Well, I got another bill later, but I'll probably close.

GEIST: Are there any proponents for this legislation?

RHONDA LAHM: Good afternoon, Chairwoman Geist and members of the Transportation and Telecommunications Committee. I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, Director of the Department of Motor Vehicles. I'm appearing before you today to offer testimony in support of LB465. I would like to thank Senator Moser for introducing LB465 on behalf of the DMV. The purpose of the bill is to provide a funding mechanism to stabilize the DMV cash fund due to the revenue shortfalls. Section 1 of the bill reallocates from the General Fund to the DMV cash fund, the portion of the document fee for issuance and replacement of all types of state identification cards, driver's licenses and permits. Section 2 provides for an operative date of July 1, 2023. The DMV is fully funded by cash funds generated by user fees and receives no General Fund appropriations. The budget proposal for the next biennium, however projects a deficit balance by the end of the biennium. LB465 will better align these user fees to cover agency

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

expenses to close the deficit balance. The DMV has historically been very mindful of the use of allocated funds. Over the past several years, the DMV has not spent all of the monies authorized by the Legislature, usually around 90 percent of the agency appropriation. Just going back six years, this has allowed us to keep over \$18 million in the bank to be used for future years. The DMV is proposing the portion of the current document fees allocated to the state General Fund be reallocated to the DMV cash fund rather than an increase in fees. There would be no change to the amount of the document fees allocated to the county General Fund. The reallocation of these fees provides a stability needed for the future of the DMV cash fund. I encourage the advancement of LB465 to the General File. Chairwoman Geist, at this time I'd be happy to answer any questions the committee may have.

GEIST: Great. Thank you for your testimony. Are there any questions? Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here, Director Lahm.

RHONDA LAHM: Yeah.

M. CAVANAUGH: What has caused this change in the fund?

RHONDA LAHM: So really, what, you, it even goes back longer than six years, probably even ten or so. But what we have is a pretty stable amount of revenues because our revenues come mostly from driver's license fees, which don't change a lot from year to year. Title fees, which don't change a lot from year to year. Suspension and revocation, reinstatement fees, which actually are going down. Record fees, vehicle record fees and some plate fees. So our revenues change plus or minus 1 percent or so. Well, operating expenses, when I say fixed operating expenses, I'm talking about the things we have no control over. So technology charges, rent, postage, salaries, benefits, those kinds of things continue to go up at that higher pace. So over the years, we've been watching this and we've known that at some point in time we're going to have to do something about our revenue. Well, we had had enough in the bank, so to speak, to cover it until now. But now, we're in a situation where we need to take a look at what is another revenue source.

M. CAVANAUGH: So that \$18 million, do we no longer have that in the bank?

RHONDA LAHM: No, it was in the bank, but we've been using that up.

M. CAVANAUGH: Right.

RHONDA LAHM: You know, had we been, had we been spending our full appropriation, we would have been here \$18 million ago.

M. CAVANAUGH: OK.

RHONDA LAHM: Yeah.

M. CAVANAUGH: And so if we do this, this is estimated to be \$4.3 million.

RHONDA LAHM: Correct.

M. CAVANAUGH: And annually, this will be annually.

RHONDA LAHM: Correct.

M. CAVANAUGH: So how long will this provide sustainability? Will you be able to still put some into the bank again?

RHONDA LAHM: Yeah. So what they recommend for cash-funded agencies is they recommend that we maintain a balance of at least 25 percent of our operating budget in the year. So for us, that's about \$8 million-ish. So we should have in the bank at all times at least \$8 million. So what this does is it'll kind of make up for that deficit. And again, we try really hard that we don't spend all of our appropriation. I mean, if we don't need it, we don't spend it, so that way we can save a little bit. This, our projection is that this would address it at least for any foreseeable future we can see, unless there's something really unexpected we're not planning for.

M. CAVANAUGH: So there-- I'm, I'm more long term asking questions, so--

RHONDA LAHM: Sure.

M. CAVANAUGH: --we may have to revisit increasing fees. Is, is that possible? That's not what you're asking for today.

RHONDA LAHM: Right. I would, so I'm going to call that, probably, AR, after Rhonda. That's (INAUDIBLE). (LAUGHTER)

M. CAVANAUGH: OK. All right. Got it. Thanks.

GEIST: Any other questions from the committee? Yes, Senator Bostelman.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BOSTELMAN: Thank you, Chairwoman Geist. Excuse me. Thank you, Director Lahm. On a, on a more immediate. So these are funds that you're, you're requesting because those funds went to General Funds. And now you're redirecting them to here. Is this a more of a budget question for DM, for you, or is it more of a, of a, you know, really receiving the funds that you should have received a long time ago? If that makes sense.

RHONDA LAHM: Yeah. So, you know, the Legislature many years ago split the allocation of fees between our cash fund, the state General Fund, and the county General Fund. It's been that way for years. My understanding is why that occurred is, we used to be a General Funded agency. And then I think it was in the mid-nineties where that kind of switched over, and that's when they then allocated part of the fee to the General Fund because we were still getting some General Fund appropriations. But then we got to the situation where we didn't need General Fund appropriations and the fees covered it and so they still just kept allocating fees to the General Fund because that's just the way it was. And so now we're at the situation where costs have increased over the last 20 years for all those things I mentioned, plus other things. But our revenue base pretty much stays the same. And so eventually now, it's caught up. I don't know if that answers your question or not.

BOSTELMAN: Yeah, I believe it does. It's funds that were there that you could've had all along in a sense. But since you didn't need them at the time.

RHONDA LAHM: Yeah.

BOSTELMAN: So in a sense it is a bit of a budget issue, but more so, I guess I'm looking at this as funding that, that you could have had access to all along and you didn't because you didn't need it. So now we're just calling it in.

RHONDA LAHM: Yeah. Versus, you know, a fee increase when, when the funds are there to be used, so.

BOSTELMAN: Thank you.

RHONDA LAHM: Um-hum.

GEIST: Any other questions from the committee? I don't see any, Director. Thank you for your testimony.

RHONDA LAHM: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Any other proponents for LB465? Are there any opponents for LB465? Good afternoon.

CHRIS COSTELLO: (INAUDIBLE) Hi.

GEIST: Hi there.

CHRIS COSTELLO: I'm Chris Costello, C-h-r-i-s C-o-s-t-e-l-l-o. I come before you in opposition to this bill, LB465. Want to nip it in the bud. As a great senator has said before, I think that this is being green-lighted in an effort to try to answer a question or a problem that's been raised through the public media about 11 percent of unregistered voters with no forms of ID within our elections. And the solution is, we're going to give out free IDs. And, my history, we might as well then contemplate and lower the drinking age to 18, because when you start giving out free government IDs, it doesn't stop at your needed 11 percent of undocumented voters. It'll go and go and go and go. And that's why, at least, at minimum, you need to charge a fee so that you can audit the authen-- trueness of the person getting it, you know. I think this may be an effort to cover the 11 percent and say that's great, but it doesn't end there, so that's just why I've come before you.

GEIST: Are there any questions from the committee? I don't see any. Thank you for your testimony.

CHRIS COSTELLO: Thank you.

GEIST: Any other opponents? Is there anyone who'd like to testify in a neutral capacity? Senator Moser, you are welcome to close on LB465.

MOSER: Thank you. Since Director Lahm already testified, I just had a question for her. She said that IDs, there's a fee for everything they do, including IDs. So the problem is, is that they had a big surplus and they thought that's too much to hold, so they spent it down. Now they're to the point where they're going to be overdrawn if they don't do something. So your options are, raise fees-- I'm waiting for somebody to waive, no one to that-- and/or give less service, you know, make people wait longer to get permits and IDs and whatever and that's not a good solution. So I think their solution to take some of that money and put it into their cash fund is a good, is a good idea. So now, are there any other questions?

GEIST: Are there any questions from the committee? I don't see any. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

MOSER: OK, that's the end of that one.

GEIST: All right.

MOSER: Well, let's hope it's not the end, but (INAUDIBLE).

GEIST: Just the beginning. You may open on LB484. We'll wait just one moment so the page can change that--

MOSER: Change the placard?

GEIST: Um-hum. Thank you, Logan. And you may open on LB484.

MOSER: Thank you, Chair Geist. Good afternoon, fellow members of the Transportation and Telecommunications Committee. My name is Mike Moser. It's M-i-k-e M-o-s-e-r, and I represent District 22, which is Platte County and parts of Stanton County. I'm introducing LB484 at the request of the Nebraska Independent Auto Dealers Association, Department of Motor Vehicles. It's NIADA. The purpose of the bill is to professionalize independent dealers within motor vehicle industry. It places educational requirements for independent dealers applying for a new license and renewing their existing license. Independent dealers applying for a new license will be required to have 8 hours of educational material completed, approved by the Motor Vehicle Industry Licensing Board. Independent dealers renewing their license would have to complete 4 hours of continuing education during the calendar year. These educational requirements would not apply to franchise dealers. I appreciate the opportunity to testify in front of you today, and members of the NIADA will follow with supporting testimony and I'm sure they'll have better answers to some of your questions than I might have. So if you have questions, I'd be glad to answer.

GEIST: Questions from the committee? Senator DeBoer.

DeBOER: I'm definitely not trying to pick on you, Senator Moser.

MOSER: Oh, go ahead.

DeBOER: Well, since you said. What kind of, what, what's the nature of the continuing education that they would receive?

MOSER: Well, from my understanding of it, which I got from this group, is that right now there is no continuing education requirement. You have to get the license to sell cars and there are requirements for, you know, insurance and whatever, but I don't think there's a requirement for them to actually know the rules. So they could start

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

selling cars and may not know, may not be familiar with all the laws that there's things they're supposed to follow in the law. And so it might make customers unhappy if something goes wrong because of a dealer that didn't know all the ins and outs of it, so. I think--

DeBOER: Be primarily to educate them about changes in the law for a dealership?

MOSER: Well, continuing education would be changes, but just the basic education, if you want to sell cars, I think you have to get approved. And there's no requirement to know anything about the business to speak of. If, you know, and you just sell cars and I think that this would require that they complete some either in-person or on-line training and their questions about this particular part of the law. And then, well, there's a, it's kind of like we did in English comp-- comprehension. You read a paragraph and then you answer a few questions about it. And, you know, what's the deadline for doing this once you've sold a car and how long can you do this? I mean, there's, there are all kinds of rules, and I don't know what they are, but.

DeBOER: Maybe ask the--

MOSER: Yeah, yeah, there will be people following me that know the ins and outs of it. Generally, this isn't my philosophy in making new regulations, but I talked to some car dealers, independent car dealers in my district that supported it, and, and so I thought I'd bring it and see what the committee says and what the Legislature as a whole says about it, so.

GEIST: Any other questions? Yes, Senator Fredrickson.

FREDRICKSON: Thank you, Chair Geist. Similar, kind of, so I (INAUDIBLE) agree. We don't currently have any continuing education requirements in the state.

MOSER: I don't believe so.

FREDRICKSON: OK. And then my other question was, how, how would this compare to other states? Do other states have this model in place or?

MOSER: I think that would be a better answer for Mr. Keigher when he comes up.

FREDRICKSON: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

MOSER: I believe other states have it. But again, I'm speculating, and you're never supposed to answer a question from an attorney unless you really know the answer, so.

FREDRICKSON: Well, I'm not an attorney for the record, but. (LAUGHTER)

MOSER: Senator DeBoer is, we'll blame her. Other questions.

GEIST: Are there any other questions from the committee?

MOSER: OK.

GEIST: I don't see any. Thank you for your testimony.

MOSER: Thank you.

GEIST: I assume you're going to stick around and close?

MOSER: Sure.

GEIST: Any proponents? Good afternoon.

CHAD TESSMAN: Hello. Thank you for letting me testify. My name is Chad Tessman, C-h-a-d T-e-s-s-m-a-n. I reside in Henderson, Nebraska, and I am the president of the Nebraska Independent Auto Dealers Association. I'm also an independent auto dealer and I am also on the, was put on to the Nebraska dealer licensing board by this committee, well, committee in the past. So one thing we look at is, I became a dealer. I left a new car dealership, opened my own dealership about 12 years ago, handed very little knowledge. I had some knowledge just from the workings of a new car dealership, but really it was like trial and error. It was, you know, kind of had a good idea of what to do but didn't know all the titling the rules. Didn't know all the advertising rules. Was handed a pamphlet that, you know, covered some stuff. I went out and sought my own education through different areas. That's when I got involved with the Nebraska Independent Auto Dealers Association. Sought my own education that way and it was, it was very helpful, not only through the association, but getting to know other dealers. But what, what we've seen a lot of is, people come in, don't know really what they're doing, kind of the first couple of years, kind of make their way through it. You're putting customers at risk, title errors. You're putting customers at risk with, you know, not getting titles done, not getting paperwork done correctly, not knowing, you know, what you're supposed to disclose. There's all kinds of issues. Nebraska is one of the states. I went this summer to the National Independent Auto Dealers Association conference. Took a poll

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

in our state presidents meeting of how many places had continuing education or pre-licensing or both. I was, Nebraska was one of the few. There was four that did not. Now that wasn't four out of 50, that was four out of the states that are involved. There's many states that have no involvement in, in the National Association. Yeah, so we, we think it would be a fantastic thing for the state, not only for the dealers to do better business, but to protect the consumer and also just to, you know, make our state a place where, you know, we're not having some of the issues with, with customer complaints to the, to the licensing board with that sort of issue. So I want to thank Senator Moser for introducing that, this for us, and if anybody has any questions, I'd be happy to answer for.

GEIST: Thank you. Thank you for your testimony. Are there any questions? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. Thanks for being here today, Mr. Tessman. First question I have is, if a person doesn't receive this continuing education, what happens to them? Do they (INAUDIBLE)

CHAD TESSMAN: That, I would, I would say that that would be a-- so when I go to renew my license as independent auto dealer, I send in a bond. I send in proof that I have insurance and then the fee, essentially, to renew my license. Well, if I didn't have a bond, I couldn't renew my license, so I would assume that we would, you didn't have your training then you could not renew your license.

BOSTELMAN: So then you'd lose your license. You sit on a board, state board. So you're president of the--

CHAD TESSMAN: I'm the president of the Independent Auto Dealers Association, but I'm also on the licensing board.

BOSTELMAN: So on the Independent Auto Owners Association, you have a board?

CHAD TESSMAN: Yes.

BOSTELMAN: Does that board provide education and training?

CHAD TESSMAN: Yes. We actually just two weeks ago, we had our yearly convention where we provided quite a bit of training. We had three new dealers there, two of which were very eager for information. One of them, when I introduced myself, he says, I just want to make sure I'm doing my paperwork right, which is, was kind of a big sign to me,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

like, you already have a dealers license and you don't know how to do your paperwork right. But yes, we--

BOSTELMAN: So does, does your board have any say in whether a license is granted or not?

CHAD TESSMAN: Our board, the association does not, no.

BOSTELMAN: OK.

CHAD TESSMAN: Has nothing to do with that.

BOSTELMAN: So I think the last question for right now is, do you know what, franchises are not part of this, do they do training?

CHAD TESSMAN: Franchises are, number one, are a little more, there's fewer franchises and they're more, I wouldn't say permanent, but they don't come and go as much as, as independent auto dealers. You can have an independent auto dealer open up in February and close by March or June and open up a different one in November. I mean, they can come and go, whereas independent per franchises, they're dealing with a franchise. They get a lot of training through the franchise. I know where I worked prior to being an independent dealer, they were very heavy on, on training and you had people that were in certain roles. Whereas, independents, you have an owner that's doing paperwork, buying cars, cleaning the toilets, you know, washing the cars. I mean, you have lots of, lots of hats.

BOSTELMAN: One last question.

GEIST: Sure.

CHAD TESSMAN: Yep.

BOSTELMAN: So I guess my last question would be is, how do they differ, how do you differ from any other businessperson? Any other businessperson, no matter what they do is, have to come up with, they may be licensing, they may have safety issues, they may have those things as well, so why is this any different than any other person starting out a new business trying to figure out all the things that they have to--

CHAD TESSMAN: Sure.

BOSTELMAN: --know in order to stay within the boundaries of the law, I guess you'd say.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

CHAD TESSMAN: Sure. Well, I guess, you know, there is many types of businesses. People get very emotional and upset when they have issues with cars. Uh, matter of fact, a lot of times I say, it'd be nice to be a doctor because people come in and just say whatever, you know, whatever the doctor says we're just going to do and you get the bill three months later and it's, just is, what it is. Whereas a car dealership, there's lots of, there's lots of different car dealers and lots of different confrontations. And so when you have people that can't take their car and drive to their job because they don't have a title and it's been 30 days, and not getting answers from the dealer about what's going on, it creates a very emotional situation. Whereas, if you go in to get your hair cut and the person hasn't had any education, it may just mess up your hair, but you can still go to work. You're not going to get a ticket for having a bad haircut. So there's a lot of big deals there, so.

BOSTELMAN: Thank you.

CHAD TESSMAN: Yep.

BOSTELMAN: Appreciate it.

GEIST: Yes, Senator DeBoer.

DeBOER: Thank you, Senator Geist. So how frequently must you renew your license?

CHAD TESSMAN: Every year--

DeBOER: Every year?

CHAD TESSMAN: --in November.

DeBOER: And who are you imagining would be offering the educational seminars?

CHAD TESSMAN: So it could be offered by, I guess, in our imagination, it would be a nonprofit type of business.

DeBOER: Is that (INAUDIBLE).

CHAD TESSMAN: We would offer it, but we would not by any means limit it to, or want it limited to just us, so.

DeBOER: And who would approve or disapprove of the educational offerings?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

CHAD TESSMAN: That's going to be, that would probably be up to the licensing board.

DeBOER: And then who pays for it, who pays for it?

CHAD TESSMAN: The dealer would need to pay for it.

DeBOER: So the dealer would be required to pay for these, these classes that the licensing board would approve, from whoever would be willing to offer them?

CHAD TESSMAN: Correct. And that's how it's done in the states that we, we've, I've talked to some other directors in other states, and that's kind of how they do that.

DeBOER: OK. Thank you.

GEIST: Yes, Senator Fredrickson.

FREDRICKSON: Thank you. Can you maybe shed some light on what the current requirements are for licensure, you mentioned sort of--

CHAD TESSMAN: Yeah.

FREDRICKSON: --with Senator Bostelman.

CHAD TESSMAN: So if you wanted to be a new dealer, you have to have a lease on a property that I think can house ten vehicles for sale at minimum.

FREDRICKSON: OK.

CHAD TESSMAN: You have to have a sign with your phone number, has to be a landline phone number. So you have to have a lease, has to be zoned correctly. You have to have a bond, a \$50,000 bond and then insurance. And then, it's been a while. You have to have a--

FREDRICKSON: (INAUDIBLE) Sorry, but you say you get the example of, maybe not knowing how you do the paperwork--

CHAD TESSMAN: Correct.

FREDRICKSON: --so, so there's no requirement of knowledge of selling a car process.

CHAD TESSMAN: When I got mine in 2011, I was handed a packet that just had some examples.

FREDRICKSON: OK.

CHAD TESSMAN: And I kind of knew what I was doing because I'd been in the business. But I made, made mistakes. I made, oh, for example, on a Nebraska title, it could say John, John Jones or Susan Jones. So who needs to sign that title? Well, John or Susan? Oh, no, in Nebraska, "or" actually means "and", you have to both sign them. I got in this situation my first year where I'm five months later, and I didn't have another signature and I had to try to track down the person. Kid's dad didn't want to sign. I mean, I had to almost beg the kid's dad to sign. He said, I never wanted him to sell that car in the first place. I didn't know what the heck I was doing. So, I mean, it's, it can be, can be difficult if you, you're just kind of winging it.

FREDRICKSON: Sure. OK.

CHAD TESSMAN: Yeah.

FREDRICKSON: Thank you.

GEIST: Any other questions? I don't see any. Thank you.

CHAD TESSMAN: Thank you for your time.

GEIST: Thank you.

CLINT JONES: Hello. My name is Clint, C-l-i-n-t, Jones, J-o-n-e-s. I'm the vice president of the Independent Auto Dealers. I'm also on the licensing board. I've been a car dealer. I've been in the car business for 35 years. I was a CFO for a dealer group that had, franchised dealer group that had stores in four states, and have been an independent dealer for 12 years. So, I think where I'm going to start is maybe to continue on some of the questions that were asked. And Senator Bostelman, you asked about do, does the Nebraska Independent Auto Dealers do training? We do, but only to our members. You know, the only the people that come to us do we offer that training. I will train anybody that calls me. I don't care if it's a competitor across the street from me, I'll help them, but they don't call. They just mess up. And, unfortunately, the, the barrier to entry to being a car dealer is way too low. And, you know, you asked about the requirement to be a dealer, yes, you have to have insurance. You have to have a \$50,000 bond. To get a \$50,000 bond, yes, you have to be somewhat stable or have somebody that will go on with you to get that bond. So you might, you, yourself, not be that stable, but you get a couple buddies to go on with you and you three-way a \$50,000 bond. That doesn't in and of itself really qualify the person to be a good

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

business person and represent our industry the way that we, we want to be represented. I mean, the reality is, and we all know, I mean, we, we joke about it, we're used car dealers and we're trying to hold ourselves and our peers to a higher standard is what we're doing. There were some questions about states, other states. I just did a quick search yesterday, California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Louisiana, Michigan, Mississippi. This goes on. I mean, they all have had mandatory continuing education. By trade, I'm an accountant. I'm not a car dealer, what a weird combination. But, so in my prior career as a CFO, I handled obviously accounting. I handled acquisitions. We bought a lot of dealerships, but I handled compliance and compliance is a big deal. The Federal Trade Commission is, has released, it's called the Safeguards Rule. And what it is, is it's a rule that they're putting in place for specifically car dealers on protecting consumer data and how our computer systems, the architecture behind our computer system. This is thousands of pages. And there was a deadline that was supposed to go into effect early January, and they've actually extended it. If I were to poll 100 independent auto dealers in the state of Nebraska, I would be shocked if five even knew about it. And so, the ongoing training we talk about, there you go. This is new stuff that's coming. And yes, regulation laws do change, rules do change, at the state level. And we need to do it right at the state level, but there's a lot of federal things involved as well that we do train. One of them being the most obvious that as is sticker that's on the window of every car on the lot. That's a federal document, that's not a state document. Our dealers don't know this and I think that, we can do a lot of good. I think that, I had a couple of other points I wanted to touch on. On the, on the licensing board, we, we see a lot of repeat infractions where dealers, the complaints are coming in on the same things over and over and over. So that would be an example of something that we would train on. You know, we will work with the licensing board and we'll focus on things that are coming up. And is that yellow light for me? Have I been talking 5 minutes?

GEIST: You, only four. That's your one-minute warning.

CLINT JONES: Oh, I was going to say.

GEIST: It's going to run out here though, here in just a minute.

CLINT JONES: So anyway.

GEIST: Actually, now it did.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

CLINT JONES: It did. Oh, shoot. Ask me about the franchise dealers, why they shouldn't have to do it.

GEIST: It, it, may I ask you a quick question--

CLINT JONES: Yeah.

GEIST: --before someone else asks you that question? You talked about updating your, that there is a requirement to update your software. Is that a, is that a federal requirement to update your software that only about five people you would think knew about it? Is there a penalty for not doing that?

CLINT JONES: Well, that's a good question. And we haven't seen the final version of the Safeguards Rule yet, because I think they've kind of been sent back to the drawing board a little bit. Consumer data protection is a big deal. And so what I've done in my store is I've worked with my software vendors to make sure that we're compliant. And if there's an area where I think maybe they're pulling my leg, I'm making them sign off on. So I have a signed document by Frazer Computing or whoever it is that says, yes, any information that we're sharing is encrypted. Well, so I'm kind of a, you know, I understand technology a little bit, maybe more than the average person, not real good about it, so if I have my doubts that it is.

GEIST: You're going to do it?

CLINT JONES: Um-hum.

GEIST: OK.

CLINT JONES: Yeah.

GEIST: OK. Thank you.

CLINT JONES: You're welcome.

GEIST: That's, that's interesting. Are there any questions from the committee? Yes.

BOSTELMAN: Sure, I'll ask.

GEIST: Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist.

GEIST: I wondered if you would take that interest.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BOSTELMAN: And I appreciate it. I think it's important (INAUDIBLE) understand. So this only applies to some, a new dealer, correct? It's 8 hours continuing ed for an applicant. Is that for, for renewal of the license and then 4 hours so it's a total of 12 hours?

CLINT JONES: No, I'm glad you asked for clarification. So if a new licensee applies for a license, they've never had a dealer license before, that would be new dealer training, and that's an 8-hour requirement. Then existing dealers like myself or Mr. Tessman, we would be required, and we haven't nailed it down whether it's annually or every two years. Other states vary, so we want to talk with them a little bit about it, but we're looking at annually. So that training requirement would be last because they've already gone through the new dealer training. In theory, they understand the paperwork and things like that, so they're, they're, they've gotten that past that.

BOSTELMAN: So in the bill that talks about continuing education credits and that the board then approves those credits depends on what it is. So as you're, do the other states, do they have a list of resources that you go to, to take so many hours so that, so you know that it's approved or something you need to do?

CLINT JONES: Yeah. So the way that the states that I've really studied and got on the phone and talked with their directors, the equivalent of their licensing board would approve the curriculum and the vendor that's permitted to do this training. So in essence, all their vendors are going to be teaching the same curriculum. But I think they're more looking at the delivery method. I think that there needs to be accountability in that training system. In other words, you can't just click the mouse and say, play, and then go to the golf course because that, you know, that's all car dealers do is play golf, and then come back and it's done and I did my training. So Senator Moser kind of talked about that reading comprehension or whatever. You know, you watch a 5-minute segment on a given topic and it asks you three questions. And it isn't, they're not trick questions. The question is, did you watch it? I mean, do you comprehend what you're watching? Very basic.

BOSTELMAN: OK. Thank you.

GEIST: Any other questions from the committee? I don't see. Thank you for your testimony.

CLINT JONES: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Are there any other proponents? Are there any opponents to LB484? Is, any opponents? Anyone who'd like to testify in a neutral capacity? Good afternoon.

LOY TODD: Good afternoon, Senator Geist and members of the committee. My name is Loy Todd. It's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. The reason we have chosen to testify in a neutral capacity is because we're exempt from this and I felt a little uncomfortable coming in and being on any other part of it. I'll tell you, for the last 34 years, my primary job has been to educate my dealers. I represent about 200 new car dealers in the state of Nebraska. We have had a 100 percent membership penetration as long as I can remember because we are so highly regulated that, that my dealers need this constant training and information. The factories supply it to my members. We supply it to my members. And I'm going to just scan, just to, I'll tell you that twice this week, I got calls from new licensees and we sell a lot of the forms that, that dealers use because it's very expensive to produce and I draft lots of them. They come in and say, I got a license, what do I need? What do I need for forms. It's not our job to teach them, but we, we try to give them a packet of what they'll need. But just like the Safeguards Rule that was just mentioned by the gentleman, that is actually the law now. It is not being revised, it's been delayed until about May. The fine for failure to follow it is \$40,000. The smallest fine I can find of all the regulated items that these dealers are responsible for, and it's not just my dealers, it's them too. The smallest fine I can find is about \$10,000 by the feds, and the state does not enforce them. These folks need to know. I don't want to embarrass anybody, there are 1,100, 1,200 used car dealer licensees in the state. They have fewer than 100 that belong to their association and, and actually participate. This, their goal is to compel some of them. But just, I'll just laundry list them very quickly: Equal Credit Opportunity Act, Regulation B; Federal Consumer Leasing Act, Regulation M; Truth and Lending Act, Regulation Z; Cooling Off Rule; Unfair Trade Practices Act; Adverse Action Notices; Privacy Notice; Red Flags Rule; Risk-based Pricing Notices; Safeguards Rule; Used Car Rule. I can go around to, to dealer lots all over this state and find, there's a required form on every used car that's on any of these lots. I mean, sits the "as is" sticker. Is there a warranty included, is it gone? How much is expired there? That's a \$40,000 fine for not having that and they don't know it. And so, you know, we, we really believe that this would be a real benefit out there. And I don't apologize for us being exempt because we don't, we don't need this, we do it. I haven't had a new franchisee, in my

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

memory. Those dealerships have been here forever and in compliance. And many of these things require written programs within the dealership, the new requirements about a multifaceted verification system and records retention. Because privacy is huge and it's so risky and these dealers have thousands of private information because they're participating in the financing. Under the federal law, even any dealer who is-- sells, let's say they get a 100 customers a month, they're covered by that. They're considered a financial institution under, under the FTC rules and the federal law. They're treated the same as a bank. If they turn you down, you come in and, and they look at your credit and say, it's terrible, we're not going to waste our time. That customer is entitled to an adverse action notice required by federal law. When they come in and talk about financing, they're required to have a risk-based pricing. We're required to do a privacy notice. There's, the cash reporting, structuring a deal. Somebody comes in and says, If I give you \$11,000, for this car is, you know, can you take it? Well, we have to report it. That could actually end up with a fine. If it's, if it's bad enough, it can be jail sentence. The federal advertising rules and that's not, don't even mention the state requirements and there are lots of them. Advertising laws and the various things. It's the second biggest purchase most people make in their life. And the average, I just looked it up again because the average is going way up, but you know, the average used car is about \$30,000 now. It's, and the bond is only \$50,000. So, and I know I'm kind of a cheerleader for this, but, but not if we have to do it too. I know that's selfish, but I, we just don't need it. But, but I can tell you that people do. So with that, I would answer any questions.

GEIST: Thank you. I think one of the things that's concerning about this to me is that, granted, some of the dealers, the independent dealers might not know about this, but certainly the consumer doesn't know this hasn't taken place. And that's even a bigger concern because they're assuming that this is, this person knows more than they know. And if all of those things aren't complied with or known, then they may not and the consumer might assume that they do. So with that, are there any questions on the committee?

LOY TODD: If I could just add one thing.

GEIST: Sure. Absolutely.

LOY TODD: Very few lawyers in this state know about these laws either. And so when a consumer, when a deal goes bad, it's not unusual for me to get a phone call from maybe some of my old law school friends or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

just people that know what I do saying, hey, how's this work? And so it isn't just a consumer, it's, it's a narrow field--

GEIST: Yeah.

LOY TODD: --and it's very complicated.

GEIST: Thank you. Thank you for that testimony. No questions? Thank you for that.

LOY TODD: Thank you.

GEIST: Any other neutral testimony? Good afternoon.

JOSH EICKMEIER: Good afternoon, Chairwoman Geist and committee members. My name is Josh Eickmeier, J-o-s-h E-i-c-k-m-e-i-e-r, the executive director for the Nebraska Motor Vehicle Industry Licensing Board and I'm here this afternoon in a neutral capacity. Our agency would be the agency that would be regulating and enforcing this requirement if it were to become law. We, we're neutral on, on this. Obviously, this is requirement. We'll do everything we can to implement it. I did speak with, with Tim Keigher previously regarding this bill and I, nothing critical of the bill, just having questions because my background, personal background or experience with continuing education is with CLE and the continuing legal education requirements for having a law license. And, and so just questions like, can you carry-over hours? If you went to a 6-hour conference and you only needed 4 hours, can you carry over two? You know, those kinds of questions that come up with CLE before COVID, only so many hours could be online. Other hours had to be in person. That's been lax during COVID. So those are the types of questions that I had with Tim and in talking with Tim about that, my, my understanding would be is we could probably address most, if not all of those concerns with rules and regulations in order to, in order to make sure that we can answer the questions that the dealer is going to ask us when, when somebody goes to renew their license on Christmas day and we inform them they haven't met their 4-hour requirements for continuing education and they're not aware of that. So we just want to make sure that we're in the best position to, to meet those expectations. And I feel, for having-- I think this is the first time I've actually had an amount in the fiscal note, so I felt a little guilty about that. But we, we have our renewal licensing software. It's a couple of years old now and we, we've worked with Nebraska Interactive, which is now Tyler Technologies on developing that. If this became a requirement, I would assume we would, we would require that the licensee to include the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

documentation or proof that they have met these requirements as part of that process. So that's why it's a, it's a vaguely specific number of 3,000 to 10,000, because even they weren't sure how involved it would be to require additional documentation to be submitted and there would be some sort of a verification process, I assume as well, to make sure they actually took the hours that they, that they are claiming on their renewal. So other than that, I just want to add, when we do have a, and there is maybe some confusion when they talk about a new dealer, there are franchise dealers that sell new vehicles. But when we talk about a new dealer, we're referring to a dealer that has an application to become a first-time dealer. When we do the first-time dealer, there are a number of statutory requirements they must meet. The bond insurance. If they don't have Workers' Compensation coverage, then they would need a waiver, if they qualified for the waiver. There's a number of, of requirements and there's also facility requirements as was mentioned earlier. Once, every, once we have all the documents that we need and the application looks good, for a lack of a better term, meets all the requirements, then we send that application to one of our investigators for that area and then they will go and physically inspect the location. They're going to look to make sure that the sign is proper, that they have, you know, a mailbox, they have the phone, they have room for ten vehicles, space for ten vehicles, that sort of thing. And they do then take that time to educate the, the new dealer as far as answering any questions they have. They mentioned a packet. They receive a packet with a sample purchase agreement, sample documents. Again, we're only doing the state side of it. We're not, we're not providing any federal requirements. So on the state side, that's what we're providing. And so with some, you know, as was mentioned earlier, they run the gamut. You're going to have somebody that has grown up in the business, has been a salesperson, maybe their parents owned a dealership, and you have other people who have absolutely no background in this. So, so that's why I, on the inspect, on the inspection side of it, there is an opportunity. But again, the opportunity is only as good as the questions that are asked by the new applicant, because in some instances they just don't know what they don't know. So it's not, obviously, a perfect system from that standpoint. And then last thing I would just mention, too, is we do administrative enforcement and regulation. There's also a criminal side potentially to dealers who have violations. If the police get there before we do, they could be facing felony charges for, for various offenses. We, our focus is again on education and also progressive compliance to get them back and in line with what the state law requires, so. The amber light is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

on, so I will stop. If there's any questions, I'd be happy to try and answer them for you.

GEIST: Great. Thank you for your testimony. Yes, Senator Cavanaugh.

M. CAVANAUGH: Thank you. Thank you for being here. Did I hear you say that you're such a dedicated public servant that you work on Christmas?

JOSH EICKMEIER: No. No. (LAUGHTER) I said because, because we have-- great question --but no, because of the online renewal process we implemented. You can, you, we do get applicants that, here's what, here's what.

M. CAVANAUGH: You could have said yes.

JOSH EICKMEIER: Yes. But here's the, no, am I under oath. I'm so nervous right now. (LAUGHTER) No, what, with the, with the, the system we have is they can, they can do the renewal at any time.

M. CAVANAUGH: OK.

JOSH EICKMEIER: And then, and what typically happens is that the great reminder that their license has expired or is about to is when their tags on their dealer plates expire.

M. CAVANAUGH: Oh.

JOSH EICKMEIER: And that's usually the frantic phone call that we get is they realize they haven't renew their tags, but they can't renew their tags until they renew their license and then, that's when the panic sets in.

M. CAVANAUGH: Thank you.

JOSH EICKMEIER: Yes, thank you.

GEIST: Any other questions from the committee? I don't see any. Thank you--

JOSH EICKMEIER: Thank you very much for your time.

GEIST: --for your testimony. Any additional neutral testimony? I don't see any. Senator Moser, are you, there you are. Would you like to close. Senator Moser will waive closing. And that will end the hearing on LB484. And I do not have any letters of opposition or support. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

Senator McDonnell, you are welcome to open on LB728. Welcome to Transportation and Telecommunications.

McDONNELL: Thank you, Chairperson Geist. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB728 which would provide for boat trailers license plates, and allow individuals to register these plates every three years. This legislative concept and change was brought to me by a friend. Currently in Nebraska, motorboat registrations are issued for 3-year periods expiring on December 31 of the third year, while trailer registration are required every year. Through all this legislation to provide an opportunity to align boat trailer licensing with that of the boat licensing on the third year. This is just a real common sense. As I mentioned, a friend, we were having a discussion and to let the committee know and I'll work with you on this, when we sent it to Bill Drafters, it was, it was supposed to be revenue neutral. So it wasn't a way of saying if you're paying \$10 every year and then you go on the third year, therefore it would be \$30. It wasn't trying to say, ok., then we reduced it by \$20 in that 3-year period. That was not the goal. So we can work on that with you, the committee. It's just real simple. Every three years you go to register the boat, the trailer matches up. Again, I think it's the best part of democracy and just a friend and I having a discussion and they said, you know, what's the story with how this works and, and Bill is here in the, in the audience today and I give him credit for, for bringing this forward and it's just a real common sense, simple request.

GEIST: Yes. Senator Brandt has a question.

BRANDT: Yes. Thank you, Chairman Geist. Thank you, Senator McDonnell, for bringing this. So this would be the only trailer in the state of Nebraska that gets registered every three years if we pass this. Would that be correct?

McDONNELL: If you define a boat trailer, yes.

BRANDT: Yeah, it's got two wheels and it goes down a highway, right?

McDONNELL: With a boat on it.

BRANDT: With a boat on it, most of the time.

McDONNELL: Most of the time, yes.

BRANDT: Whereas, all the other trailers and I've got, I don't know how many. I just registered the other day, four of them. I got to do this

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

every year, enjoy my trip to Fairbury, pay for, pay for these trailers. Wouldn't another solution to this be license boats every year so it would be in sync with the trailers?

McDONNELL: I would, going the exact opposite way of what I want to do, but--

BRANDT: Yeah.

McDONNELL: --the idea of, I'd rather go with the idea of taking the, all the rest of the trailers and make them every three years to include the boat every three years, all trailers. I would offer, I think that would be a friendly amendment to the legislation.

BRANDT: All right. Thank you.

GEIST: Senator Bostelman has a question.

BOSTELMAN: Thank you, Chairwoman Geist. Senator McDonnell, could you define boat?

McDONNELL: A, something that floats on the water.

BOSTELMAN: The reason why I ask is, there's Jet Skis, there's WaveRunners. Those are those type of things. I mean they would all, and when we say boat, you know, there's, there's sailboats, there's all different so, I mean, your intention would be that, all of those would be included in that term of boat.

McDONNELL: Yes.

BOSTELMAN: Thank you.

GEIST: Any other questions from the committee? I don't see any. Do you plan to stick around to close?

McDONNELL: If you need me here, I'll definitely be here, so.

GEIST: It's your call.

McDONNELL: I'll be here.

GEIST: OK.

McDONNELL: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Thank you. Are there any proponents for LB728? Any proponents?
Good afternoon.

BILL HAWKINS: Chairperson Geist, members of the committee, thank you for being here. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm a lifelong Nebraskan and I'm here in as a proponent for this bill. And I guess I'm the only boat owner that's paying attention in the state of Nebraska. And I don't really understand that, but I've been a lifelong Nebraskan, and most of my life I've lived out by Branched Oak Lake. I started out motor boating and I got tired of polluting the water. And with Senator Brandt, I have two trailers that I work with most of my life hauling logs, trees, plants, whatever. And so I agree with the amendment that Senator Brandt has suggested that we include all trailers in a three-year rotation and that we actually let us pay the fee all in one month rather than have to come in in April and then back in July. So if you have multiple trailers, it would make it a lot easier but we can talk with that later. Just recently, at the end of this summer, I learned to sail. And it is the most incredible thing in the world to kick up on a boat and tighten that sail and fly with the wind. So as a progression of learning to sail and wanting to explore our great state of lakes, public recreation that we have, and the reason I've stayed here my whole life, I now have as of an acquisition of a boat this weekend of somebody moving that had to get rid of a sailboat. I now have seven sailboats. So now I'm up to nine trailers. So, this is important to me because I plan on enjoying these boats. And so this is an important bill that I just happen to be paying attention to. And that's one reason with these public hearings that came on real quick and you have people around McConaughy or Lewis and Clark Lake who don't even know about this bill, who may have more trailers than me. And so I hope you take that into consideration that I speak for a lot of sailboat people. I belong to the Lincoln Sail Club now. I told them about it at our banquet here this weekend, and they, everybody was busy and didn't really care. And I had no way of getting ahold of them and telling the public hearing was today. So I appreciate your time and your interest. I know this is a minor bill in the mountain of bills that you have, but it's important to Nebraska because we are here for our recreation. And so if you would give thought to amending the bill to allow paying all at one-time multiple trailers and with Senator Brandt, I'm all for including all noncommercial trailers that are the farmers trailers and not landscape and construction trailers. So I thank you for your time, and I'd be happy for any questions.

GEIST: Thank you for your testimony, Mr. Hawkins. Yes, Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BRANDT: Thank you, Chairman Geist. Thank you, Mr. Hawkins, for your testimony.

BILL HAWKINS: Yes.

BRANDT: From a practical standpoint, though, there is an issue here that would need to be resolved. We get a sticker for all of our license plates every 12 months and that sticker is a different color so that law enforcement knows whether you paid your registration. Now, if we throw a three-year license into the mix, so now I get licensed in '23, it doesn't expire till '26, it's, yeah, it's going to be kind of a mind bender to figure out a system unless you reissue a different plate every three years so that law enforcement can identify whether you've paid your registration at the courthouse. Do you have any idea of how that could be resolved?

BILL HAWKINS: And you stated it right there is, reissuing the license plate. So it's distinctive for that three years you recycle of the license plates and you have a different boat trailer, this bill is specifically boat trailers and so you have that specific boat trailer. But then you also have the farm trailer that's--

BRANDT: Yeah.

BILL HAWKINS: --very easily distinguished. And then that law enforcement officer doesn't have to look at that little sticker. He knows that that plate is, and then it would simplify the whole system of western Nebraska where you have to go miles, and then you forgot the registration or you forgot this, or then next month you have to go back because you bought this trailer the day after you bought this one and it's another month. And so that would really help a lot of Nebraskans.

BRANDT: I would suggest, at the courthouse, at least in my courthouses, when we buy something out of sequence, I get everything licensed in January. So if I make a purchase of a trailer or a truck or a vehicle in October, they let me sync it up to January.

BILL HAWKINS: Ooh.

BRANDT: And so they should, they should, I would be surprised if, and I don't know which courthouse you deal with, I'm just suggesting that maybe you might want to ask the County Treasurer if that's possible.

BILL HAWKINS: That's very interesting because the county, I live in Lancaster, it is a whole lot different. And there's no way that if I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

take a boat trailer title that I got from somebody, every time I go in there, something's wrong and they have to go to the back room for 10 minutes and stand and chit-chat to come out and tell me that, oh, this wasn't, this T wasn't crossed properly. And I've heard that from many people, so I don't think I can do that because I asked them about that.

BRANDT: That's between you and your treasurer.

BILL HAWKINS: Yeah. Yeah.

BRANDT: Thank you for your testimony.

BILL HAWKINS: Thank you, Senator Brandt. Other questions?

GEIST: Are there any other questions from the committee? I don't see any. Thank you.

BILL HAWKINS: I thank you for your time and this is an important bill. Thank you.

GEIST: Thank you. Are there any other proponents? Are there any opponents to LB728? Are there any who would like to testify in the neutral capacity? Senator McDonnell, you are welcome to close.

McDONNELL: Unless you have questions, I'll waive.

GEIST: OK.

McDONNELL: Thank you.

GEIST: Any questions? Just so I don't cut him off too quickly. Now, I do have four letters in opposition. No, oh, I transposed the letters. I'm sorry. That's for another bill. (LAUGHTER) I think I'm on it. It's LB782, so legitimately. All right. I'm dyslexic, I suppose. That will close the hearing on LB728, and we will go to LB782.

DeKAY: Good afternoon, Chairman Geist, Vice Chairman Moser and members of the Transportation and Telecommunication Committee. I am Senator Barry DeKay, B-a-r-r-y D-e-K-a-y, representing District 40 in northeast Nebraska and here today to introduce LB782. LB782 amends Chapter 60 to improve the process and way Nebraska automobile repairs are completed. The reason I introduced LB782 is because there are problems with how cars are repaired today. There are many instances when some car repair shops do not repair cars correctly. This has led to many cars in the secondary market that are unfit to be on the road.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

I believe consumers need additional protection in this instance. LB782 would create a new definition known as structurally totaled. This definition would consist of vehicles deemed totaled due to a kink or crease, crease in the frame rail, unibody or structural component, including an engine cradle or rear differential. The car repair body shop facility repairing the vehicle and the insurance company that insured the vehicle can deem a late model vehicle structurally totaled if both determine the vehicle meets the condition. This process provides some flexibility for the two to come to a consensus. The vehicle would then get a salvage title via the insurance company. The salvage title, title would give consumers a better idea of the state and history of the used vehicle. The other two ways of designating a salvage vehicle, either through a voluntary declaration by the owner of the vehicle or a case where a late model vehicle has been damaged to the extent that the total costs of repair to its immediate pre-damage condition meet or exceed 75 percent of the retail value of the vehicle prior to the damage remains the same. I do want to be clear, a structurally totaled vehicle does not include a vehicle deemed a total loss due to hail or cosmetic damage. It also does not include a vehicle if the cost to perform repairs does not exceed 75 percent of the actual cash value of the vehicle. Secondly, I want to make sure cars are repaired correctly. In today's society, newer cars are increasingly sophisticated computers, sensors and other electronics, and it is crucial to make sure these cars are repaired correctly. That is why LB782 dictates that cars must be repaired with how the manufacturer recommends cars to be repaired with the exception of parts. One item, a note for the committee, I do have an amendment, AM116, impacting page 6, line 11. The amendment is changing the tool auto body repairs are following, from estimating system to the original equipment, manufacture procedures. There will be proponents following me that can offer the importance of that change. If there are any questions. I'd be happy to try to answer them for you.

GEIST: Great. Thank you for your testimony. Are there any questions from the committee? I do not see any. You're sticking around for closing?

DeKAY: Exactly. Thank you.

GEIST: Thank you. Are there any proponents for LB782? Good afternoon.

SARAH STILLAHN: Chairperson Geist, Vice Chair Moser and members of the Transportation and Telecommunication Committee, I am Sarah Stillahn, S-a-r-a-h S-t-i-l-l-a-h-n. Thank you for your time and the opportunity to be in front of you to discuss an important issue facing Nebraska.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

I'm from Bumper to Bumper Body and Paint in Scottsbluff. I manage my family's body shop that was started in 1984, and I've been actively working in the industry for 12 years. Our repair center is one of the largest in western Nebraska, and we currently employ nine people. We consistently strive to educate ourselves to provide safe and factory-recommended repairs. In western Nebraska, we see a growing concern of vehicles coming in to our shop with previously salvaged titles. Most of these vehicles have been cosmetically repaired to be marketable with a low budget making these vehicles very appealing in the current market and economic conditions we are facing. Consumers are misled that these salvage vehicles are repaired properly and are safe to drive, but more often this is not the case. It will shock you how easy it is to cover up major structural damage and disregard or leave off safety features that are designed to save lives and prevent accidents. There are far too many people or businesses that take shortcuts or try to cover up major issues to save a dollar or make quick money and take advantage of unassuming consumers. Coincidentally, as I prepared to come testify this week, a customer came in that recently purchased a late model vehicle from a local dealer. She wanted us to repair a cracked bumper. She had a list of other concerns she felt might be related: headlight flickering, tail light doesn't come on, radio no longer works, tires going flat. My experience told me these items likely were not related and I proceeded to open the hood and immediately saw severe prior damage. I saw a new headlight that was installed of which the tabs were intentionally broken in order to fit due to the prior damage. Diving deeper, I saw wiring repairs completed only using electrical tape, cross-threaded bolts holding the engine cradle, and several other safety concerns. It's frustrating to know someone was willing to cut corners and make something work to make a sale. When repairs like these are made and not brought up to the standards the original manufacturer intended, it compromises the safety features and possibly the lives of people driving these hacked vehicles. I'm currently in possession of a Honda Civic that has significant structural damage to a quarter panel. To do factory repairs to this car, this car will total. After I submitted my plan of roughly \$14,000 to the insurance company, they responded by shaving off \$4,000 in needed repairs and deemed it repairable. After further discussion, the insurance company decided to settle on the value of the car with the customer, but would not adjust their written estimate of the repairs. They artificially reduced the repair costs to allow the vehicle to be sold at an auction with a clean title. It increases the salvage value and is more appealing to the buyers. It not only won't have salvage title, but it has structural damage. These insurance auto auctions used to sell these vehicles are even available

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

to the public. A quick online search of Copart clean title cars brings up Copart's website touting and I quote: Copart has a growing inventory of clean title vehicles available in online auction, register and start bidding. I decided to check this inventory and one of the first vehicles I found is exhibit A that you guys have. This is a screenshot of the exact listing. I think even those not in the industry can agree this vehicle has structural damage. However, it is being sold with a clean title. Many of these vehicles are sold online and the only inspection is utilizing auction photos. Unsuspecting consumers are purchasing these from the auction and have a false assumption of a repairable car. Over the years of seeing these issues, I can't help but notice that every other industry has rules and regulations to prevent catastrophic accidents. My husband is a pilot and his plane has been checked yearly with a fine tooth comb in order to be airworthy. There are huge consequences to fly a plane that doesn't fall under the FAA standards for flying. And for obvious reason, it helps prevent planes from crashing or causing other incidents and property damage. We ask you that you would consider doing similar to the vehicle on the road. We need legislation to guarantee repair facilities insurance companies follow factory repair procedures to satisfy safety standards. And beyond this, we need to stop structural total loss vehicles from being on the road and brand these titles for parts only. I ask that you take a serious look at our bill. Thank you for your time.

GEIST: Thank you. Thank you for your testimony. Are there any questions from the committee? Yes, Senator Brandt.

BRANDT: Thank you, Chairman Geist. Thank you, Ms.-- is it Stillahn?

SARAH STILLAHN: Stillahn.

BRANDT: Stillahn, for appearing today. I think your testimony kind of clarifies this for me, having had vehicles totaled in the past. So what you're asking for today in Nebraska, we have just a salvage title.

SARAH STILLAHN: Yes.

BRANDT: And is the salvage a 100 percent loss? Is that, is, who determines the salvage title?

SARAH STILLAHN: The insurance company determines the salvage title. So they determine a salvage title based off of the repair cost, plus salvage is going to equal actual cash value of the car.

BRANDT: OK.

SARAH STILLAHN: If you can alter any one of those numbers, sometimes you can affect whether or not that vehicle becomes repairable, even if they settle with the consumer and the customer gets the car replaced, the vehicle will still go to auction, but may not have a branded title.

BRANDT: Right. And that's what happened here.

SARAH STILLAHN: Yeah.

BRANDT: Nebraska is a salvage title. You see these truckloads of these vehicles go up and down the road every day to somewhere. So what you're asking for is a new category called "structurally totaled".

SARAH STILLAHN: Yes.

BRANDT: And that would appear on the title of these vehicles as structurally totaled and they would have to be a minimum of 75 percent of that previous formula. Is that correct?

SARAH STILLAHN: Yes. Yes.

BRANDT: And, but is that 75 percent determined? I mean, if you're an insurance company, why don't they deem it back to 74 percent and you're still going to see this, won't you?

SARAH STILLAHN: Yes. And that's why we need to add the repair procedures following OEM recommended repair procedures. It's going to prevent them artificially adjusting those numbers to get clean titles.

BRANDT: But if you use OEM parts, we're going to make it more expensive to repair than new aftermarket parts.

SARAH STILLAHN: Our bill isn't talking about parts. We're talking about how we want to handle installation of the parts and the repairs.

BRANDT: OK.

SARAH STILLAHN: The procedures, not the parts.

BRANDT: OK. Well, I think I, it's a little clear on what your perspective is on this, so thank you.

MOSER: Questions from other committee members? I have one, I guess. I listened to Senator DeKay talking about changes in the definitions in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

the law, but I was having a little trouble figuring out how that changes the situation you're describing. So what's the, in a nutshell, what's the purpose of the bill and how does it, how does it address what you're concerned about?

SARAH STILLAHN: I'm sure some others are going to go into that a little bit more, but we're removing the estimating database for being the basis of the repair cost. We need it to be OEM repair procedures and that's going to allow it to be more of a correct description of the repair damages.

MOSER: So a repair shop couldn't repair something in a field expedient manner, so to speak. Change the mounting of a panel or change the mounting of an engine.

SARAH STILLAHN: Right. Right. They want to do it in the way that the factory wants us to do that repair rather than just how we feel like it.

MOSER: Well, they could do that, but then it would be salvage, or would that affect whether it's a salvage time or not?

SARAH STILLAHN: Maybe somebody can expand a little bit better on how exactly that would work. You know, we're not wanting to use the estimating database to dictate how those repairs are done because it's simply just a tool for cost. It's not a tool for repairs.

MOSER: OK. Well, thank you. Other questions? Oh, I'm sorry. Senator Brandt.

BRANDT: Follow-up question. Using this truck and it's obviously choked out, but, so the insurance company or whoever, they're selling this truck with a clean title. If this was the same truck with a salvage title, the exact same thing, what's the price difference between what they're, what they're selling here is a clean title, right?

SARAH STILLAHN: Yes.

BRANDT: The truck is junk, but they're selling a clean title versus if this thing now had a salvage title, what, what is that worth? What's the price of that clean title worth on a totaled vehicle?

SARAH STILLAHN: You know, I don't have that actual data. We might be able to come up with some of that information for you, though.

BRANDT: What does your gut tell you?

SARAH STILLAHN: 20 percent.

BRANDT: All right.

SARAH STILLAHN: You know, it depends on how severely damaged it appears.

BRANDT: But, I mean, that's really what we're talking about. This is the issue we're talking about today in Nebraska. It's, it's, the version of a clean title, right?

SARAH STILLAHN: Yeah.

BRANDT: All right. Thank you.

MOSER: OK. Other questions from the committee? Thank you very much for your testimony. OK, we're still on supporters, right? Anybody else want to speak in support of this bill? If you plan to testify if you could move to the front row to be a little closer, that would be great. Go ahead.

RYAN CLARK: Good afternoon, Chairperson Geist and members of the Transportation and Telecommunications Committee. I am Ryan Clark, R-y-a-n C-l-a-r-k. I'm currently the vice chair for the Nebraska Autobody Association and work as the eastern regional manager for Eustis Body Shop. We have six locations across the state and I am based out of our Lincoln location. First part of the bill addresses the need for designated total loss vehicles with the structural damage as such. Just like Sarah, we recently had a customer, as in this week, and our shopper came in for a routine repair, just a front bumper replacement. After we took the front bumper off, we found severe damage to the frame rail and other parts of the vehicle. I do have a link to that site, just as she did. I just don't have it with me. The customer sold the vehicle with a clean title from an Internet car lot out of Omaha. He was completely blindsided by this damage. Now we, as repairers will assume the liability if this is not fixed correctly and do what just the vehicle came in for, a bumper replacement. If he were to get another accident, the framer will not react in the manner that Honda intended and could impact the safety of the passengers. This is a clean title vehicle came in for a \$2,000 repair and needs over \$10,000 in additional repairs. Had this bill been in place, the customer would not have been risking his and his passengers lives by driving around in a structurally damaged vehicle unknowingly. This customer is now stuck between a rock and a hard place. He doesn't have the money to get the vehicle fixed properly right now, but he doesn't

want to burn anyone else on it either. Is it on the consumer to know that they need to take the bumper off to see the frame rail damage on this Honda, or could we have a system in place that prevents this type of behavior in the future? Vehicles today are equipped with more safety features than ever before. Some many advanced driver assist systems include adaptive cruise control, lane departure, blind spot monitors and many others. Some manufacturers do not allow you to repair over the area where the sensor is mounted, some do. Some metals in the vehicle can be repaired, others require replacement. We are often asked by bill payers, why is this required? Why are other shops in the area don't ask for that or we don't pay for that. The problem is the vehicles are changing. There's more traffic now than 20 years ago. Speed limits have increased. Vehicles are becoming safer to drive. But if a vehicle is in an accident, don't we want the vehicle to react in the same manner if it were to happen again? Shouldn't repairs bring the vehicle back to pre-accident condition? This requires different repair methods than we had even five years ago. We now have to calibrate sensors, post collision, inspect many more safety components, and follow specific parameters of how the vehicle metals can be repaired. Every manufacturer has in-depth testing and engineering on how vehicles should be built, repaired, serviced. Very few of them are the same. It is vital to consumer safety that we follow the procedures set forth by the OEM, not how we used to do it. For instance, the most common estimating platform in our industry is the CCC gave sectioning guidelines for a 2018 Chevy Traverse along a roof rail section. This is a common vehicle in our marketplace. However, GM does not approve the sectioning operation in their repair procedures. Bill payers often want to pay what the estimating guidelines pay, not what the manufacturer approves is the proper repair. This is why there should be a requirement to follow each manufacturer's guidelines. The opposition will likely touch how this will increase the severity of claims. Anyone who asserts that the cost of repairs will increase if the shops are following the documented repair procedure instructions from the manufacturers and dealt, developed by the engineers who design the vehicle, is admitting that these procedures are not currently being followed. Otherwise, the cost of repairs and the cost to insure would not increase. If they aren't being followed today, and both sides of the issue agree on that, then the consumers in Nebraska are being endangered. Our opponents will state that we have monopolistic motives. I want to point out that this bill states the exclusion of OEM parts. Interestingly, these organizations that submitted opposition letters support the Repair Act federally because they believe automakers should be required to give consumers the critical information, software and tools they need to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

fix their vehicles. In the context of a repair, these OEM repair procedures are the most critical pieces of information that all of these organizations say should be available to everyone. Yet here they are objecting and being followed. This issue was not introduced to address parts. It's about ensuring that vehicles should be totaled are totaled, and structurally totaled for parts only, and the vehicles that should be fixed are fixed safely following proper processes. Thank you for your time. Be happy to answer any questions.

GEIST: Thank you for your testimony. Are there any questions? Yes, Senator Brandt.

BRANDT: Thank you. Thank you, Chairman Geist. Thank you, Mr. Clark, for testifying. It kind of bothers me that you're the second testifier to bring up, somebody bought a car that probably went through a flood or something in another state. Probably got the title washed somewhere.

RYAN CLARK: Yep.

BRANDT: Came to Nebraska. Does Nebraska, from a consumer protection standpoint, do we have any lemon laws in Nebraska so that when that individual buys a car from a dealer and then they find out they've been had, do we have any, any lemon laws on the automobile side or they just have to take a civil action in court?

RYAN CLARK: To my knowledge, I do not know. My gut says no, but we do have another proponent that works in dealership that might be able to help you.

BRANDT: OK. And then I find it sort of interesting that you brought up right to repair.

RYAN CLARK: Yes.

BRANDT: OK. So bear with me.

RYAN CLARK: Um-hum.

BRANDT: But it shouldn't make any difference if a individual chooses to repair the vehicle themselves or a body shop does, should it, if they're using new parts?

RYAN CLARK: If they're following the correct procedures, no, it shouldn't.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

BRANDT: All right. Thank you.

GEIST: Are there any other questions on the committee? I don't see any. Thank you for your testimony. Any other proponents?

DOUG KELLER: Chairperson Geist and members of the Transportation and Telecommunications Committee, my name is Doug Keller, spelled D-o-u-g K-e-l-l-e-r. I'm the president of Eustis Body Shop. I started my business in Eustis, Nebraska, in 1979. Eustis Body Shop is now in six communities in Nebraska. Eustis goes at Lexington, Kearney, Grand Island and Lincoln. Our company has over 75 employees and we're in fact certified in many of the vehicle brands. Our employees participate in annual training in all aspects of collision repair and are all high cargo class. We, we approximately repair 4,000 crash, crashes a year in our facilities. When I started my business, the most advanced safety feature in the cars of the seventies were shoulder harness seat belts. In the eighties, we started to see anti-lock brakes, lighter vehicle construction. During the nineties, airbags were introduced with federal standards going into place in 1998. In the 2000s, automatic braking systems became more commonplace. From there, the floodgates of technology have opened with blind spot, forward collision warning, lane keeping, lane departure, pedestrian detection, adaptive cruise control, parking sensors, auto parking, rear-view backing and night vision cameras. In 2016, the U.S. government released guidelines for self-driving cars. Today's vehicles have more sensors and computer systems than the space shuttle. As you can imagine, the procedures to repair vehicles have changed dramatically. In the seventies the worst of the poor quality repairs that we would see coming into our shops from other repairers were bent frames. That might result in an alignment problem or poor fitting of bumper or misaligned sheet metal. Rarely was there a life-threatening improper repair. As vehicles advanced and safety standards were increased, the more complicated the car became. Now, structural integrity in repairs is critical for the safety of all of us that are on the road. Federal rollover standards include windshield and back glass as part of the roll over strength of a vehicle and must be installed properly with factory recommended urethane sealer and processes. There have been many documented cases of fatalities due to not installing glass properly. Several years ago, two young men from Eustis were driving home from the county fair. They ran and hit a cow and were thrown from the front windshield and they both died from their injuries. Further investigation found that the windshield was not installed properly and failed to keep the occupants in the vehicle. Windshields are just a small part of the repairs we do at our shops and you can see the importance of following factory procedures.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

Rebuilt salvage vehicles are a problem. I have personally witnessed many vehicles coming to our shop for minor repairs and discovering that there are major structural issues. Not too long ago, a vehicle came into our shop for repairs. It had a salvage title and the rebuilder did not replace airbags that were deployed. The vehicle owner had no idea and had to pay several thousand dollars out of pocket to make his vehicle safe again. Please give our bill serious consideration. There must be legislation to ensure that insurance companies, as well as repairers, follow factory procedures. There must be strong legislation directing insurance companies to brand the cars title for parts only in the case of a structural total loss. Thank you very much.

GEIST: Thank you for your testimony. Are there questions from the committee? Yes, Senator Moser.

MOSER: So you would make it, this bill would make it illegal to use parts that weren't original equipment parts?

DOUG KELLER: No. No, it doesn't have anything to do with parts. It just has to do with procedures, factory procedures.

MOSER: But if you're doing a repair for a customer, the company that's doing the repair has to use the right procedures?

DOUG KELLER: Right.

MOSER: What if they're doing their own car repair?

DOUG KELLER: Well, you know, they should follow procedures, but I don't know. I can't control that.

MOSER: And you're not allowing the use of salvage vehicle to allow you to use different procedures. You don't want to use any procedures other than the ones that are approved?

DOUG KELLER: Well, I think the salvage, if the, if the car is for parts only, that would put that car in salvage yard and we would buy used parts. It would increase the amount of used parts available to us. Is that, did I answer that?

MOSER: Well, yes, I think you answered my question, but I might not have asked the right question.

DOUG KELLER: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

MOSER: So, isn't there an advantage to the insurance company if they declare a car is a salvage car? Why do they, why do they put salvage? Is that a law that we have to put salvage on the title if it's 75 percent of the value?

DOUG KELLER: Yes.

MOSER: OK. Because that doesn't help the value of it.

DOUG KELLER: Right. It does not.

MOSER: Is there a different, you have a different answer for Senator Brandt's question about the difference between a clean title and a salvage title?

DOUG KELLER: I would say it's more than 20 percent. I'd say it would be half.

MOSER: Yeah, I don't know either. I was shopping for a car and it had a salvage title and I was buying it from a rebuilder. He buys cars that are all--

DOUG KELLER: Right.

MOSER: --mushed in and resells them. And I think him to be, I think he's reputable. But he said 25 percent at least, you know less value with the salvage title.

DOUG KELLER: Um-hum.

MOSER: Thank you.

GEIST: Senator Brandt.

BRANDT: Thank you, Chairman Geist. A real quick question. Your goal is just to get all structurally totaled and salvage vehicles off the road and in a junkyard so that they can't be rebuilt and put back on the road. Would that be a correct--

DOUG KELLER: Structural total loss, not a cosmetic total loss.

BRANDT: But the bill doesn't define the difference, does it?

DOUG KELLER: Yeah, think it does.

MOSER: There's a definition.

BRANDT: OK, fair enough.

DOUG KELLER: OK.

BRANDT: Thank you.

DOUG KELLER: Thank you very much.

GEIST: Oh, yes, Senator DeBoer.

DeBOER: OK. So let me see if I got this. The concern is that we have cars or trucks that have been so structurally damaged that they really cannot be made safe again. Is that the concern?

DOUG KELLER: That's kind of why they're totaled and, you know.

DeBOER: OK. And so if we had some sort of, maybe it's a special title, like maybe you said that it's a salvaged unfixable, whatever the name of it.

DOUG KELLER: Like parts only.

DeBOER: Yeah, for parts only, sure.

DOUG KELLER: OK.

DeBOER: And we had that category, then do we need to do, is there another thing that we're also not getting at? Because I understand that piece, that those are only for parts. We can only take the parts. We don't want those back on the road. Is there, is there any other problem that we're trying to solve with this bill?

DOUG KELLER: Yes.

DeBOER: OK.

DOUG KELLER: We want to have the insurance companies as well as the repairers follow factory procedures. There's two parts in the bill.

DeBOER: So really, the one is this exhibit.

DOUG KELLER: Um-hum.

DeBOER: That's pretty straightforward.

DOUG KELLER: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

DeBOER: And the other is you want them to follow factory, or--

DOUG KELLER: Factory procedures.

DeBOER: --factory procedures.

DOUG KELLER: To repair cars that are repairable.

DeBOER: And will that make some folks unable to, I mean, will some repair shops be unable to comply with that level of factory procedure fixing because maybe of some of these. I just got a new car last week. It has adaptive cruise control. I'm still trying to get used to it. And some of those things maybe are more difficult to repair than, you know, something that requires a wrench.

DOUG KELLER: They would either have to just turn those jobs down and send them to someone that could, could do them, or else they'd have to get up to speed and be able to do them.

DeBOER: So this is not as dissimilar from the right to repair bill as I thought. OK. Thank you.

GEIST: Any other questions from the committee? Seeing none, thank you.

DOUG KELLER: Thank you.

GEIST: Good afternoon.

JAMES RODIS: Good afternoon. Chairperson Geist and members of the Transportation and Telecommunications Committee. I am James Rodis, J-a-m-e-s R-o-d-i-s. I am the process procedure and training manager for Woodhouse Auto Family and OEM Calibration. I come to you with 35 years experience as a past vice chair for the Nebraska Auto Body Association, an active member of the Society of Collision Repair Specialists. If you've heard from my colleagues, this bill is twofold versus to follow the workshop manual. I can tell you before manufacturers change the design of vehicles at the direction of the IIHS to make passenger vehicles more safe, this bill would not have mattered much. In the last 15 to 20 years, with vehicle design changes immensely and continues to change yearly, we used to be able to do almost anything to fix the car, but serious design changes means if we don't use exactly the right glue, the right number of welds in the exact spots, we could lead to catastrophic failures and the next accident. We currently have material compositions that even a nick means it must be replaced. The government prides itself on the crash test ratings. I'm led to believe some of the design changes are due to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

the higher rates of speed that we are allowed to travel. Those ratings are the reason people buy certain cars and trucks to keep their husbands, wives, children and grandchildren safe. I get calls weekly from friends and family members on this very question. As insurance companies have removed adjusters from the field and insurance companies have popped up some, excuse me, as insurance companies have removed adjusters from the field and inter, Internet insurance companies have popped up, having someone as educated as us talk about fixing the car is not the norm anymore. We simply have one side looking at numbers and the other side trying to fix the car for consumers and liability reasons. We are repeatedly told this repair is not conducive to the market or no one else is asking for this. For, one, any reputable shop which we have a ton across this state and two, if the shop writes a repair bill to fix the car correctly per the manufacturer, it needs to be granted. This simply is not a numbers game. It's keep, to keep severity down. It's to save lives. The second part of the bill is the total loss section. Over the last ten years or so, we've been seeing more and more businesses pop up that their business model is to purchase vehicles from insurance auctions and to repair and to resell them. A lot of times to unsuspecting consumers. I just had one two weeks ago that had wedge screws, baling wire, and were used on the front end of a car attached to the headlight and a bumper along with fabricated brackets. Luckily, this repair wouldn't kill anybody, but the customer had no idea. And the repair bill was north of \$3,500. Thirty-five hundred dollars the insurance won't cover as it wasn't in an accident. Thirty-five hundred dollars, the car lot does not owe because it was sold as is. Our Calibration company sees these kinds of repairs daily, whether it's a frame rail that's wadded up or even worse, a frame rail that was heated up in order to try and straight, straighten it. Thankfully, my guys are trained to look for such things, but the normal everyday consumer has no clue what to look for. They make sure the paint looks good, the body lines are straight. Thought they got a great deal because they paid \$2,000 less than the dealership, the car lot, or the owner selling it out of the newspaper. These unsuspecting consumers have no knowledge that the airbags may not deploy at the correct time or worse, they could get trapped in their car if there's an accident because the vehicle is not going to react the same as it was intended to do due to improper repair. Woodhouse currently represents 23 locations under its umbrella. Believe me when I say that a company this large, the final, financial impact when these vehicles are traded in, we simply refuse to sell them to consumers. I have enclosed a couple photos from the local insurance op, auction. It's just a couple of the vehicles we see on our roads that we will see on our roads soon. The problem with the red

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

fire vehicle is the fire weakens all structure, all metal and the front end of this car, not to mention the glue, along with the welds that help hold it together has melted out. We know this because the paint and the glue have the same melting point of 300 degrees. The blue vehicle has serious frame damage that the manufacturer tells us, we simply can't pull it out because it's a kinked. This has to be replaced. We largely see these simply pulled out and covered up. I'm sure the opposition, opposition is going to hammer on the parts side of this, but clearly we did not include parts. We actually excluded them. In closing, we humbly ask you that you help us in our fight to keep our families, neighbors, friends, customers and your constituents safe on the roadways. Thank you for your time. And I'll answer any questions from the committee.

GEIST: Are there any questions on the committee? Yes, Senator Bostelman.

BOSTELMAN: Thank you, Chairwoman Geist. How many other states have this been introduced in and have they been passed?

JAMES RODIS: I could get that information for you. I can tell you that there was an article posted by the SCRS, Society Collision Repair Specialists in 2019 that they talked to the Department of Insurance in every state, and over half of them stated that they assumed that this is how cars are getting repaired.

BOSTELMAN: So I want to talk about that you have to be able to repair. I think this goes with kind of what Senator DeBoer was asking earlier, in order to repair a vehicle, you have to be able to be certified, I would say, in order to work on that vehicle. So does that then eliminate certain people or businesses in the state that may not be certified?

JAMES RODIS: You would not have to be certified. The only thing you would have to do is get access to the repair procedures which it daily passes, generally \$25 to \$35, which you can then pass on to the insurance company. You know, here's my bill for this. And then at that point, it's simply going in and seeing what you have to repair. If you're welding on a quarter panel, you pull the procedures for the quarter panel. Where are we going to weld it at? How many welds, what kind of welds do we have? What kind of glue do we have to use? That all matters when this car is put together. It's not, you know, we're going to throw eight welds on here and call it good. We have to follow their procedure. There's multiple different kinds of glues out there. Each glue dries at a different rate. The slower the glue dries, the

stronger it is. They tell you which glue we have to use because that's how it was done at the factory. That's how we know it's going to react the same.

BOSTELMAN: Thank you.

GEIST: Yes, Senator Moser.

MOSER: So this bill would eliminate every builder from buying the back half of a car that's in good shape and the front half of a different car that's in good shape and cutting them somewhere and welding them back together?

JAMES RODIS: 100 percent, because that will kill people. Today's cars, that will kill somebody.

MOSER: And what about custom cars like limousine builders and stuff? They cut cars apart, weld the section in the middle. Would this eliminate their business?

JAMES RODIS: Would not eliminate it.

MOSER: Did the car manufacturers have procedures how to make a limousine out of a Lincoln Continental or?

JAMES RODIS: They have a number sections, yes. So even like lifted vehicles, there's a special section you have to go to for that. They kind of tell you how you can do that and change what was done at the factory. They don't always agree with it. You know, they tell you, don't lift the car over six inches, but they do have a section that does describe that in the workshop manuals. A little harder to find, but you can find it.

MOSER: This would cost insurance companies a lot of money if they had to fix cars using original parts and in certain ways.

JAMES RODIS: We're not asking for original parts. We're asking let us just follow exactly how the manufacturer wanted these fixed, excluding parts.

MOSER: So you can use generic parts, but you have to follow the repair manual.

JAMES RODIS: Correct. That's all we're asking for here. We just want to fix cars right.

MOSER: Yes. Thank you.

GEIST: Yes, Senator Bos-- DeBoer.

DeBOER: Thank you, Senator. Bostelman is very popular today.

GEIST: Yes, he is in my head.

DeBOER: We're all getting called Bostelman. So if you're looking at the factory, factory procedure manuals, do they require, so do they require you to use factory parts? Because if they require use factory parts, then even though you may not intend that the bill require factory parts, if the manuals say you have to use factory parts and you say you have to use the manuals, the transitive property says you've got to use factory parts.

JAMES RODIS: They all have statements that say you have to use factory parts, every manufacturer.

DeBOER: So then--

JAMES RODIS: But that's the reason we're excluding it. We're saying we're good with not having the parts, without that. We're saying we just want to be able to repair it the way that they state and that's why we excluded the parts, because we knew that's, that was going to be the fight.

DeBOER: But my point is that if you say you must use what the factory manual says and the factory manual says, in order to do this properly, you must use our part. Then we're sort of running in circles here where we end up with, you have to, the bottom line is you end up having to use the parts.

JAMES RODIS: I don't disagree with you, but we have to start somewhere. We have to protect our consumers somewhere.

DeBOER: OK.

JAMES RODIS: I mean, there's, there's got to be a starting point somewhere. That's the, that's the easiest thing we can do is say, hey, we will exclude parts from this. Just allow us to weld them where we need to, where to section them, the way that they need to be sectioned so we can do this right. Aftermarket companies, they don't sell quarter panels, which is struct, structure. They say, sell fenders. You don't find doors in aftermarket companies, you find bumpers. Those are small pieces to the puzzle.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

DeBOER: OK. This is way outside of my wheelhouse. But let me see if I followed that. There are some things that in the factory parts, men, factory procedures manual will say, you can't fix a certain thing. Is that what you're saying?

JAMES RODIS: Absolutely. There's structure pieces. So what kind of car you drive?

DeBOER: A Chevy Equinox.

JAMES RODIS: OK. So when you open up your Chevy Equinox, you see the door jamb?

DeBOER: Yeah.

JAMES RODIS: Right behind that door jamb is structure. That outside piece you see is not structure. The piece inside is.

DeBOER: Yes.

JAMES RODIS: If we put a nick in that piece of structure when we take it apart, we have to replace it because it has weakened the metal. That is super high-strength metal.

DeBOER: Yeah.

JAMES RODIS: The minute we nick it, we change it.

DeBOER: That makes sense to me. So when you're saying that in the factory manuals, they have these procedures. Essentially what you're trying to do is say that means that some things cannot be repaired.

JAMES RODIS: 100 percent.

DeBOER: OK. Thank you.

JAMES RODIS: Yes, ma'am.

GEIST: Yes, Senator Fredrickson.

FREDRICKSON: Thank you, Chair Geist. I, I'm trying to make sense of this. I'm not trying to belabor the point, but so if the bill is saying you have to follow the manufacturer's guidelines and you're saying but that excludes the parts, help me understand how those two things coexist if the manufacturer's guideline is requiring the parts.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

JAMES RODIS: We already have those guidelines that our side we really have to follow. But a consumer sign or signs the insurance policy that says they haven't read it, but it says, hey, we're okay to use after market parts. So our hands are tied there, right? They're going to get after market parts, that's how it is. All we want to do is follow, in this situation the part is-- a part is kinked, we can't repair a kinked part.

FREDRICKSON: Right.

JAMES RODIS: They're saying manufacturer tells us we can't. We know from litigation that our work has to be in a workmanlike manner. When you go to court over this, workmanlike manner relates back to following the OEM manual. If we don't do that, we're going to lose in court. There's tons of cases where this has already been proved across the country. We just haven't had a big one here in Nebraska. There was one five years ago in Texas, \$42.5 million a dealership my size lost the lawsuit because they did not follow the workshop manual.

FREDRICKSON: Right.

JAMES RODIS: We just, we want to protect our shops. And again, the two people were trapped in that car, had third and fourth degree burns. I've actually met them, great people. They're in pain every single day. We don't want that for any of our shops to go through something like that or our customers to have to go through it. We just want to fix cars right.

FREDRICKSON: Sure. Thank you.

GEIST: Thank you. Any other questions? I don't believe so. Thank you.

JAMES RODIS: Thank you for your time.

GEIST: Additional proponents. Good afternoon.

NICK STEINGART: Good afternoon, Chair Geist and members of the committee. My name is Nick Steingart, N-i-c-k S-t-e-i-n-g-a-r-t, and I am the director of state affairs at the Alliance for Automotive Innovation, a trade association that represents the manufacturers that produce nearly every new vehicle sold in the United States. We, our membership includes battery manufacturers, semiconductor makers and suppliers up and down the supply chain. And appreciate Senator DeKay sponsoring this bill and recognizing this as a serious public policy issue and taking steps to address it. As you can tell, I am here today to speak in support of this bill and the amendment. As has been

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

mentioned by some of the previous presenters, today's vehicles are considerably more advanced than vehicles of even just a couple of years ago. Everything from automatic lane centering, blind spot detection, adaptive cruise control, passing or pedestrian detection systems. These systems that we refer to as Automated Driver Assistance Systems, or ADAS, and some of these systems come equipped and even standard on many new vehicles sold today. In order to fix these vehicles, you need to have the proper repair procedures. And accordingly, automakers have developed and published specific procedures to guide the post-collision repair of every new car they sell each year, detailing the proper way to return a vehicle to a safe roadway condition. And that's a process, I might add, that takes thousands of hours per vehicle. Just so nobody thinks that this is an issue of access to manufacturers' procedures, there are many ways to access OE repair recommendations, including OEM1Stop, which is a Web page that allows auto body shops a single point of access to access repair procedures from almost every manufacturer. No other group or company provides anything close to vehicle specific guidelines on how to appropriately conduct vehicle post-collision repairs. Under the current system, collision shops are forced to decide between making a proper repair and receiving proper payment for their work from the insurance companies, which is simply not right. Most consumers, and rightfully so, would expect OEM repair procedures are already being followed on their vehicles in absence of any law that would-- that would require as such. To steer a collision repair to follow any repair procedure other than the one produced by a vehicle's manufacturer is a disservice not only to the owner of that vehicle, but passengers who unknowingly may get in that vehicle and fellow motorists. In fact, there are not any other procedures to follow. Either you're following the practices of the manufacturer or you're not following any approved repair plan at all. The reality is the average consumer does not have the expertise or ability to monitor and approve the post-collision repairs conducted on the advanced automobiles of today. And for that reason, we applaud and thank Senator DeKay for proposing this safety focused pro-consumer approach to better quality repairs for all Nebraskans. And again, would urge you at the appropriate time to pass this bill with AM116. That concludes my testimony. Happy to take any questions.

GEIST: Thank you for your testimony. Are there, yes, Senator Bostelman has a question.

BOSTELMAN: Thank you, Chairwoman Geist. As I sit here and listen to testimony, I've worked on a lot of title issues over the years we've been here. And one thing always stuck out, this committee has had and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

I've had bills myself, is that the number one thing in order to title or register your vehicles in the state of Nebraska, you have to meet safety standards. And if you do not meet safety standards, you can't title or register that vehicle in the state of Nebraska. So what I'm hearing is, is these vehicles do not meet safety standards. And if they don't meet safety standards, then why is this a issue, more of a legal issue than it is a repair issue? Because those vehicles, if they don't meet those safety standards should not be licensed, should not have a title and should not have that. So to me, I guess I'm coming to the point of this is, this is maybe not a repair issue, it's more of a titling issue in the sense that these vehicles that have been, there needs to be some action taken against the companies or those who have titled those vehicles, period.

NICK STEINGART: Yeah, I think that's probably a determination for the committee and sponsors to make, but, you know, as the previous witness testified, this really originated out of a case in Texas where you had a shop that was getting pressure, which came out during deposition from an insurance company, to cut corners, not follow the OEM repair procedures. And that shop was found to be 75 percent liable for, you know, those horrific third-degree burns that those individuals suffered, so.

BOSTELMAN: So that's exactly what I'm talking about, is that there is a remedy to this and there's those who do not repair them according to the safety standards can be held liable.

NICK STEINGART: Yeah, I don't know if we want to be in the-- where this issue again originates from is these repairers want to fix their cars properly. They have to negotiate with the insurance companies and they control the purse strings here and they get a lot of pressure to keep those costs down.

BOSTELMAN: I hear what you're saying, and the insurance companies will come and testify, I'm sure. But again, I'm going to come back to if that vehicle is not roadworthy and not safe to be on the road, then that should come back to whoever is titling that vehicle. If it's the insurance company or if it's a repair place that did not repair it back to a safety standard, then there's got to be some responsibility there. I mean, and I don't know that this, you're still going to have people who go out there and do it. I think, you know, what about rat rods? What about, what about Model A that gets, that gets changed, that someone, that someone rebuilds it? What about the farm truck that you have that-- you know, you run into something? You knock in the front end of it. But, you know what? It still works on the farm. You

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

still do on the farm. I mean, I think-- I guess what you're saying is that there's already been case law out there. There's always been liability found. Maybe that's a place we should be rather than putting up, you know, if the repair firms already know, repair shop already knows, that potentially it comes back on me, right, as a repair shop. If I don't fix that vehicle right so it's back to road worthiness and safety standards for the road, that comes back on me. And if it's an insurance company, then it comes back on the insurance company. Maybe those type of cases need to happen more often and we can resolve the issue we're talking about.

NICK STEINGART: I see what you're saying. I, I don't want to lose sight of the fact that we're talking about safety here. And I get a little, you know, wary or uncomfortable if we're saying, let's just wait for accidents to happen and then sort it out in the courts later.

BOSTELMAN: I'm not saying wait for, for an accident to happen. There should be an inspection on that vehicle and the state should inspect that--

NICK STEINGART: Yeah.

BOSTELMAN: --or somebody should inspect that vehicle. If the insurance company is going to put-- going to say this vehicle is roadworthy and safe when there's an inspection saying if it's not, then, then it should come back on them.

NICK STEINGART: Yeah, and I'm frankly not familiar with the inspection process here. It's, it's possible that could be, you know, revisited.

BOSTELMAN: Thank you.

NICK STEINGART: No, thank you.

GEIST: Thank you. Any additional questions? I don't see any. Thank you.

NICK STEINGART: Thank you.

GEIST: Any other proponents? Proponents?

ROBERT M. BELL: Did you say opponents?

GEIST: Proponent.

ROBERT M. BELL: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: But you're ready for the next announcement. Why don't you go ahead? Opponents.

ROBERT M. BELL: Thank you.

GEIST: Good afternoon.

ROBERT M. BELL: Good afternoon, Chairwoman Geist and members of the Transportation and Telecommunications Committee. My name is Robert M. Bell, last name is spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. I'm here today to testify in opposition to LB782. As a refresher, the Nebraska Insurance Federation is a state trade association of insurance companies. The Federation currently has over 40 member insurance companies. Members of the Federation include companies who write all lines of insurance and who provide over 16,000 jobs to the Nebraska economy and over \$14 billion of economic impact to the state on an annual basis. Perhaps most importantly, Nebraska-- the Nebraska Insurance Federation member companies provide high-value, quality insurance products that protect Nebraskans during difficult times. As you've heard already, maybe not, but LB782 has two parts. First is a designation of a structurally totaled vehicle in the salvage title statutes for vehicles that have a kink or crease in certain structural components. I wasn't going to go too much into that in my testimony, but listening to the proponents, I did want to mention just a few things. There are certainly some times that structural components can be repaired for less than 75 percent of the value of the vehicle. And, you know, I-- and from my member companies, from what they tell me, that that does happen occasionally. And they do, they, they can repair that. And I'm going to admit I'm by no means an expert on salvage title. I'm not actually sure the legislation does what the proponents think it does related to the salvage title. And I think that would take more evaluation and discussion on, on, on that particular piece. The second part of the legislation is the last three sections of, of the bill, and that legislation places requirements on auto repair facilities to utilize original equipment manufacturer, OEM, procedures for all repairs to motor vehicles except for the use of OEM parts as it's amended. We are a little bit confused by this language, but when we review the legislation, the insurance companies in Nebraska determined that LB782 is an attempt by certain auto body shops to require the use of OEM parts in motor vehicle repair. And I want to provide a little background. OEM parts dominated the auto repair marketplace until about 40 years ago when non-OEM parts began to be manufactured and sold. These typically are called aftermarket parts. Aftermarket parts are, generally, are sheet metal and plastic parts

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

for the exterior of the vehicle. The introduction of aftermarket parts into the market broke the monopolies of the OEM parts manufacturer. Aftermarket parts save Nebraska policyholders money. Premiums are lower when insurers and their policyholders are able to have a body shop use aftermarket parts. Not all insurers require the use of aftermarket parts. Many policies have provision for OEM parts for newer vehicles, and some riders are available for early OEM parts on some policies. However, there is also definitely a market for cheaper insurance that requires-- and that's probably not the word I should be used, cheaper-- less expensive insurance that requires the use of aftermarket parts unless the consumer decides to pay the difference for an OEM part, OEM repair versus an aftermarket repair. The question you might ask yourself, are OEM parts as good or is aftermarket parts as good as OEM parts? In Nebraska, the answer is yes. And before you, you have a rule and regulation from the Department of Insurance that was promulgated in 1988 that requires aftermarket parts must be at least equal in like kind and quality to the original parts in terms of fit, quality, and performance, which is Title 210 of the Nebraska Administrative Code, Chapter 45. Under this rule, insurers must disclose to the claimant in writing on the estimate that this estimate has been used-- has been prepared based on the use of automobile, automobile parts not made by the original manufacturer. Parts used in the repair of your vehicle by other than the OEM are required to be at least like or equal in like kind and quality in terms of fit, quality, and performance to the original manufacturer parts they are replacing. I would also say that Congress has also seen the value of aftermarket parts. Federal law, specifically the Magnuson-Moss Warranty Act, prohibits warrantors from voiding an automobile warranty merely because an aftermarket part has been utilized. And as of late as last year, the Federal Trade Commission has, has dinged manufacturers for placing prohibitions in their warranties. I think in particular, Harley-Davidson was the company that was fined as of-- what's the latest fine? And they re-emphasized the consumer's right to repair. Sorry, I didn't realize I'm out of time. We oppose LB782 in case you couldn't tell. Thank you.

GEIST: Thank you.

ROBERT M. BELL: So.

GEIST: Are there some questions for this testifier? Yes, Senator Brandt.

BRANDT: So in, in Nebraska, when we talk to the proponents here.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

ROBERT M. BELL: Um-hum.

BRANDT: And we have a vehicle here that's obviously totaled. I mean, it's totaled.

ROBERT M. BELL: Sure.

BRANDT: There's no doubt about this. And it is a clean title because when the insurance company takes possession of the vehicle, you're going to resell it to-- typically you resell it to a whoever,--

ROBERT M. BELL: Sure.

BRANDT: --the highest bidder. Would that be the correct statement?

ROBERT M. BELL: A lot of times that is how insurance companies do work. I assume it's, it's not just the highest bidder, but the best bidder, right, so.

BRANDT: And the difference between the highest bidder and the best bidder is?

ROBERT M. BELL: Well, it's-- depends on the situation, right? You know, we may have a business relationship with a, with a, with an auction or we may not like doing business with somebody. And so we decide we're not going to take the highest bidder so.

BRANDT: So I guess, you know, you talked a lot about parts, but the other part of the bill is about this, this clean title on a obviously destroyed vehicle.

ROBERT M. BELL: Right.

BRANDT: Is-- are the insurance companies opposed to when, when the insurance company totals that vehicle, it's got to be salvaged if you total the vehicle in Nebraska, doesn't it?

ROBERT M. BELL: That's my understanding, yes.

BRANDT: All right. I'll wait for somebody else to come up. I've got to formulate my thought here for a minute. So thank you.

ROBERT M. BELL: No problem.

GEIST: Any other questions? I don't see any. Thank you for your testimony.

ROBERT M. BELL: You're welcome.

KORBY GILBERTSON: Good afternoon, Chairwoman Geist, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association in opposition to LB782. And I don't want to be repetitive. And so I'm going to just kind of jump to comments from Senator Bostelman and Senator Brandt. The replies I got to this legislation were literally what are they trying to do with this? It doesn't make any sense. We can't figure out what this bill does. Friday we got an amendment that kind of clarified it and then the assumption was, OK, they're pretty much just bringing back the bill from last year so-- because it's still not clear what the bill intends to do. We did not spend time discussing the title issue because they weren't that concerned with that part of it, because, as you said, the safety issue is still there. Insurance companies don't want people out driving unsafe cars. I think that is-- we hear that all the time. Well, the insurance company didn't want to fix the car. We don't gain anything by having unsafe cars on this-- on the road. So I think we need to put that aside and talk more about what are we really trying to get at with this bill? And if we're really trying to get at figuring out how to do salvage titles on vehicles, then let's talk about doing that. There is no such thing as a parts only title. I heard one of the proponents say that. That doesn't exist. So I don't-- I'm, I'm confused. I don't know what the bill actually does. I think obviously if the issue is keeping unsafe cars off the road and figuring out how to title them as a salvage vehicle, then that's the conversation we should have. This bill I don't think does that.

GEIST: Are there any questions? I don't see any. Thank you.

KORBY GILBERTSON: Thank you.

GEIST: Good afternoon.

SCOTT MERRITT: Chairperson Geist, members of the Transportation Telecommunications Committee, my name is Scott Merritt, spelled S-c-o-t-t M-e-r-r-i-t-t. I'm here today on behalf of the automotive recycling industry of Nebraska, ARIN. We are a trade association that represents the salvage yards and recyclers across the state, as our name says, and we have yards across the state. Many of them, almost all of them are locally owned and many of them are still in the second, third generation of ownership in their, in their family. We submitted some written testimony through the portal. So in essence of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

time, I'm just going to jump to a couple of the points. First, our association does not have a position on the structural salvage title issue part of this. It's two-edge. We'd like to see vehicles salvaged so my people can recycle them, but yet we also sell parts to other, other customers. The, the real problem that we have with the bill in opposition is Section 6. It's been referred to several times. And what is the intent? We found the language very, very ambiguous and we're really, as some of the other folks have spoken to, really not sure where this heads. Is it about the process of repair? And if so, I've heard in here that it's not about parts, but the manuals that they're referring to and the information that they're referring to, I'm not a specialist in this area, but I have yet to see a manufacturer's manual that refers to please use recycled parts in the repair of this vehicle, whether it be from John Deere or GM or Ford. So we're really confused on the verbiage in there. And I think the amendment that was mentioned does not really clarify it for my members. And where does recycled parts fit into this whole scope of things? So on behalf of my membership, I would ask that we do not advance LB782. If there's any questions, I'll try to answer.

GEIST: Are there any questions? Yes, Senator Brandt.

BRANDT: Thank you, Chairman Geist. Thank you, Mr. Merritt, for your testimony today. Today on your salvage yards when you get a vehicle like this that's totaled, gets pulled across the scale, they must provide a title. Is that correct?

SCOTT MERRITT: Yes. And that title is either filed with the state or it's salvaged.

BRANDT: Right. But once, once-- and obviously then the car's probably crushed or taken apart or something. But there's an obligation on the part of the salvage yard then to turn that title in to, back in to the state. Does that go to the DMV--

SCOTT MERRITT: Correct.

BRANDT: --or who does that go to?

SCOTT MERRITT: I believe it goes to the county first and ends up at the state. But I'd have to check. I know it goes to the county.

BRANDT: And that's, that's an effort to keep any shenanigans from going on down the road. Correct?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

SCOTT MERRITT: Yeah. The title would be separate when the car is torn apart.

BRANDT: All right. Thank you.

GEIST: Any additional questions?

SCOTT MERRITT: I'm sorry.

GEIST: Oh, no, you're good. Thank you. Good afternoon.

CATALINA JELKH PAREJA: Good afternoon, Chairwoman Geist and members of the committee. Good afternoon. My name is Catalina Jelkh Pareja, spelled P-a-r-e-j-a and I represent LKQ Corporation. LKQ is a global leading provider of aftermarket, recycled, remanufacturer, and specialty parts [INAUDIBLE] alternative auto parts. LKQ is also a leading provider of motor vehicle diagnostic services, including pre and post scans, calibrations reprogramming, and other mechanical services. LKQ has a global leading team of about 45,000 members. We operate in 1,600 locations in 25 countries and we have 7 facilities here in Nebraska. LKQ is in opposition to LB782 as originally introduced and recently amended. The bill creates inaccurate definitions and problematic provisions for the use of original equipment, manufacturer procedures and parts. And I think we have to make a clear distinction between the two very different issues that we are discussing here today. We have Section 1 addressing the salvaged total loss vehicle issues, and then we have the section of concern for most of the opponents found in Sections 6, 7, and 8 dealing in OEM, OEM procedures and parts. The bill is model legislation supported by the car companies and body shop associations across the nation. In recent years, OEM repair procedures legislation attempting to restrict the use of alternative parts has been introduced in almost 20 states with no success. All of those legislatures have rejected this anticompetitive legislation, including Nebraska, when this proposal was presented to the Banking, Commerce and Insurance Committee in 2021. LB72's [SIC LB782] proposed definition for OEM parts fails to state the fact that car companies do not manufacture all of their own products. Manufacturers of OEM parts supply parts to the car companies as well as the aftermarket providers. These parts are often manufactured in the same facility, the same assembly line following identical specifications, but they're branded differently for the car companies and the aftermarket providers. LKQ is in strong opposition to the underlying premise to mandate repair procedures originated by the car companies, which by default require the exclusive use of their branded products. Such proposal would outright prohibit the use of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

alternative parts, including aftermarket, recycled, remanufactured, and specialty parts, as well as the tools and equipment that are needed to conduct diagnostic and repair services. LB72-- LB782 would establish a de facto restriction on the alternative industry as it makes solution to OEM repair procedures that are normally included in manuals, guidelines, service bulletins, specifications, and directives for motor vehicle repair that most certainly favor the use of only branded car company parts, tools and equipment. Legislation should not mandate adherence to any position statements, recommendations, suggestions, advice, or guidance regarding the use of any particular brand, type, or manufacturer of parts, tools or equipment. This proposal translates into a monopolistic government mandate that attempts to disrupt Nebraska's auto repair industry and will undeniably result in higher prices and limited choices. Nebraska consumers should have the right to choose how to repair their vehicles. Limited options, raising repair costs and insurance premiums via government mandates will only hurt families in Nebraska that are-- that are already under economic frustration and depend on their vehicles to get to work the most. This is the wrong time to pass adverse legislation limiting repair options for Nebraska families. LB782 would exacerbate the already stressful situation for families dealing with high fuel prices, inflation, and product backorders. Constituents would simply outcry the increase in repair and insurance expenses in addition to abnormally long wait times for servicing of their vehicles due to the controlling nature of this proposed language. Parts shortage and supply chain disruptions continue to affect new car production and parts availability. Alternate, alternative parts are readily available, and they're ready for Nebraska families to promptly repair their vehicles in a safe and affordable manner. Alternative parts for-- are over between 26 to 70 percent less than comparable OEM parts. We respectfully ask you to reject this proposal and allow Nebraska families to continue to repair their vehicles with safe, affordable, and readily available options.

GEIST: Thank you for your testimony. Are there any questions? I don't see any. Thank you.

CATALINA JELKH PAREJA: Thank you.

GEIST: Any additional opponents? Are there any neutral testimony? Is there any neutral testimony? Senator DeKay, you are welcome to close.

DeKAY: Thank you again, Chairman Geist, Vice Chairman Moser. I appreciate the discussion today from both sides of this issue. And I would like to reemphasize my amendment as amended, Section 7 says any

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

person performing consumer care shall follow the original equipment manufacturer, OEM, procedures for all repairs to motor vehicles except for the original equipment manufacturer part. I will repeat that this bill does not dictate that the car be repaired using certain parts. It just means that the car must be repaired with the best practices to provide consumer care through manuals and guidance provided by the manufacturer. This amendment lays out that OEM procedure should be used to fix the vehicle, but allows room for the facility, facility to use OEM parts, aftermarket, remanufactured, or refurbished parts if they so choose. I will emphasize in the state of Nebraska, at least you go through insurance, all insurance specified aftermarket parts must be at least of similar kind, quality to OEM parts to fit quality and performance, which means the procedure should be followed to make the repairs necessary. It doesn't mean you necessarily have to use OEM parts. It just means that those parts, whether refurbished or aftermarket, must meet the standards of the manufacturer's suggested, suggested schedule for how they work with them. So it does-- it's not-- it's not to dictate for any parts, but to make sure that they're inspected to manufacturer specifications. So if you're going to use refurbished parts, all it means is that they need to meet the inspection if they are properly dismantled to-- for somebody to use; properly inspected so your antilock brakes, your cruise control, all of those are taken apart, inspected so they are safe and are reintroduced to a different vehicle. That's not-- that is what I'm looking for today, is to make it as safe, make it for the consumer that is doing this, for buying these vehicles. Insurance costs aside, there are options out there for insurance carriers on their vehicles to use regardless if it's a newer vehicle, older vehicle. Sometimes it dictates how much coverage they have. So if they can buy remanufactured, refurbished, or aftermarket parts that will make those vehicles safe to be on the highway, that is what my intent is with this bill today. So I just want to make that clear to everybody here. I believe consumers have the right to expect that their vehicle will be properly repaired. In my view, a proper repair is performed pursuant to the original equipment manufacturer's OEM procedures and using OEM or OEM equivalent parts that are similar like in quality. If members of the committee or those testifying have any thoughts on how to improve the bill, I would be happy to work with them to make this as-- make vehicles on the highway safer for everybody that's driving them and buying them. With that, I thank you for your time.

GEIST: Thank you. Are there any questions? I don't see any. That will close the hearing except for a spoiler alert, which I already announced. We have four letters of opposition that came in for LB782

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

and that will end the hearing on this bill. We will now move to LB688 and that will be our final bill for today.

ERDMAN: Thank you, Senator Geist. My name is Steve Erdman. I represent District 47. That is nine counties in the Panhandle. And the name is spelled S-t-e-v-e E-r-d-m-a-n. I bring to you today LB688, which is a bill to help with CDL training. And, and I have some prepared remarks. But before I get there, I'll just share with you the intent of why we are considering this. It's because the state of Iowa has done a similar thing to this and they have contributed \$6 million to a CDL driver training program in Iowa, and rightfully so. The concern is if we don't do something to keep our CDL drivers, our truck drivers in Nebraska, we may lose those over to Iowa. So that is the intent of the bill is to transfer \$10 million one time to a fund to help with training for CDL drivers and also for diesel technicians. And the fiscal note very well stated what the intent of the bill is. The bill states the intent to appropriate \$10 million from the general fund of the Nebraska Department of Motor Vehicles. The funds are to be used and utilized for work training programs designed to award grants to individuals to obtain commercial driver's license and diesel technology degrees or certificate through an in-house or third-party certified training provider. The providers must be located in Nebraska and/or be a Nebraska community college, which I think is very important. And so the department, the DMV, had a chance to take a look at the fiscal note and to give us their opinion about what this would cost. They stated that they don't have the expertise on staff to handle such grants. And as you'll see in the fiscal note, they're saying that to do that program they need four full-time employees and it's about \$270,000 for that program. So it leaves about \$9.7 million to be distributed for training. And so that is the intent of the bill. Truck drivers and diesel technologists are essential part of Nebraska and the national workforce. We're short of truck drivers. That's one of the issues that we have in the state. And being in an agricultural district, that is a difficult thing for us at harvesttime to find people who have CDL licenses to haul our products to the market. And so the CDL training will also help train diesel mechanics so that they can work on these, on these trucks. The intention is up to \$2,500 will be given to each one of those individuals seeking that training and that will help offset the costs of getting certified in either one of those two classes. So you'll hear from the department. I would hope that they would be here and speak about that. There'll be others that will follow me to talk about what exactly this is going to do for the industry. The trucking industry is very important. I believe anything that you have today, a truck brought it; and if you don't have it,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

you're not going to get it if a truck doesn't bring it. And so when we've seen the diesel prices increase as they are and the shortage of truck drivers, you see some of the shelves in your grocery stores are vacant or empty because they couldn't get it transported there. There have been several emails I have received in support of this. I appreciate that. I went and looked at the Iowa proposal the other day. I think they have a very easily-- very easy way to do log in to their site and check in how do you-- how you find that resource. And I think we can do similar things here. So I'll make it very simple on the last one today. I don't want to stand in between you and going home. Senator Wayne said to me yesterday, he said, Erdman, I've never seen you bring a bill that asks for money. You're always trying to stop something. And so in the six years that I've been here up until now, I have submitted two bills for an appropriation and this is one of them. And so I would appreciate your consideration on this. I'll try to answer any questions, but the technical questions can be answered by those following me.

GEIST: Which is pretty funny, Senator Wayne and I think the same way because I was going to say the same thing. So-- but I don't need to. You've already stated it. Are there any questions on the committee?

ERDMAN: Thank you.

GEIST: Yes. Senator Brandt.

BRANDT: Thank you, Chairman Geist. Thank you, Senator Erdman, for bringing this bill. This is truly a bill that will help rural Nebraska. I guess the first question for you, why don't we just give the money to the community colleges that have the people in place to award the grants as opposed to creating a grant program in our DMV, Nebraska DMV department? And I think we could save that \$270,000 they're asking for. You know, that's another 100 scholarships, a little over 100 scholarships there at \$2,500 each. And then the second question is typically truck driver training is like an 8- to 10-week course. But to become a diesel mech, you know, it's a two-year course.

ERDMAN: Correct.

BRANDT: You know, they're-- what were your thoughts on that?

ERDMAN: Well, you know, Senator Brandt, I think those are great ideas and it's worth flushing out and seeing if the community colleges can handle that. Why reinvent the wheel? So I think that's an idea that we need to consider and flush out to see if we can do that, because the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

community colleges have some of those people on staff to do those things. And whatever we can do to make it more efficient, I'm willing to do that.

BRANDT: All right.

ERDMAN: [INAUDIBLE] we can, however we can fix it.

BRANDT: Appreciate it.

GEIST: Do you plan to stick around for closing?

ERDMAN: Yeah. One thing I figured out, if I sit over there, I can hear.

GEIST: Oh, good. OK.

ERDMAN: Thank you.

GEIST: Any proponents for LB688?

JACK PEETZ: There are other proponents, but they pointed their finger at me first so.

GEIST: I noticed that.

JACK PEETZ: Good afternoon, Chairwoman Geist, members of the Transportation and Telecommunications Committee. For the record, my name is Jack Peetz, J-a-c-k P-e-e-t-z. I'm a registered lobbyist for the Nebraska Trucking Association. Thank you for allowing me the opportunity to testify in support of Senator Erdman's LB688. As background, excuse me, the Nebraska Trucking Association currently has more than 900 members, ranging from some of the North America's largest trucking fleets, single truck owner operators, construction companies, government agencies, healthcare systems. While our emphasis is mainly on the transportation industry, an important point to remember is any organization depending on trucks as part of its operation often needs our assistance and is in desperate need of more professional drivers. For these reasons, we stand in support of LB688 and thank Senator Erdman for introducing this important and timely legislation. I would be remiss if I did not mention the great working relationship the association has with director Rhonda Lahm. We have had the pleasure of interacting with the director on many issues. We appreciate her professionalism and her commonsense approach and want to work closely with her on this legislation as it moves forward. We recognize the agency is going through a major update of its motor

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

vehicle registration software package, which is needed and appreciated. Our concern is finding ways to solve Nebraska's shortage of new CDL holders. That pipeline is nearly empty. The NTA estimates on any given day there are between 4,000 and 6,800 jobs open for CDL holders that employers are struggling to fill. The problem is far worse on the national scale, where the shortage is expected to hit 150,000 in the next few years. We believe a program like the one proposed in LB688 can make a difference. Less than a year ago, the Federal Motor Carrier Safety Administration implemented the long awaited entry level driver training regulations. And on the, on the chart you have it's referred to as ELDT. With that, gone are the days when a person trained to drive trucks on the farm, the ranch, feedlot, truck service center, or other organization could simply go to the Department of Motor Vehicles, take the test, prove proficiency behind the wheel, and get their CDL. Up to 8,000 people a year would do so in Nebraska almost every year. Now a CDL candidate must complete a minimum curriculum of theory training and meet training standards in behind the wheel instruction, both on a driving course and over the road, all provided by certified and federal registered training provider. And if any fees are exchanged, that provider must also go through a registration process with the state. Please refer to figure one in your handout, which might help you understand just how far this problem reaches in many segments of the Nebraska economy. The NTA stepped up with a new program to help provide ELDT training, not for the sake of competing with the great community colleges or private driving school programs we currently have, but to simply try and fill the gap in the state's capacity. But we still need more. We believe LB688 can lay the groundwork for a program that will spur on the development of more training opportunities, and it should be one that moves with the speed of business, unlike many other current funding programs. It could also help bring more people to the diesel technology profession, other labor-- another labor area in the state where we're critically short of technicians. We illustrate the point in figure two by pointing out three areas in which these funds could create many new training opportunities. Thank you for your time today and for your public service. I would be happy to answer any questions that-- if I can answer those, but I would defer to the wise legal counsel you are lucky to have guiding you. Mike Hybl has quality experience in dealing with the trucking industry, and we greatly appreciate his experience. Thank you.

GEIST: Thank you. Are there any questions?

JACK PEETZ: I knew there was one there.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Yes, Senator Brandt.

BRANDT: Thank you, Chairman Geist. Thank you, Mr. Peetz, for your testimony. So you get a scholarship for CDL; you go through truck driver training; I've got my CDL license. What's to keep that operator in Nebraska? How do you know we aren't going to start training these guys and they're going to go over to Iowa because they're paying more? I mean, does there need to be a clause in the, in the enabling legislation that says you have to serve a year in Nebraska or something of that nature?

JACK PEETZ: Well, I think that's a pretty good question. I would defer to all of you on how you want to design the program or require the Department of Motor Vehicles to work with somebody in designing the program. But I would tell you that if you look at that chart and one of the things the Nebraska Trucking Association has done, they've gotten certified to do that entry level training. So they do the classroom portion of it, and then they will-- they make references to community colleges. They make referrals and references to trucking companies, different entities that actually can do the, the behind-the-wheel and on-the-road training. But if you look at that group on that chart, and the Nebraska Association, Nebraska Trucking Association has just entered into arrangement with several municipal entities, cities and counties, where they will provide for a fee, Nebraska Trucking, will provide the training and then-- the theory training, and then they will kick those back to the particular entity, the municipality that can do the actual over-the-road training. But this is covering bus drivers. Like if you look at the program up in Omaha with OPS shortage of bus drivers, this is a program that can help get those bus drivers trained. You get diesel mechanics that work in farm shops as well as truck shops that when they fix your truck, they have to take that truck out on the road and road test it before they can certify that it's fixed and release it back to the customer. Those folks all have to have a CDL in order to be able to do that. This is a program that affects all of those people on the top of the chart. But the other thing is, if you look at some of the-- a couple of the largest trucking companies you have that run over the road that do have drivers that come from other states or reside in other states, those trucking companies are based here and they license almost exclusively, with the exception of maybe some small regional operations, 100 percent of their trucks here. So there's a huge volume of income that comes to the state by virtue of those tractors and trailers that they, that they operate being licensed in Nebraska. Now, the person that's behind the wheel may drive or come from another state, but their-- the headquarters for those companies that pay taxes

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

here, as well as license their vehicles and trailers are based in Nebraska.

BRANDT: All right. Thank you.

JACK PEETZ: Thank you.

GEIST: Yes, Senator DeKay.

DeKAY: I'd just like to thank Mr. Peetz for the expertise that he brings to our committee today and for his work on behalf of Nebraska truckers.

JACK PEETZ: Thank you. I'm, I'm just kind of the spokesman. The guys--

DeKAY: I get that.

JACK PEETZ: --they got good staff and they have Kent Grisham is their president, does a great job.

DeKAY: I would have one question for you.

JACK PEETZ: OK.

DeKAY: Who else is drawing straws today besides you?

JACK PEETZ: Pardon?

DeKAY: Who else has drawn straws to testify today besides you? Thank you.

JACK PEETZ: Thank you.

GEIST: Any additional questions? I don't see any. Thank you for your testimony.

JACK PEETZ: Thank you.

GEIST: Any others?

JOHN WATERS: Good afternoon, Chairwoman Geist--

GEIST: Good afternoon.

JOHN WATERS: --and members of the Transportation and Telecommunications Committee. Thank you to Senator Erdman for bringing forward this bill. My name is John Waters. That's J-o-h-n W-a-t-e-r-s.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

I'm employed by Werner as in-house counsel. I encourage you to support this grant program in LB688. In 1956, President Eisenhower signed the Highway Construction Act. The act aimed to build 41,000 miles of interstate highway system. That same year, a young man from Boone County sold his family car. He used the proceeds to buy a gas-powered truck. Next, he built his own trailer for hauling and he went to work. More than 65 years later, the Nebraska business founded by one driver with one truck has grown to nearly 10,000 professional drivers. Werner drivers travel highways across America and into Mexico and Canada too. Today, the company founded by C.L. Werner employs nearly 15,000 people, all from its global headquarters off Interstate 80, just south of Omaha. Like other industries, trucking faces challenges related to its workforce, specifically the shortage of licensed professional truck drivers and diesel techs is affecting the operations of Werner Enterprises and most other Nebraska trucking companies, large and small. In 2022, the American Trucking Associations reported an industry-wide driver shortage of more than 80,000 professional truck drivers, a trend they project could double by 2031. Less reported but also significant is the shortage of diesel techs. These experts inspect, repair, and overhaul our diesel engines. Both of these professions require a high school diploma or equivalent. They both require professional training too. This grant program will help address the shortages by providing those training opportunities to individuals seeking a CDL or certification diesel technology. Specifically for your consideration, we have three recommendations. First, on the subject of CDL training, we recommend funding be made available to licensed training providers that are listed on the FMCSA's Training Provider Registry. This Training Provider Registry is a national database comprised of providers who give instruction to entry level drivers. Second, on the subject of diesel tech training, we recommend funding opportunities be made available to in-house trainers, Nebraska-based employers, nonprofit organizations as well that partner with individuals and employers seeking training as diesel techs. Third and finally, we recommend the Nebraska DMV be responsible for administration of the grant program, but have the flexibility to contract out the grant program if that provides for greater efficiency in workload and cost. Moreover, we encourage this committee to provide for administrative costs incurred by the DMV and any contractor. In conclusion, Nebraska trucking is the lifeblood of our economy. Further, trucking is a pathway to opportunity for Nebraska drivers, diesel techs and office associates. Werner Enterprises was founded by a driver, and our company continues to lead with the driver in mind. Thank you. I would be happy to answer your questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

GEIST: Any questions from the committee? Thank you for your testimony. Any other proponents?

TIM KEIGHER: Good afternoon, Chairman Geist and members of the committee. My name is Tim Keigher. That's T-i-m K-e-i-g-h-e-r. I appear before you today in support of LB688 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association as their members, as well as their associate members who are also in the pop, beer, grocery supply industry. I want to thank Senator Erdman for bringing this bill. CDL drivers are probably one of my, my members' biggest problems in finding them. I agree with you, Senator Brandt. Retaining them is difficult, too, because my members spend some money training them and then they go to another employer. Hopefully they stay in Nebraska. But one of the issues we have is hours of service. We're constantly looking for an hours of service waiver which, I mean, there's safety concerns with that. But I think more importantly, it's you're burning people out. We're getting to the point where it doesn't matter how much you pay truck drivers anymore. If they're never home and they can't spend any time with their families, you know, it doesn't matter how much you pay them. So I think that any incentive to try and bring more drivers and train them into the industry is good for all of us, no matter what industry you're in. So with that, that's all I have. Thank you.

GEIST: Thank you for your testimony. Any questions? I don't see any. Thank you. Any other proponents?

ANDREW DUNKLEY: Good afternoon.

GEIST: Good afternoon.

ANDREW DUNKLEY: Chairman Geist and members of the Transportation and Telecommunications Committee, my name is Andrew Dunkley, A-n-d-r-e-w D-u-n-k-l-e-y. I'm with the Nebraska Farm Bureau and nothing new that hasn't already been said. On behalf of the Ag-- the Ag Leaders Working Group, which consists of the Nebraska Farm Bureau, cattlemen, corn growers, soybeans, pork producers, State Dairy Association, wheat growers and Renewable Fuels Nebraska, we support Senator Erdman's LB688. We thank the senator for bringing it. Ag cannot operate without CDL drivers. And many, if not the large majority of agricultural producers are-- also hold a CDL. When the, the federal guidelines on CDL were passed about a decade ago, it was-- it was pretty restrictive on this industry. And we, we encourage the passage of this. We believe that it would be a positive and especially as we have young producers coming up wanting to get their CDL, this is an opportunity for them as

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

well. And as, as the senator mentioned in his opening, there are-- there are backups every single year during harvest for, for folks looking, looking for qualified drivers and they don't have it. So with that, I am open for any questions.

GEIST: Thank you. Thank you for your testimony. Any questions? I don't see any. Thank you.

ANDREW DUNKLEY: Thank you.

GEIST: Any other proponents?

BLAIR MacDONALD: Hello.

GEIST: Good afternoon.

BLAIR MacDONALD: Good afternoon. Chair Geist and members of the Transportation and Telecommunications Committee, my name is Blair MacDonald, spelled B-l-a-i-r M-a-c-D-o-n-a-l-d, and I appear before you today as the registered lobbyist for the Nebraska Beverage Association in support of LB688. The Nebraska Beverage Association has been representing the nonalcoholic beverage industry and local distributors of Coca-Cola, Pepsi, and Keurig Dr. Pepper Snapple in this state for over 40 years. My testimony today is also reflecting support from the Nebraska Grocery Industry Association. We're all very appreciative of Senator Erdman for introducing LB688. So today I'm also speaking from the CDL employers' perspective, similar to Mr. Keigher. Like many, many industries, our local bottlers have struggled to hire and fill openings for CDL drivers since before the COVID-19 pandemic. We saw many CDL drivers retire and we're now experiencing a severe workforce shortage of CDL drivers. This is also complicated by the changes, as mentioned previously by the Trucking Association, of the implementation of the entry level driving test last year, which an employee must complete, must complete before even starting a training course. So like many Nebraska businesses, our local bottlers are hugely reliant on truck drivers to deliver our products across the state. The beverage industry had to turn to creative solutions to hire CDL drivers. Both LinPepCo and Chesterman Company, Coca-Cola in Lincoln have created their own in-house driving training program. So these, these companies are hiring potential drivers and training them in-house and incentivizing them to join the trucking industry. Our employers are currently-- our employers under the current system have become the training ground for CDL drivers at a significant up-front cost. So the employee arrives with no CDL and after about a two-month period and the up-front costs, the employee has a very valuable CDL

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

license. The companies bear the cost of the ELDT exam as well as the training. In 2022, for example, LinPepCo hired and trained 22 CDL drivers. The total cost for the curriculum, training hours for instructors and students, both in the classroom and behind the wheel, amounted to over \$100,000 and about a little over eight-- \$8,000 per driver. As Mr. Keigher also mentioned, our, our drivers are coming out with valuable CDL licenses and there's nothing to stop them from, after receiving their licenses, going and taking a better offer at a different company. There is little to no legal recourse for these employers who are training the drivers through this program at much cost as mentioned, to actually have any way to recoup the funds that they have invested in these employees at the beginning. So we're very thankful for Senator Erdman bringing this bill. Another issue and I know that Director Lahm is sitting behind me, but another issue that is facing us is the lack of time slots and availability of the testing for the CDL license. When calling for appointments, some of our, our drivers have been seeing four-week wait times or more. And we even had a driver in Hastings that had to go-- the next available option was to go and test in Papillion across the state. So we're doing as much as we can to fill these positions, but there's still a shortage. And any sort of investment up front from the state would be incredibly helpful. The other issue at play here is that in December, the state of Iowa DOT announced that they would be investing \$6 million in their ELDT program. And I think we have a long history of competing with Iowa and proving that we are superior in all things that we can do in Nebraska. And so in the spirit of competition, I hope that our state can also make an even bigger critical investment in CDL drivers. Again, thank you so much for bringing this bill, Senator Erdman. The Beverage Association and the Grocery Ind-- Grocery Industry Association are in much support.

GEIST: Thank you. Any questions? I see none. Thank you.

BLAIR MacDONALD: Thanks.

GEIST: Any other proponents? Are there any opponents? Those that wish to testify in a neutral capacity? Seeing none, Senator Erdman, you are welcome to close.

ERDMAN: Thank you, Senator Geist. I will make this brief. So if, if we see, we see that some people have an idea how this should be handled and distributed, and I'm open to doing that tomorrow. All the community college presidents will be here for a very special event. We're going to take their authority to collect property tax. So I've heard from Lowe that they will be in tomorrow for that bill. So maybe

Transcript Prepared by Clerk of the Legislature Transcribers Office
Transportation and Telecommunications Committee January 31, 2023

I'll have a chance to visit with them about how [INAUDIBLE] how they might be able to handle this in the training of CDL drivers. So it might be OK. So-- but that's, that's what the intention and I think it's important. I think Senator Brandt made a good point there. We need to find out the most efficient way to distribute the money.

GEIST: Perfect. Great. Are there any questions for Senator Erdman? And with that, there were three letters sent in as proponents supporting this legislation. And with that, we will close this hearing and end for the day--

ERDMAN: Thank you.

GEIST: --for LB688. Thank you.