

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Transportation and Telecommunications Committee March 3, 2025

**MOSER:** The afternoon hearing for Telecommunications and Transportation will now come to order. My name is Mike Moser. I'm in District 22, which is Platte County and most of Stanton County. We'll start with introductions of senators, starting on my left.

**STORER:** Good afternoon. Senator Tanya Storer. I represent District 43, 11 counties in north central Nebraska: Dawes, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer.

**BOSN:** Good afternoon. Caroline Bosn. I represent District 25, which is southeast Lincoln, Lancaster County.

**DeBOER:** Good afternoon, everyone. Hello, my name is Wendy DeBoer. I represent District 10 in beautiful northwest Omaha.

**BALLARD:** Beau Ballard, District 21 in northwest Lincoln, northern Lancaster County.

**BRANDT:** Tom Brandt, Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**MOSER:** Our committee clerk is Connie Thomas, and our legal counsel is Gus Shoemaker, on my right. Our pages today are Logan and Alberto. And, let's see, if you're not testifiers, you can sign the yellow sheet in the book by the table near the entrance. Handouts should be-- will be included as part of the record as exhibits. Please provide 12 copies. Senators may come and go during the hearing or not show up depending on what else we have going on. They may be in other committees presenting bills at the same time. Testimony will begin with the introducer's opening statement, then we'll hear from supporters, then those in opposition, then those speaking in the neutral. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. Begin your testimony by giving us your first and last name, and also please spell them for the record. We will be using a 3-minute timer today. There are no demonstrations of opposition or support allowed on any testimony. Please be sure to shut your cell phone off so it can't ring during the hearing. And I think that takes us to LB227. Welcome.

**DeBOER:** Good afternoon, Chair Moser and members of the Tele-- Transportation and Telecommunications Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in beautiful northwest Omaha. I'm here today to introduce LB227. LB227 modifies the process for transportation carriers applying within the Public Service Commission, or PSC, to be common carriers. Under

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current law, when applying to be a common carrier, the applicant must show that they are fit, willing, and able to provide the service and show a public convenience and necessity. To say another way, they must show their service will be safe, they are capable of providing the service, and they must demonstrate there's a market for their service that is not being met by the incumbent carrier and that their service will not endanger or impair the services of the incumbent carrier. LB227 modifies the public convenience and necessity process, or PCN process, and does not make any changes regarding the safety standards. With our current PCN process, as stated before, an applicant has to demonstrate there's a public need for their services, that the need is not being served by incumbent carriers, and that the service will not endanger or impair the services of the incumbent carrier. The system essentially allows incumbent carriers a veto on any new application. While it is possible to argue against an incumbent carrier, the process to do so is rigorous and often expensive. Many times, these small businesses decide to end their attempts to become licensed. This model has never made sense to me. Of course, the incumbent carrier will say they can provide service to prevent competition from coming in. Not to mention the PSC, the regulating body has to make determinations of the market, which is never something a regulator should do. The market should decide the market. As a bit of history, the Legislature, in my first biennium, agreed LB461 was-- which passed on Final Reading on a 48-0 vote-- one member was excused-- eliminated the need to demonstrate public convenience a necessity for movers of goods and rail crew personnel. The sky has not fallen and I-- fact-- I, I believe this change is going well. So similar to what we did before, LB227 does not go as far as the other bill, but shifts the burden of proof during the PCN process for a new applicant applying to be a transportation carrier. The new applicant needs to prove their fitness to provide the services they are applying for. All the safety regulations remain the same. If an incumbent carrier wishes to protest the application, they may do so, but must provide evidence of the market impact. But, otherwise, the free market reigns. There is value in having the current providers involved in the process. They have the expertise of serving their area and their understanding of how to provide these services safely and adequately. That's why we structured our PCN statutes the way we did when originally implementing them. But I believe the current model tips the scales too much to the side of incumbent carriers, giving them power over their competitors, skewing market competition. This is a good free market bill. The free market should decide the market, not the regulators. And that's why I introduced LB227. Happy to answer any questions. But I will just say when we change that for movers of goods, there were folks that--

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originally, the bill intended to be everyone, including the common carriers that are covered by this bill, there was objection at that time. We've seen that this method works. I did not go as far as we did on the movers of goods bill. I have simply shifted the burden of proof. Instead of having to prove that there is a need for your services in order to fill the market, what you have to do is show that there is not a need if you're trying to get someone unable to get a, a, a certification. So right-- or a license-- right now, if you want to provide taxi service, for example, you have to go and get licensed to do so in a particular area. We've created a bunch of areas where there are one, or maybe there's a couple of licensed folks, and then somebody new tries to come in and it's very difficult to get in. What this has really prevented is in circumstances where you have a very niche provider of taxi cab services. For example, there are parts of Omaha where there are large immigrant populations from somewhere, wherever it is, that this is Sudanese, whatever it is, and there are folks who would like to start a, a carrier for those folks that speak the language and know the customs and that sort of thing. And what happens now is they are not able to kind of go into the, the Public Service Commission and show that they-- that there is this need and their competitors will come in and say, oh, no, no, no, we can handle it. We don't need it. So this really is just a way to free the market up a little bit and get rid of some of the regulation.

**MOSER:** OK. We have a couple senators who arrived just a bit late. Senator Fredrickson.

**FREDRICKSON:** Yes. John Fredrickson. I represent District 20, which is in central west Omaha.

**GUERECA:** Dunixi Guereca, District 7, downtown and south Omaha.

**MOSER:** Thank you both. Questions for Senator DeBoer? Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Senator, for bringing this. What is a common carrier? The definition was not in the bill.

**DeBOER:** So it's-- if it's not in the bill, it's probably just before or after in statute. It's, it's taxi cab drivers. Basically, it's people who move people.

**BRANDT:** OK. And then on page 3 of the bill, it references: to provide Medicaid nonemergency medical transportation services. And this includes HHS and some other things in there. What would, what would that be? If you stuck a, a bleeding person in a taxi cab or--

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**DeBOER:** No. So for-- HHS has some contracts with specific providers who will transport folks who doesn't-- don't have transportation to medical appointments. And so they contract with them at large for non-- nonemergency medical services.

**BRANDT:** All right. Thank you.

**MOSER:** Other questions? So is this a quest for you to arrive at the perfect world, or is there some kind of a need for this? What's the driving force behind the bill? What's it solve, I guess?

**DeBOER:** Yeah, so it solves the problem where people who are trying to come into the market to become a provider of services, common carrier services, so taxi cab services, that sort of thing, they're trying to come into the market and they're barred by the, by the hearing in front of the Public Service Committee [SIC] in which their competitors can say, no, no, we don't need you. And they often are unable to overcome the burden of proof to show that they are needed because they're the smaller start-up, haven't yet become, you know, a full business.

**MOSER:** So are the-- have the rideshare carriers been required to get the same permit?

**DeBOER:** No, this-- the rideshare folks are dealt with in a completely different system. So this is a completely different system.

**MOSER:** They're exempt from this regulation?

**DeBOER:** It's a different system.

**MOSER:** OK. Other questions? All right. Thank you. Are there supporters for LB227? Welcome. Welcome.

**DILLON KEIFFER-JOHNSON:** Good afternoon, Chair Moser and the members of the Transportation and Telecommunications Committee. My name is Dillon Keiffer-Johnson, spelled D-i-l-l-o-n K-e-i-f-f-e-r-J-o-h-n-s-o-n. I am the Transportation Director for the Nebraska Public Service Commission, and I'm here to testify in support of LB227 on behalf of the Commission. The Public Service Commission regulates for-hire transportation within the state of Nebraska. When someone wants to provide transportation services as a common carrier, meaning for the general public, currently that carrier must show the Commission that they are fit, willing, and able. They must also show that their service is, or will be required by a present and future public convenience and necessity, otherwise known as PCN. PCN has three

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elements: that the proposed operation will serve a useful public purpose responsive to a public need; whether the applicant's purpose can be served as well by existing carriers; and that the applicant can serve this need without endangering or impairing the operations of existing carriers. The applicant holds the burden of proving these factors, regardless of if a challenge or a protest is filed by an existing carrier. We believe that LB227 improves this process by aligning who bears the burden of presenting evidence with who is best situated to have the relevant information. Under LB227, the applying carrier would still have to show that they are fit, willing, and able to perform the service. The applying carrier would still also have to show that they meet the first element of the PCN standard, that the operation will serve a useful purpose responsive to a public demand or need. However, if this bill passes, the protesting carrier would now have the burden to show whether the applying carrier's purpose can be served as well by existing carriers and that the applicant's services would endanger or impair existing carriers' operations. This change more naturally aligns the burdens of proof between the parties, so that existing carriers would be required to make an evidentiary showing, rather than relying on conclusory statements or unsubstantiated data to counter an applicant's showing of need. Additionally, LB227 may discourage an existing carrier from filing a protest as a delay tactic to prevent new market entrants if they do not actually intend to present information to the Commission about their concerns with the proposed new operation. The Commission also supports revising the standard applied to carriers seeking to provide nonemergency medical transportation services, as well as the transportation network companies seeking to provide services to the Nebraska Department of Health and Human Services. Contract carriers who provide services for specific customers or a class of specific customers are generally under a different standard than common carriers. However, a contract carrier for nonemergency medical transportation is subject to both the standard for contract carriers, along with the PCN standard, typically only applied to common carriers. LB227 would make it so that contract carriers for NEMT service are subject to the same standard as other contract carriers, rather than applying the two standards. The Commission would continue to consult with the Nebraska Department of Health and Human Services on making decisions on NEMT applicants. I would like to thank Senator DeBoer for bringing this legislation and to the committee for your time this afternoon. I'm happy to answer any questions you may have. Thank you.

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**MOSER:** OK. Thank you. Questions from committee members? Seeing none, thank you very much.

**DILLON KEIFFER-JOHNSON:** Thank you.

**MOSER:** Other supporters? Anybody else here to speak in support? Anyone here to speak in the opposition? Welcome.

**ALISSA KERN:** Good afternoon, Senators. My name is Alissa Kern, A-l-i-s-s-a K-e-r-n. I am the Managing Director for Camelot Transportation and Triumph Transportation serving as one of Nebraska's NEMT providers for the last 12 years. Camelot and Triumph Transportation is in opposition of LB227. LB227 would burden the passengers being served as a place of hardship within the industry by potentially over saturating the market. Passenger transportation is a unique industry, in which if there are too many providers competing for the service, it will only harm the public that actually needs the service. Regarding the section that revises who has the burden of proof when applying to operate as a common carrier, carriers applying for this service should have to prove that they are able to provide the service they are requesting, as well as demonstrate a financial responsibility that is required to provide a service to the public in all areas of Nebraska. Our current system is not broken and it's clearly working. For example, in the last 24 months, Camelot has protested 24 applicants in which 23 of those applications were approved through an external settlement process outside of the Public Service Commission, which that means that that cost the state of Nebraska nothing. One applicant-- one application did go to hearing resulting in 6 hours of testimony, cross-examination, etcetera, that resulted in the Public Service Commission ultimately denying the application request. Thus, the system is, is working and the carriers are getting authority to service underserved areas under the current law. Regarding the section that would remove NEMT providers to show convenience and necessity could also potentially harm the safety of our passengers. And it's the most critical concern that we have. If we open the market and create an easy access to serve the most vulnerable citizens and the transportation were to fail, the government would have to take over all essential transportation services, creating a significant fiscal impact. There are already too many providers for the Public Service Commission to police and to regulate. So we, we support the convenience of necessity initiative, and we see that it weeds out the process without compromising public safety. I do not believe the PSC would be able to handle the regulatory liability that LB227 would create. Senators, please remember, transportation in Nebraska is not just the Husker games. It's not just bar hopping. It's

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the client in Chadron that needs to get to Scottsbluff, who literally depends on life-- depends on transportation for their life or for their chemo, chemo client that needs to get to the hospital each week or the 3-year-old Hispanic boy who needs monthly injections for an autoimmune disorder, and his family is transported from Lexington to Lincoln. The current law establishes a well-balanced public-private relationship, and it's working. And with that said, we oppose LB227.

**MOSER:** OK. Questions from committee members? Let's start with Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here and for your testimony.

**ALISSA KERN:** Um-hum.

**FREDRICKSON:** Question-- so you-- and you, you begin to say that having more providers in the ecosystem, for lack of a better word, could harm the public. Can you thread that needle for me a bit? Help me understand how it's harmful to the public.

**ALISSA KERN:** Yeah, so there's a lot of infrastructure that goes within the transportation industry. We have rules and regulations that we have to follow, backgrounding, vehicle inspections, all of that. And there's only so many transportation trips that are available throughout the, the day, the year, you know, the month. So if you have too many fish in the sea and only a little bit to eat, eventually the, the system's going to, to implode. So you're not going to have-- there's not enough to go around. So you need to keep what's there there and safe and have a good system so that they can continue to provide safe and affordable public transportation.

**FREDRICKSON:** OK. And so, so my thinking would be with a free market there would be more potential affordability for, for the public. Is that-- are we seeing a different [INAUDIBLE]?

**ALISSA KERN:** NEMT is usually provided-- I mean it's a, a free service to those clients. So those clients aren't your Ubers and Lyfts.

**FREDRICKSON:** Right.

**ALISSA KERN:** Those clients aren't your TNCs, they're not going to be afford the-- be able to afford the transportation.

**FREDRICKSON:** OK.

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**ALISSA KERN:** If we allow anyone to come in and automatically be approved, you know, they might not be this-- they not-- they might not be safe. They might not know the land. You might have someone that only wants to operate in the metropolitan areas. And then you've got the western side of the state stranded because you won't have anybody going out there.

**FREDRICKSON:** OK. OK. All right. Thank you.

**MOSER:** Senator Storer.

**STORER:** Thank you, Chairman Moser. I-- my original question was exactly what Senator Fredrickson asked you. So just to follow up on that a little bit more. When you say part of your concern is that they wouldn't be safe, when I read the bill, they, they are required to still provide evidence of their ability to perform the service and rules, requirements, regulations of the Commission that the proposed service will be responsive to the public demand. So they-- they're still going to go through a process for approval. Correct?

**ALISSA KERN:** So what we see, and like I stated, we had, we had protested 24 applicants. 23 of those applicants had really no idea what they were asking for, and it was through our company and attorneys, we were able to educate the applicants on what they were actually wanting to provide the service, where they were wanting to provide service, as well as the location that they were able to provide the service. Some applicants were asking for statewide service, but they only had two vehicles located in Omaha. They weren't able to-- be able to provide statewide service. It wasn't until we were able to privately settle and negotiate that what they could do was provide service within their territory, and that's what they actually were asking to do. And we settled and they are providing that service. So if we-- basically, it's not really the safety, it's the-- if we just allow everybody and anybody to come in, the PSC doesn't have enough hands to regulate all of that's-- all that's going on already.

**STORER:** So, so these applicants that you protested, they had already been approved by the PSC, and you then protested that approval or was that you protested when they were in approval process?

**ALISSA KERN:** Correct. So they applied, and within the 30 days we protested, but then privately had negotiations on the side getting to know what they wanted their operations to be. Did they want to provide

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NEMT services for just Douglas County, or did they want five different counties in and out of those counties?

**STORER:** So there's no, there's no certainty that they would have been denied by the PSC. I mean, you-- because that hadn't been determined yet, basically.

**ALISSA KERN:** Correct. Because we, we did not go to hearing yet. We didn't go to the final. That-- out of the 24, we did go to a final hearing on one of them and the PSC was able to deny their application completely.

**STORER:** I get-- I guess what I'm trying to get at is, and understand that whole process, is you, you protested them, but, but that's really not a sure sign that your protest was the result of their denial-- their denial was a result of your protest. It's just that was additional information, but they could have been denied anyway. Right?

**ALISSA KERN:** The, the final one that went--

**STORER:** Any of those. You said you protested 24 total.

**ALISSA KERN:** 24. Yep. And 23 of them, we were able to settle and they, they have an authority to provide the service that they wanted to provide [INAUDIBLE].

**STORER:** But they weren't-- the PSC hadn't made their determination by the time you filed your protest. So you don't know whether they would have been denied with or without your protest, right?

**ALISSA KERN:** What I mean by denial is that the PSC, the evidence that we brought forward, such as they, they-- the one that we had protest was not able to show that there was a need in the area. They were applying for transportation service for the entire state of Nebraska, and they didn't show that there was a need for it. And at the same time, we were able to show evidence that it could possibly harm the public that they were trying to provide the service to.

**STORER:** OK. And, I mean, it just-- the way the, the proposed language on this bill reads, you would still have the ability to demonstrate that they were not meeting a current need.

**ALISSA KERN:** We would have got--

**STORER:** There's still a-- and, and I, and I'll ask some of those questions of Senator DeBoer when she comes back up. But, I mean, it

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appears to me there's still a process for you to, to come in and protest that.

**ALISSA KERN:** And I, I will believe-- if, if that LB227 were to pass, instead of 1 hearing for 6 hours, we will be going through 24 hearings for 6 hours. There would be a protest and a hearing process on every single one.

**STORER:** So your primary concern was safety is just that these people applying for-- to be a common carrier aren't qualified?

**ALISSA KERN:** They couldn't-- some, some aren't qualified. Some aren't understanding what they're getting themselves into. The insurance-- the, the amount of insurance that we are required to have by law is astronomical.

**STORER:** But wouldn't the PSC, through their process, be able to identify that as well?

**ALISSA KERN:** I do not believe so. That's what our hearings usually are. When we get to hearings, it's usually an education process, and everybody learns about NEMT and the rules and regulations because the applicants aren't made aware prior to, which is the 3 that-- the 23 applications that have been filed in the last 2 years, we have graciously educated a lot of carriers, and they are able to have their business, and we're all able to provide the service.

**STORER:** Thank you.

**ALISSA KERN:** Um-hum.

**MOSER:** So do you primarily work for the state?

**ALISSA KERN:** Our contracts are with the MCOs, Managed Care Organizations.

**MOSER:** Health insurance?

**ALISSA KERN:** Health insurance. Health--

**MOSER:** So you take people for doctor visits and things, you don't, you don't do anything to support-- take people to court hearings or anything like that?

**ALISSA KERN:** So common carrier-- I think we had-- a senator had asked the-- what, what the common carrier definition is. Common carrier is

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any general public citizen that needs transportation within the state of Nebraska.

**MOSEER:** But just your company doesn't do-- doesn't haul people around for-- to court hearings and that sort of thing.

**ALISSA KERN:** We do everything.

**MOSEER:** You do?

**ALISSA KERN:** Camelot and Triumph does every transportation. Yes.

**MOSEER:** Oh, OK. All right.

**ALISSA KERN:** So this, in particular, is for, is for nonemergency medical transportation, which is governed through the MCOs.

**MOSEER:** OK. Senator Brandt, did you have a question?

**BRANDT:** Yes. Thank you, Chairman Moser. Thank you, Ms. Kern, for testifying today.

**ALISSA KERN:** Yeah.

**BRANDT:** Help me understand, you as an incumbent carrier get to protest any new applicants. And then when you remove-- when you negotiate with them off to the side and you, you basically are removing your protest after a private negotiation with them, which may or may not involve money or, or area or something of that nature. And then you're coming back to the PSC and, and tell them that you've removed your objection and, therefore, that's how they get approved. Would that be accurate?

**ALISSA KERN:** Very accurate. Yep.

**BRANDT:** OK.

**ALISSA KERN:** And our settlement is then presented to the Public Service Commission, which then they can approve or deny our settlement.

**BRANDT:** So that's public information what the settlement between you and this other company was?

**ALISSA KERN:** Correct.

**BRANDT:** Are all of your passengers paid for with public funds?

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**ALISSA KERN:** Not-- 100%, no.

**BRANDT:** What percent?

**ALISSA KERN:** I would say 90%.

**BRANDT:** And then who sets the mileage rates?

**ALISSA KERN:** So our mileage rates are approved by the Public Service Commission.

**BRANDT:** Would it be the same across the board for all companies?

**ALISSA KERN:** No.

**BRANDT:** Why would they differentiate?

**ALISSA KERN:** Every company is different. Our, our insurance rates could be different. Our employee levels could be different. Our vehicle count could be different.

**BRANDT:** But for the sake of the taxpayers of the state, wouldn't we want to go with the least cost providers?

**ALISSA KERN:** Yes. And that's usually how the trips are, are divvied out. It's usually lowest-cost provider first.

**BRANDT:** All right. Thank you.

**MOSER:** Senator Ballard.

**BALLARD:** Thank you, Chair. Thank you for being here. I should have asked the PSC this, but do you know how many applicants they get for this a year? Is it-- just ballpark.

**ALISSA KERN:** They, they get several different applicants for certain things. I, I don't know. If usually they-- there's a, a box on the application that says HHS designation. It's kind of confusing. Not a lot of people know what that box means. But if it is checked, then we do protest. And so I do know within the last 24 months there has been 23 applications that checked the box.

**BALLARD:** OK. So that's the, that's the criteria you use if they check the box. So there's not like-- in Scottsbluff they have certain amount of-- you have certain amount of carriers. There's-- that's just if they check the box, there's a good chance you're going to protest.

**ALISSA KERN:** Correct.

**BALLARD:** OK.

**ALISSA KERN:** Yes.

**BALLARD:** Thank you.

**ALISSA KERN:** Yeah.

**MOSER:** Any other questions? Thank you very much for your testimony.

**ALISSA KERN:** Thank you.

**MOSER:** Anybody else here to oppose this bill? Is there anyone here to speak in the neutral on this bill? Seeing none, we received one opponent testimony by the website. Welcome back, Senator DeBoer.

**DeBOER:** Thank you, all. So I will address the one opponent, that was the Platte Institute who said I didn't go far enough. And it is for the reasons that you've heard that there are objections, that that's why I tried to find a middle path as is my way, as you know. And so that's why we have the scenario that we do in front of us. The Platte Institute wanted to get rid of the PCN requirement altogether, and I shifted the burden of proof to try and make it a little more palatable to folks. Just to be clear, the safety factors, the financial ability, all of those things, still something that we're not touching at all in this, all of that will be the same in this bill as before this bill. So anything about whether they're able or financially stable or safe or anything like that, all of that's the same. The question is simply about whether the public-- the necessity piece, they could still do an external settlement if-- I don't know how they do that now, but this would simply shift the burden of proof so they could still do it later. In terms of all the information that they give in a hearing, we're still having a hearing, so they could still do that. We're just shifting the burden of proof. The too many fish in the sea argument is exactly the point that I'm making about, about the free market, that if there are too many fish in the sea, then they will provide better service and the best ones will rise to the top, and then we will have those that are going to do the best work, because that's how the market is supposed to work. The DHHS has a process. So the-- these nonemergency rides-- those-- DHHS has a practice-- a, a process that they contract with the MCOs, who then contract with the individual companies. So part of the reason I didn't touch that is because DHHS is the one that specifically works with those folks. So that's why we

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wanted to kind of leave DHHS to do that. I can answer any questions you have.

**MOSER:** Any further questions from committee members? Seeing none, thank you very much for your testimony and bringing your bill. That'll conclude the hearing on LB227. And we will move to LB444.

**DUNGAN:** Thank you.

**MOSER:** Welcome.

**DUNGAN:** Good afternoon, Chair Moser and the Transportation and Telecommunications Committee. I think this is my first time in front of you this year. So happy to be here. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26 in northeast Lincoln. And today I'm introducing LB444. LB444 raises the minimum uninsured and underinsured insurance coverage to \$1 million per occupant for any motor carrier transporting employees of a railroad carrier under a license issued pursuant to Section 75-304.04. Currently, the minimums are set at \$25,000 a person and \$50,000 for an accident. This was a minimum that was set in 1996. Just to clarify, if needed, we are happy to put language in this bill that specifies the only companies that we are attempting to modify here are the carriers of rail crew. I understand the statute applies to a bunch of different common carriers. It is rail crew carriers that we are seeking to modify here. So happy to bring legislation or an amendment rather to clarify that specific language. This legislation was brought at the request of the Sheet Metal, Air, Rail, and Transportation Union, commonly referred to as SMART. Mr. Andrew Foust from SMART will follow me and can discuss the history of this legislation and the need to update our minimum uninsured and underinsured insurance coverage. Happy to answer any questions you might have, which I will likely direct to Mr. Foust, but thank you for your time and consideration.

**MOSER:** Questions? Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you, Senator Dungan, for, for being here and for bringing this bill. So when you say that this is intended to only apply to-- for the carriers of rail crew, so like Union Pacific, BNSF, is that--

**DUNGAN:** Correct. Yes. So this is intended to specifically reference the companies that are carrying, like, rail crew members from point A to point B. So let's say, you know-- and there are specific companies that do this work. So, you know, trying to go from--

**FREDRICKSON:** Like those vans you see on I-80.

**DUNGAN:** Correct. Yes, that's what this specifically speaks to, 75-307 applies to multiple intra-- intrastate motor carriers, but the intention was to have the PSC make these regulations specific to the rail carriers. I think the way that the Bill Drafters put the language in here was intended just to make it clear. But I do think that by creating that subparagraph (3), it applies to a number of different carriers. That was not our intention. We've been in contact with truckers and other individuals where I've reassured them before, this legislation is not intended to affect those industries, simply the intrastate carriers for rail.

**FREDRICKSON:** OK. And, and why not those other industries, just out of curiosity?

**DUNGAN:** Well, I mean, if I'm going to be frank with you, it's because this is the issue that was brought to me and that we were seeking to address. I certainly think uninsured and underinsured coverage is important in all of those different industries.

**FREDRICKSON:** Sure.

**DUNGAN:** But when you're talking about these carriers of rail crew and they're carrying multiple people from point A to point B, I, I just think it's important we ensure that in the event there is an accident with somebody who's uninsured or underinsured all of the individuals in that truck get essentially made whole. So happy to address it in other industries as well, but this is sort of the first bite at the apple of what we were kind of thinking was a major problem.

**FREDRICKSON:** And what are the insurance requirements currently? Do you--

**DUNGAN:** I do-- I think it's \$100,000 and \$300,000. I'd have to double check.

**FREDRICKSON:** OK.

**DUNGAN:** Those, those are the limits, I think, and so I'd have to double check. Mr. Foust might have those specifics, but, yeah, the minimums currently are set at \$25,000 for a person and \$50,000 for an accident.

**FREDRICKSON:** OK. Thank you.

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**DUNGAN:** Yep.

**MOSER:** Questions? Oh, I'm sorry.

**STORER:** That's all right. I'm short.

**MOSER:** She was holding paper between you. Senator Storer.

**STORER:** Thank you, Chairman Moser. So that's a huge, that's a huge increase. Is, is there-- so a little bit more background as to the why. Has there been some specific cases that there was just-- this was a catastrophic failure where the rates are now? Help me understand a little bit [INAUDIBLE].

**DUNGAN:** Yeah, and, again, I, I don't mean to defer too much, but I think that Mr. Foust might have more specifics of instances where this has been a problem or situations where this has come up in the past, or at least situations where it could have come up. The million dollars was picked not out of thin air, certainly, I think that was an amount that was discussed with regards to being able to make people whole in those circumstances, I guess, suffice to say, I'm flexible on the amount. That amount is not set in stone. I understand it's a very high number and it certainly is a large increase, and so I'm happy to have conversations about the difference in that amount. But I think that was sort of a starting point to have the conversation. And then if there is a feasible compromise to be had, I'm happy to have that conversation.

**STORER:** Thank you.

**MOSER:** Other questions? I have a couple of questions. So are these people transporting rail crews independent and they're hired by the railroad companies?

**DUNGAN:** That is my understanding. Yes. These are separate companies. We're not-- it's not like they're specifically owned by BNSF or UP or something like that.

**MOSER:** And it wouldn't, it wouldn't affect somebody driving a service truck that belongs to the railroad from point A to point B to get to where there's a problem.

**DUNGAN:** Correct. That's my understanding. This specifically applies to the companies who apply for this sort of status under 75-307, which are these private companies who get certified as the intrastate motor carriers for the rail crew.

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**MOSER:** Could railroad crews sue the railroad anyway, since the railroad hired this carrier and the carrier is at fault somehow?

**DUNGAN:** I would have to think more about that, I don't have the answer off the top of my head, and I, I think a lot of it would depend on the specific situations and what the actual accident was.

**MOSER:** Well, and the other question that goes along with that is a lot of the risks that face the railroads, they self-insure because they're so big. Who do they go to to buy insurance from? Maybe they should be in the insurance business. I don't know, but--

**DUNGAN:** I'm sure people after me will be happy to respond to that.

**MOSER:** Yeah. OK. Other questions? Thank you very much, Senator.

**DUNGAN:** Thank you.

**MOSER:** We appreciate it. OK, is-- are there supporters?

**ANDREW FOUST:** Good afternoon, Chairman Moser and members of the Transportation and Telecommunications Committee. My name is Andrew Foust, A-n-d-r-e-w F-o-u-s-t. I'm the Nebraska Legislative Director for SMART Transportation Division known as SMART-TD. We're a rail, rail organization representing over 1,200 conductors and engineers across Nebraska, ranging from Omaha all the way to South Morrill, Nebraska. First, we'd like to express our gratitude to Senator Dungan for introducing LB444 and bringing attention to an issue that has not been addressed since 1996 like Senator Dungan told you, that's 29 years ago this was talked about or addressed. I'd like to offer some historical context to the issue. The Uninsured, Underinsured Motorist Insurance Coverage Act, Nebraska Statute 44-6408(2), both at the time of the rule change and currently sets a limit at \$25,000 per person and \$50,000 per accident. Those are the, the minimums right now. The act also states that there is-- in no event, shall the insurer be required to provide higher limits than \$100,000 per person and \$300,000 per accident. The act hasn't changed since 1996, like I expressed earlier. In 2020, the Public Service Commission conducted a public investigation to examine the insurance minimums comprehensively. The docket specifically addressed underinsured, uninsured minimums, and particularly in relation to transportation of rail crew carriers with the recommendation to raise the minimums to \$1 million. Following the hearing in the docket, the Commission sought the Attorney General's Opinion on its authority to implement the higher minimum. The Attorney General's Opinion concluded that the

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Commission lacked the authority to require underinsured, uninsured amounts exceeding those stipulated in the Uninsured and Underinsured Motorist Insurance Coverage Act, that 44-6408. Consequent-- consequently, no changes were made at that time. In Nebraska, 9.3% of the 1,246,179 licensed drivers are underinsured or uninsured, totaling 115,894 individuals. This is a significant number equivalent to the combined, combined population of Bellevue and Grand Island. When we look at neighboring states, the situation is even more concerning. Missouri has a 16.4% underinsured/uninsured, Kansas 10.9, Colorado 16.3, and Iowa 11.3, and Wyoming 5.8 in 2023. It is imperative to recognize that our members, your constituents, are traveling through these states every single day while working for the railroad. We must address these issues head-on to ensure that the safety and security of all drivers-- yeah, security of all drivers on the road. Rail crew carriers are the integral component of railroad operation. The-- this legislation aims to enhance the safety and protection of railroad workers and the drivers employed by these carriers. Each year, these individuals travel extensive distances, often encountering the potential risk that the-- that our-- that the other motorist may lack significant insurance coverage, or may not possess any insurance at all to address the expenses in the event of an accident. I would like to thank-- I would like to request that Chairman Moser and members of this committee support LB44 [SIC], which seeks to protect the essential workforce in Nebraska. I appreciate your consideration, and I'd be available to answer any questions that you might have.

**MOSER:** OK, I wasn't watching, let's take Senator Guereca. I was deep in thought here.

**GUERECA:** Thank you, Chairman. Thank you for being here, Mr. Foust. I'm looking through UP's online testimony, and it mentions the Federal Employers' Liability Act, so, like, workmen's comp or-- can you expand on that?

**ANDREW FOUST:** Well, FELA is the Federal Employers' Liability Act, which railroaders are covered by. We are not covered by workmen's comp. So it's essentially what the, the acronym says, liability. So that would only cover liability. So let's say Andrew Foust is driving down the road, I have a head-on collision with a rail crew carrier and the occupants in that van, and I am underinsured or uninsured. Right? So then it is my fault. I am liable for that. FELA would not come into effect then, because we have to find-- the, the requirement of the act is to find liability of the railroad or the rail crew carrier.

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**GUERECA:** Gotcha, because it's not the railroad's fault that the accident happened.

**ANDREW FOUST:** Yes, exactly.

**GUERECA:** Gotcha. All right. Thanks.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you, Mr. Foust, for, for being here and for your testimony. Can you give examples of have there been instances or stories where we had folks being transported in a vehicle where they were either underinsured or uninsured and something [INAUDIBLE]?

**ANDREW FOUST:** Recently, I cannot specifically say that. I can't, I can't give you, give you a specific incident.

**FREDRICKSON:** Sure.

**ANDREW FOUST:** I just know that it has happened, not-- maybe not in this state, but I know in other states it has happened.

**FREDRICKSON:** OK. And, and the transporter wasn't able to cover or compensate the individual based on [INAUDIBLE].

**ANDREW FOUST:** Not the transporter. So this bill doesn't hold the, the transporter liable, the rail crew carrier. It, it would hold-- it would be like a, a citizen out in Nebraska traveling, like I said with Senator Guereca, and they would be the person responsible for the wreck. And they are underinsured/uninsured. So it's requiring the carriers to carry this, this insurance in the case of the person not being insured enough--

**FREDRICKSON:** Got it. Got it.

**ANDREW FOUST:** --to cover the expenses of the accident.

**FREDRICKSON:** OK. That's all. Thank you.

**ANDREW FOUST:** Yeah.

**MOSER:** It's uninsured and underinsured supplement insurance, so to speak.

**ANDREW FOUST:** Yes, yes.

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**MOSER:** OK. Senator DeBoer.

**DeBOER:** Thank you. Thank you for being here. So the underinsured/uninsured supplemental insurance might have a cost to it, an additional cost if they have higher limits.

**ANDREW FOUST:** Oh, yes.

**DeBOER:** So the-- I assume that the railroad negotiates the cost of the services for the transport service directly with that transport service?

**ANDREW FOUST:** Yes. So the rail crew carriers are a contract employee of the railroad. So they have-- they work out negotiations. They say it's going to cost you \$400 per ride for us to take your employees from point A to point B.

**DeBOER:** OK.

**ANDREW FOUST:** So if there was an increased cost to this insurance, the rail crew carriers could go back to the railroads and say, hey, it's going to cost us five extra dollars a trip, and now we need to renegotiate our contract with you. So now it's-- I'm just throwing this out there, I don't know what it would cost-- but say \$400, it costs \$400 before this, this minimum was raised, now it's going to cost you \$405 per trip for us to carry that, that type of insurance.

**DeBOER:** OK. Thank you.

**MOSER:** Senator Storer.

**STORER:** Thank you, Chairman Moser. A couple of things that I'm still trying to wrap my head around. So we were just talking about just for comparison of previous bill, common carriers. And I don't know if you would have any idea, but that would be an example of someone carrying more than one individual oftentimes in a vehicle like this. Right? Do you have any idea what their requirements for insurance are?

**ANDREW FOUST:** That's what this-- that's what I stated earlier. I think it's \$25,000 per person, \$50,000 per accident. I don't know if that is for sure because the common carriers are in a different category. Rail crew carriers, back in 2019, Senator Friesen introduced a bill that was passed which created a, a subpart of it. And there's, like, network, Uber and Lyft are one section. And then you got common carriers are one section. And then you have rail crew carriers and, and household good movers are another section of their-- of the PSC.

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**STORER:** OK. And, actually, I had just-- and maybe I misunder-- when I was looking up the definition of common carriers, it included household goods under common carriers in the statute. But we can come back.

**ANDREW FOUST:** Yeah, I don't--

**STORER:** So--

**ANDREW FOUST:** I'd have to get back to you on that one.

**STORER:** --help me understand why-- I mean, there's a-- again, a huge difference between \$25,000 per person for the-- and you're recommending in this-- this bill recommends up to a million. Am I--

**ANDREW FOUST:** OK.

**STORER:** --understanding that right?

**ANDREW FOUST:** So, yeah, I can, I can give you, like, a, a scenario. Let's say I'm traveling down the road in a rail crew carrier in a van, right, and that person who hit us head-on was underinsured/uninsured. So the minimum right now is \$25,000. Now, we all know somebody that's gone to the hospital, \$25,000 does not go far at all, right? I mean, if you, if you require surgery, if you require one day in ICU, that one day you could take up 25,000 bucks. Right?

**STORER:** So are these-- these are still-- they're employees of the railroad, are, are they-- have additional coverage from the railroad in that-- in the event like you described?

**ANDREW FOUST:** No, because like we said, we're covered by FELA. We have health insurance, but then that's out of our pocket. That's not out of the railroad's pocket. Right?

**STORER:** So there's no coverage to help offset this from their employer?

**ANDREW FOUST:** Yeah. So--

**STORER:** Whether UP or--

**ANDREW FOUST:** I, I can't remember which senator asked this question, but there is a liability insurance, and the minimum for that is \$5 million in the state of Nebraska. So I don't know if-- I'm not an insurance guru, I don't know it that well. But if there's-- if you are

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able to take from that section of the insurance, like the liability insurance, I don't know.

**STORER:** And there may be some folks that can help answer that a little bit--

**ANDREW FOUST:** Yeah, they could touch on that.

**STORER:** --a little bit better. But last question, is there a specific-- do you have an example that really drove this to be a priority? Like, has there been some cases that said, wow, we have a problem?

**ANDREW FOUST:** No. Like I-- I think Senator Fredrickson asked the same question. I, I don't have any specific incidences like recently. I just know that it has happened. This might have been before I was in this position, so I couldn't tell you. But--

**STORER:** You don't have a specific incidence, but we're recommending we go from \$25,000 to \$1 million with no real documentation of a problem. I mean, I don't-- I'm not [INAUDIBLE] but is that--

**ANDREW FOUST:** No, I, I, I appreciate the question.

**STORER:** OK.

**ANDREW FOUST:** My thinking, and this is just my personal opinion, is I, you know, I've been driving for, say, 30 years, right, and I have never had a wreck. So do I need car insurance?

**STORER:** Right. But you would-- I think we all agree this is a huge differentiation.

**ANDREW FOUST:** Yeah.

**STORER:** We're not, we're not just doubling it. We're--

**ANDREW FOUST:** Yeah, no, I, I totally understand. When I saw that it hasn't been adjusted since 1996, there's a lot of, of costs in there, that if it was to happen, that then it could possibly cover. Like I said, I wasn't-- and when, when the \$1 million was recommended in 2020, that recommendation was not from me and my organization personally.

**STORER:** Who did that study or where, where did that recommendation come from?

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**ANDREW FOUST:** This was, this was conducted in the PSC. They did a public investigation.

**STORER:** OK.

**ANDREW FOUST:** And that's what was recommended in 2020 they said.

**STORER:** From the PSC?

**ANDREW FOUST:** That's what was-- that's what came out of the, the public hearing or public investigation, I think they call it, PI.

**STORER:** OK. Thank you.

**ANDREW FOUST:** Yeah.

**MOSER:** Senator Bosn, do you still have a question?

**BOSN:** Yeah. So I don't know if you've had a chance to see the online comments that were submitted, sort of like Senator Dunixi [SIC] referred to, have you had a chance to look at those?

**ANDREW FOUST:** No, I have not.

**BOSN:** So one of the points that was made by UP was that these insurance products do not exist. The proposed raise is a drastic change. To her [SIC] point, it says to UP's knowledge, there is no product in the insurance market to cover this requirement specific to rail employees. Do you see the-- I, I guess what-- how do you counter that?

**ANDREW FOUST:** They have it. They're required to have it, so it must exist.

**BOSN:** Well, they aren't required to have it right now.

**ANDREW FOUST:** They're required to have it. The Public Service Commission requires to have a \$25,000 per individual, \$50,000 per accident.

**BOSN:** Right, but I think what they're saying is, is there isn't someone that would provide coverage.

**MOSER:** In that amount.

**BOSN:** At the amount of the minimum.

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**ANDREW FOUST:** At the amount? OK. Yeah, I, I don't know, I haven't, I haven't had a chance to read their comments, so.

**BOSN:** OK.

**ANDREW FOUST:** But I know it exists. I know the actual underinsured/uninsured exists. I have it personally, so.

**BOSN:** But your cap isn't a million, right? So that's what I think her point is.

**ANDREW FOUST:** Yeah, I didn't understand your question. I'm sorry.

**BOSN:** Yeah, sorry. And I--

**ANDREW FOUST:** The million dollars, I, I couldn't tell you. I haven't talked to any insurance--

**BOSN:** OK.

**ANDREW FOUST:** --people. And like I said, the, the earlier, the 2020 hearing with the PSC, that's where that amount comes from.

**BOSN:** OK.

**ANDREW FOUST:** Like it was, it was found to be recommended in that hearing. And that's where I'm getting the amount, or Senator Dungan's getting the amount also--

**BOSN:** OK.

**MOSER:** OK.

**ANDREW FOUST:** --for the bill.

**BOSN:** Thank you.

**MOSER:** Senator Brandt, do you have a question?

**BRANDT:** Yes. Thank you, Chairman Moser. Thank you, Mr. Foust, for testifying. What states have 100-- \$1 million right now?

**ANDREW FOUST:** Now-- I don't know of any states that have \$1 million.

**BRANDT:** So this-- we would be the first in the nation?

**ANDREW FOUST:** Yes.

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**BRANDT:** And then the \$25,000, \$50,000 is just kind of the standard minimum insurance for everybody in the state of Nebraska right now.

**ANDREW FOUST:** In the state of Nebraska, yes.

**BRANDT:** And-- well, I guess the last point, I don't know if it's a question, but if this carrier got in a bad accident, I'm pretty sure there'd be a line of lawyers there to sue that carrier for negligence or the other individual not--

**ANDREW FOUST:** Well, like--

**BRANDT:** I, I guess, I guess the point I'm trying to make is that just because there's \$25,000 per occupant in that vehicle is not the end of the story after a bad accident, usually there's a lawsuit involved, is there not?

**ANDREW FOUST:** Yeah, but how many lawsuits out there that-- like, this is-- this has nothing to do with rail crew carriers or the railroad. It's not their fault, right? It's a, a citizen driving down the, down the highway, and they cross the center line, and they have a head-on with a rail crew carrier. It's not their-- it's not the railroad's fault. It's not the carrier's fault. There are, like I said, numerous people, citizens in Nebraska, over 100,000 people who are underinsured or uninsured.

**BRANDT:** Yep.

**ANDREW FOUST:** Once those lawyers line up and you go to the court hearing and they find that it's, yes, it was your fault, they can only take so much.

**BRANDT:** I guess my experience is they see who's got the deepest pockets, regardless of whose fault it is.

**ANDREW FOUST:** Yeah, I, I mean, they could come after the railroad, maybe, and trying to find them liable. I don't know, but I just-- yeah.

**BRANDT:** All right. Thank you.

**ANDREW FOUST:** Yeah. Thank you.

**MOSER:** Would having insurance be more a, a speedy resolution to the problem than having to sue and--

**ANDREW FOUST:** Yeah.

**MOSER:** --and pay the attorneys 30%?

**ANDREW FOUST:** Yeah.

**MOSER:** Not to insult any of the attorneys present. Senator Guereca.

**GUERECA:** And probably also if they can't afford insurance, they probably don't have much to go after anyway.

**ANDREW FOUST:** Yeah.

**GUERECA:** But so, I mean-- I know we talked a lot about the health care costs, so that's a thing. But, I mean, if an occupant is hurt to a point where they can't work, that would-- we all know it would need more than just medical costs, right?

**ANDREW FOUST:** Yeah.

**GUERECA:** So that's--

**ANDREW FOUST:** Pay the bills.

**GUERECA:** Right. Right. So it's also-- you know, it's not just the medical expenses, it's also-- if it's a bad wreck and they can't work for 6 months--

**ANDREW FOUST:** Yeah.

**GUERECA:** --right, then it's something that they can go after. All right. Thanks.

**MOSER:** OK. Other questions from the committee? Seeing none, thank you--

**ANDREW FOUST:** Thank you.

**MOSER:** --for your testimony. OK, are there any other supporters for LB444? Are there any opponents for LB444? Welcome.

**SANDY WALKER:** Thank you. Good afternoon. I appreciate the opportunity to come here and speak in front of you today. RailCrew Xpress. My name is Sandy Walker, S-a-n-d-y W-a-l-k-e-r. I work for RailCrew Xpress. Our company is a transportation company that provides service to the railroad crews based on awarded contracts for their customers and their various service units. RCX-- I'll shorten, I'll shorten it up a

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little bit. It's easier to tell the difference between us and the railroad. RCX employs approximately 260 employees in the state of Nebraska, we provide transportation services to both Union Pacific, as well as Burlington Northern Santa Fe. Currently, RailCrew Xpress carries auto liability limits to adhere to our contracts with customers that are well above the required minimum limits in Nebraska. For example, currently RailCrew Xpress has \$5 million in auto liability insurance to cover any incidents that occur in our vehicles. In addition to that, those contractual relationships with the railroad, if they're claiming injury in an RCX vehicle, regardless of the RCX driver's fault, they are covered by RCX. The only exception to that is, unless the passenger was a sole exclusive cause. So, for example, gets mad and breaks a window on the side of our van. Other than that, the railroad is going to tender that claim to us. Additionally, to single out one sector in the transportation industry, those that transport railroad crews creates an unjust advantage to other types of companies that haul other employees or constituents. They can then bid significantly less than we can for the same business, because they are not held to those same standards that rail crew is for driver qualifications, insurance and vehicle requirements, which are not only monitored by the company, but they are also monitored by the PSC. RCX, when we noted the [INAUDIBLE] bill, we reached out to our insurance broker and they have indicated that we would not be able to obtain the new \$1 million per occupant. It's not per claim, they're asking for \$1 million per occupant in UI/UIM with our current AL provider, nor the previous provider we have for close to a 10-year relationship with. Both insurance providers said that they will not provide UI/UIM coverage at levels beyond our normal auto liability limits. They also commented that they have never seen a per occupant requirement anywhere near the ask in this proposed legislation. The proposed bill essentially is asking RailCrew Xpress to be the insurer of every vehicle in the state of Nebraska. No other transportation company is required to insure Nebraska highways. Companies like Uber, Lyft, traditional taxi cabs, school bus companies, and tour bus companies transport, transport far more Nebraska citizens than a crew hauling company does, yet, this legislation leaves for them to have less far requirements than a crew hauling company and leaves their passengers with far less coverage than the railroad workers would receive. Later on, the railroad is going to speak in reference to their FELA claims, which is federal employee liability claims. But in 2023, BNSF-- I'm sorry, I'm supposed to stop talking when the red light came on?

**MOSER:** You could just summarize your remarks at this point.

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**SANDY WALKER:** Yeah, I just wanted to indicate in the state of Nebraska, we drove over 6.4 million miles in Nebraska with zero FELA claims. And we've had one claim throughout the entire BNSF network, which we service. And that one claim was for somebody who bumped their knee on the back of our bumper. RailCrew takes care of the people in our, in our vehicles. And this service is not needed. It's an enormous cost to our business. And, frankly, if this passes, RailCrew will have no choice but to leave the state of Nebraska.

**MOSER:** OK. Comments from committee members? Senator Ballard.

**BALLARD:** Thank you, Chair. Thank you for being here and your testimony. On average-- I know, I know it varies, but how many individuals do you carry on a given, on a given ride?

**SANDY WALKER:** Yeah, majority of them are two. But we can call up to four at a time.

**BALLARD:** Four at a time.

**SANDY WALKER:** We're using, we're using minivans, passenger vans.

**BALLARD:** OK. So it would be \$4 million per-- so on-- OK.

**SANDY WALKER:** Correct. And, yes, it would be per occupant, so in that case it would be a driver and four crew, so it would actually be a \$5 million UI/UIM, because they're asking for \$1 million per occupant.

**BALLARD:** OK. And just curious, did your insurer, when you reached out, did they say what this would do to your premium?

**SANDY WALKER:** I'm sorry? They actually said we couldn't get this insurance.

**BALLARD:** You couldn't.

**SANDY WALKER:** Could not get it.

**BALLARD:** OK.

**MOSER:** They don't offer coverage in that amount.

**SANDY WALKER:** Correct.

**BALLARD:** OK. Thank you.

**MOSER:** Yeah. Senator Storer.

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**STORER:** Thank you, Chairman Moser. Can you repeat what-- you said what your current liability threshold was. How much was that?

**SANDY WALKER:** We currently have \$5 million, which we are contractually required to have to do business with both Burlington Northern Santa Fe and as well as Union Pacific.

**STORER:** And if I am reading your testimony correctly, the-- those railroad employees are currently covered under your liability insurance in your vehicle, regardless of fault?

**SANDY WALKER:** The Federal Employers' Liability Act that we spoke about earlier has a 1% threshold. So if RailCrew is found to have-- or the railroad-- to have 1% liability, we own the entire claim.

**STORER:** So this would be clearly unnecessary. It would, it would double-- it would add a whole nother layer, right, of insurance that--

**SANDY WALKER:** That is correct.

**STORER:** Thank you.

**MOSER:** Now let's take Senator Guereca since I skipped him for [INAUDIBLE].

**GUERECA:** Do-- are you required to currently have the UI/UIM coverage?

**SANDY WALKER:** We currently have \$100,000 per occupant, up to \$3,000-- or \$300,000 aggregate. And that's through the PSC that-- those requirements.

**GUERECA:** All right. And you referenced the \$5 million liability. If you're not at fault, coverage would kick in, correct?

**SANDY WALKER:** I would like to find a time when we don't find 1% at fault. I have been in the industry for 30 years, and I'm not aware of one case where the Rail-- RailCrew or the railroad were not found 1% liable where they owned the whole thing.

**GUERECA:** So in every instance of every accident FELA has kicked in?

**SANDY WALKER:** FELA kicks in-- yes. It helps with the-- that's what the claim is brought forward is under FELA, which covers-- and I know the railroad spoke about it earlier, but they have off-track benefits that they're getting paid, as well as their medical is being paid and their

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time off work. So I, I would love it if you have a-- anybody has a suggestion for what's 1%, I'd love to deny some claims.

**GUERECA:** All right. Thank you.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here and for your testimony. You spoke a little bit to this earlier, but it-- I mean, based on what you testified upon. Can, can you speak a little bit more to your safety record in Nebraska?

**SANDY WALKER:** Yeah, absolutely. So here it has it in here, I'll, I'll just kind of read through it, though. There-- for-- in, in Nebraska, we've handled over 53,000 trips in 2023 and 63,000 trips in 2024 with crew members in our vehicle. We drove 7.3 million miles in 2023 in Nebraska and 6.4 million miles in 2024 with zero FELA claims in the last 2 years.

**FREDRICKSON:** OK.

**SANDY WALKER:** We are the gold standard.

**FREDRICKSON:** OK. And, and I know you mentioned that your insurer would not-- the \$1 million is not something that they would be able to provide. I, I mean, I haven't spoken to the introducer about this, but is, is there a number that you feel you'd be more comfortable with or something that you feel like you could support?

**SANDY WALKER:** Yeah, I, I don't actually feel that it's needed at this time because they're getting coverage under our auto liability care. So there's not a reason to do an additional insurance [INAUDIBLE], it's only allowing everybody to, to dip into another fund, if you will.

**FREDRICKSON:** OK. Thank you.

**MOSER:** Other questions? OK. Thank you very much for your testimony.

**SANDY WALKER:** Thank you for your time this morning. Actually, I guess it is.

**MOSER:** OK. Other opposition? Welcome.

**JEFF DAVIS:** Mr. Chairman, members of the committee, Jeff Davis, J-e-f-f D-a-v-i-s, here on behalf of BNSF Railway in opposition to

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LB444. Let me begin by saying very clearly, there is no gap in insurance coverage for railroad employees riding in these crew vans. Pursuant to our off-track vehicle agreement, all employee medical bills are covered. If a bill is not paid, it's because the employee didn't turn the bill in. A railroad employee collects about \$1,000 a week from off-track vehicle benefits and railroad retirement benefits from day number one. That can stretch for 3 years, 156 weeks. The PSC already requires \$100,000 per person, \$300,000 aggregate UI/UIM coverage. So if an employee is injured in a crew van accident by UI/UIM driver, all their medical bills are paid. They collect about \$1,000 a week. They can claim up to about \$100,000 UI/UIM coverage, four times the amount required of automobile drivers, plus they can still sue the automobile driver and anybody else involved in the accident. And unlike every other worker in Nebraska who is covered by workers' compensation, they still get to sue their employer. Railroad workers can and do sue the other driver, the crew van company, the railroad for all of their economic and noneconomic damages under the Federal Employers' Liability Act, either in state or federal court. FELA sets a very low bar for railroad liability than what exists in normal personal injury cases. The injured railroad worker doesn't have to show proximate cause. They only have to show some negligence by the railroad or their agency, so a finding of 1% liability allows 100% recovery for all their damages. The Unicameral changed the law in 2015. The PSC has had two dockets and about a half a dozen hearings over the last decade. BNSF has been party to all those proceedings, and at no time has Mr. Foust or his predecessor produced one witness from any of the accident-- accidents who could say they weren't made whole under the existing framework. In 2023-2024, BNSF has had 77 FELA claims. 58 of those claims have already settled. 19 are still pending. We still have some pending in Nebraska from prior to that. In conclusion, railroad workers involved in a Nebraska crew van accident already get more benefits than anyone else covered under the Nebraska workers' compensation system. Plus, they get to sue the other driver, the crew van company, and the railroad to recover all their damages, which includes a lower burden of proof than anyone else bringing a civil suit in Nebraska. Railroad workers injured in the line of duty deserve to be made whole. They don't deserve a windfall at employer expense. And I urge you to indefinitely postpone LB444.

**MOSER:** Thank you. Questions from the committee? Senator Ballard.

**BALLARD:** Thank you, Chair. You said BNSF has been part of the, part of the proceedings with the PSC. The proponents of this bill talked about a \$1 million number. Are you aware of any through the PSC?

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**JEFF DAVIS:** Yes. So that was actually the, the docket that I missed. But my understanding is that that \$1 million amount was proposed either publicly or privately by Mr. Foust's predecessor, Bob Borgeson, who also moonlighted as a, quote, accident investigator in FELA claims, so he would be an accident investigator and testify at trial.

**BALLARD:** OK. Thank you.

**MOSER:** Other questions? Senator DeBoer.

**DeBOER:** Yes. Thank you. Just-- you keep talking about the FELA, and I'm just curious, it's maybe not even that relevant to this bill, but who determines the 1%, whether you're 1%?

**JEFF DAVIS:** It's a matter for the jury if it, if it--

**DeBOER:** This is in trial?

**JEFF DAVIS:** Yes, in, in, in--

**DeBOER:** This is not an individual--

**JEFF DAVIS:** Right. Right. The courts refer to it as a, quote, featherweight burden.

**DeBOER:** Yeah. Yeah, yeah.

**JEFF DAVIS:** That's the way it's, it's been, it's been, it's been cited. So all they had to do is show, quote, some liability. And so examples that I have seen here in Nebraska where the crew van drove through an intersection that there had been several accidents at previously. So, therefore, they should have known that by going through that inherently dangerous intersection, they should have, they should have instead taken an alter-- alternate route. So it's the, the, the knew or should have known standard. Second, you know, in the, in the instance that Mr. Foust said, well, you know, if someone just drives across the centerline and, and hits the van, well, you know, there's one of those cases that's still pending out there right now. And I believe Mr. Foust and, and others talked about this at the PSC, where they were saying, well, the crew van, the crew van driver was, was on some sort of substance and, you know, have made all sorts of accusations. So like the witness before me, I am not aware of any person that has not, you know, alleged some form of negligence by the railroad where, you know, like I said, we have, you know, we've had 60-- 77 of these cases that have been filed against us in the last 2

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years. And, you know, three-quarters of them have already been settled.

**DeBOER:** And so that, that 1% that, that kicks it in is decided at trial?

**JEFF DAVIS:** Yes.

**DeBOER:** OK. So that explains a little bit more the, the objection to Tadros the other day, don't you think, Jerry?

**JEFF DAVIS:** Yes, ma'am. It does.

**DeBOER:** OK.

**MOSER:** Other questions? Senator Guereca.

**GUERECA:** What's a-- thank, thank you for being here and for your testimony-- what's a RRB benefit?

**JEFF DAVIS:** So Railroad Retirement Board. So railroad retirement benefits were a predecessor to workers' compensation. And so this FELA system was established before most, if not all, of your state workers' compensation laws. So under FELA, they would get approximately \$960 a week for up to 3 years, 156 weeks. Now, we also have the off-track vehicle agreement which would also pay them-- it's either \$960 or maybe \$1,000. It's one of those two amounts. I'm not sure. And, you know, basically it kicks in from, from day 1 of the accident and is retroactive. So they're, they're getting that, you know, sort of payment in lieu of workers' compensation, you know, from, from day 1 for up to 3 years, which by then they should have either reached maximum medical improvement or, you know, they would be bringing a case against us for permanent total disability under FELA, you know, resulting from their accident, very, very similar to workers' comp.

**GUERECA:** All right. Thanks.

**MOSER:** Other questions? Senator Bosn.

**BOSN:** Thank you. I'm going to follow up on what Senator DeBoer touched on, because both she and I sit in Judiciary where we heard the bill on LB416 that messed with the Tadros decision. And you did testify on that. Can you connect for us the connection between the impact that those would have in conjunction?

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**JEFF DAVIS:** So I'm going to say that if LB416 passes, you know, it would essentially-- to me it would be analogous to us having this some negligence standard in all of our grade-crossing accident cases, too, where we're the deep pockets. We would be the proverbial last person standing so they would settle with the, the under-- uninsured/underinsured driver. They would settle with us. And then we're arguing against the, quote, empty chair. And it really changes how we would try the case, because then at that point we have to, quote, subpoena the empty chair and have to, to basically drag them into, into court. And it just changes the whole way you would try the case. And then, and then, finally, I would say this, this bill is a little bit different in that, that LB444 just encourages the, the plaintiff lawyers to, to swing for the fences, because if all of your medical bills are paid for, you're getting paid \$1,000 a week, you get a settlement from the other, other driver, plus you get \$1 million per person uninsured/under-- uninsured/underinsured motorist coverage, then you get to sue us for, for pain and suffering, whatever, and there's, there's nothing to lose and sky is the limit at that point.

**BOSN:** Thank you.

**MOSER:** Other questions? Seeing none, thank you very much, Mr. Davis. Anybody else to speak in the opposition? Welcome.

**JUSTIN BRADY:** Senator Moser and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the American Property Casualty Insurance Association in opposition to LB444. The APCIA writes about 90-plus percent of all the property casualty, especially when it comes to motor vehicle policies in the state of Nebraska. And they're in opposition to this bill because of the inability, as was spoken before, to actually write the policies. If you look at the current law, current law says if an accident happens for the uninsured or underinsured, it's \$25,000 max if there's one person that's injured in the vehicle. It's a max of \$50,000 if two or more are in the vehicle. So not only does this law change it to \$1 million, but it changes it to \$1 million per occupant. As you heard already, I think Senator Ballard asked the question, you could have three, four, five people in the vehicle. Could have more, I suppose. And so insurance companies would write it as though the max, and they'd all have to presume there's going to be five or seven in that vehicle moving forward, which is something that they just-- that product doesn't exist. It would be expensive out there. And so for those reasons-- and the fact I think you've heard that issues have arisen that require it, there's also other policies, general liability or umbrella policies that

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individuals carry that cover this-- so for those reasons, we're opposed. And I'd try to answer any questions.

**MOSER:** Questions from committee members? Thank you very much for your testimony.

**JUSTIN BRADY:** Thank you.

**MOSER:** Any other opponents for LB444? Anyone in the neutral capacity? Welcome.

**CHRISTIAN MIRCH:** Good afternoon, Chair Moser, members of the committee. My name is Christian Mirch, Nebraska Public Service Commissioner representing District 2. I am here today to testify in the neutral capacity, as I'm sure you're all aware now. I am testifying to provide context as to how this would impact-- how LB444 would impact insurance requirements, generally, and to discuss potential impacts on the industries that the Commission regulates. The Commission has authority to regulate insurance companies' requirements under the Commission's constitutional authority and state statute. Under current Commission regulations, transportation providers must carry uninsured and underinsured motorist coverage with a minimum, minimum limit of \$100,000 per person and \$300,000 aggregate per accident, as you've heard today. According to a 2015 Attorney General's Opinion, this is the highest minimum that may be imposed by our Commission under current statutes. This bill would increase the, the minimum insurance requirement to at least \$1 million per person. While this increase may provide additional financial protections to the traveling public, the Commission is concerned with the burden that increasing insurance costs may have on carriers. Even under the current insurance requirements that we have, carriers regularly express concerns with the insurance costs and the resulting financial hardships they experience. In fact, some former carriers have indicated that they are no longer operating due to the rising cost of insurance. Lastly, I'd be remiss if I did not point out that this bill would increase insurance requirements for many carriers regulated by our Commission, such as taxis, limousines, party buses, and rail crews, but would not impose the equivalent insurance requirement on transportation network companies such as Uber and Lyft. Therefore, this bill would increase the cost of doing business on one portion of the transportation industry, but not on another portion and, thus, create a disparity in the marketplace. I'm happy to answer any questions that you may have.

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**MOSER:** Questions from committee members? Seeing none-- oh, I'm sorry. Senator Bosn.

**BOSN:** Thank you.

**MOSER:** Well, some of you are holding the phone up, and some of you are trying-- I'm having a little trouble interpreting. But, please, go ahead.

**BOSN:** Thank you. So looking at paragraph three here with your current requirements for minimum carry, have you ever had an incident or are you aware of an incident where a rail worker was not compensated under the current scheme?

**CHRISTIAN MIRCH:** I've only been on the Commission for 2 years, but, to my knowledge, no, but that is not to say that is-- does not exist.

**BOSN:** Fair enough. OK. All right. Thank you.

**MOSER:** Other questions from committee members? All right. Thank you very much.

**CHRISTIAN MIRCH:** Thank you for your time.

**MOSER:** Anyone else in the neutral? OK. Senator Dungan, you're welcome to close.

**DUNGAN:** Thank you, Chair Moser and members of the committee. I do want to say, first of all, thank you to the testifiers here today. I, I did get reached out to by BNSF and RailCrew Xpress, and we've had conversations prior to today's hearings. So I very much appreciate that. They've expressed their concerns. I hear them, I understand them. Just to be very clear, this is talking about a very specific incident with the uninsured/ underinsured individual being the one who causes the accident. I know there's been testimony here today with regards to liability insurance, and when that's triggered with the 1%, the intent for this is to ensure that any individual who's harmed due to actions not taken by the RailCrew Xpress or BNSF can be made whole in the event that ultimately it's found that the rail or rail crew carrier did not have any liability in that incident. So at the end of the day, I understand that in most circumstances that 1% is found and that liability can be triggered. Certainly, I would just say that that does mean it does have to go to trial, as was testified to, and that a jury has to make that decision rather than insurance just covering it up front. The intention here is to ensure that those individuals are made whole. I do-- as I've said before, I'm happy to have a

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conversation about the numbers and about what we're looking at here. I appreciate the PSC coming in and giving us a little context, but this is a conversation that I'd like to continue having with some of the opponents, and I'm happy to answer any questions of the committee either now or after the hearing about specifics.

**MOSER:** OK. Questions from committee members? Seeing none, thank you very much.

**DUNGAN:** Thank you.

**MOSER:** We had two proponent letters, and we had one opponent, and no neutral testimonies come in through the website. So that'll close the hearing on LB444 and now we'll proceed to LB465. Senator Bosn.

**BOSN:** Thank you, Chair Moser, and good afternoon to the members of the committee. For the record, Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennet. LB465 makes two changes to the regulation transportation network companies. Currently, Nebraska law sets the annual fee for transportation network companies at \$25,000. Revenue from this fee helps pay for costs incurred by the Nebraska Public Service Commission in regulating these companies. This bill, LB465, would allow the PSC to set the annual fee for transportation network companies at an amount less than \$25,000. It would be up to the PSC to decide what this annual fee would be. LB465 merely gives them the option to do so. At a hearing in 2023 on TNC fees, the Director and Legal Counsel for the Motor Transportation Department and Railroad Safety Manager Dillon Keiffer-Johnson, who we heard from earlier today, noted that the fund had \$83,000 in it. About \$20,000 of the fund goes towards paying staff members, leaving over \$60,000 in reserve. According to the funds analysis report provided by the Public Service Commission for this budget cycle, the June 20-- excuse me, June 30, 2024 balance of the fund was almost \$100,000. The second change in LB465 would bring Nebraska into conformity with a number of surrounding states by repealing the requirement that a driver obtain a vehicle inspection in order to drive for a transportation network company. Some of you may recall this is a bill I also brought last session. The Nebraska-- excuse me-- National Highway Safety Office clearly shows that a vehicle inspection requirement does not materially contribute to passenger safety. According to the data, 96% of the crashes are due to human error and not due to something being wrong with the vehicle. This inspection has been identified as a frequent roadblock for potential drivers in completing their application in order to drive for a ride-sharing service. The

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transportation network companies rely on a near instantaneous customer feedback loop that generates feedback from customers-- excuse me, passengers, customers, about the quality of the ride, the driver, and any issues with the vehicle, safety included. This feedback is provided through the rider's phone app, and goes directly to the company, who can take immediate action to deactivate the driver if there is such a safety concern. As public policymakers, we must frequently balance the interests of safety and free enterprise. Here we have strong evidence that the vehicle inspection requirement is not materially contributing to the overall safety of ride-sharing services, and instead is actually keeping Nebraskans from being able to earn an income on their own schedule while serving customers and delivering as many people safely home as possible. Thank you for your time and attention and I will be happy to answer any questions.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Senator Bosn, for bringing this. What's the definition of a transportation network company? Under, I guess, Section 2 on page 2 [SIC] is the first time that I see this. Because above that, we're talking about regulated motor carrier.

**BOSN:** And I know where it is. OK.

**BRANDT:** Because in the lingo, the, the motor carriers pay \$80 per car. The regulated or the transportation network companies are paying a flat fee of \$25,000.

**BOSN:** I will look at the answer to that between now and my close--

**BRANDT:** OK.

**BOSN:** --and I will get that for you, because I know I have it in here, but finding it, I'm not right now.

**BRANDT:** So then the, the second question-- I know we talked about this a little bit on the floor, is you absolutely believe there is no value to these safety inspections?

**BOSN:** I do not believe there is an increase in the safety provided to the individuals who are using rideshare that is provided from a vehicle inspection. I do not. In fact, I would argue that the more individuals who are using rideshare, the less individuals who are driving while under the influence of alcohol at the end of an evening, and it actually improves public safety.

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**BRANDT:** I, I do not disagree with that, but that has nothing to do with the safety of the vehicle, whether your passenger is inebriated or not. And I guess my concern is if I've got somebody out there that's in a, in a car with bald tires and we're going to get weather like we are tomorrow, that's an unsafe vehicle. I mean, we used to do safety inspections in the state. I'm old enough to remember that. I've lived in states where we did safety inspections, and quite often they do find that your brake pads are getting thin. Your tires, you know, should be replaced, and things of that nature, which if it's your personal choice, is one thing, but if you're hauling people, you don't, you don't believe that this would be a, a, a good thing to know?

**BOSN:** I, I would, except for the fact that the data indicates otherwise. And so when there are other states that have lifted this requirement and there isn't any correlating evidence showing any increase in accidents or propensity for accidents, I think you have to trust that the data would show otherwise if there was, in fact, some correlation.

**BRANDT:** All right. Thank you.

**MOSER:** Other questions? Seeing none, thank you for your testimony. Supporters for LB465? Welcome.

**MATT SCHAEFER:** Good afternoon, Senator Moser and members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r. I'm testifying today in support of the bill on behalf of Uber. The page is handing out some of that data that Senator Bosn was referring to in a nice presentation. So, hopefully, you can take a look at that. But some of the highlights in it that the data shows is that this vehicle inspection requirement is keeping a number of drivers from, or potential drivers from completing the process and becoming activated and becoming drivers to take those passengers to work, to childcare, to doctor's appointments and, and certainly home from the bars. And, in fact, the data shows that the, the inspection part is the most common place where dri-- where potential drivers abandon the process. This requirement is not in law in half of the states in the United States. So there's a map where you can see our bordering states. Colorado is the only one with this vehicle inspection requirement. And why, why do some states choose not to have it? Well, as Senator Bosn mentioned, there's just no evidence it contributes to safety. Uber's data shows that accidents happen at the exact same rates between states with inspections and without inspections. National highway safety data indicates it's overwhelmingly an issue with the driver and

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not with the car when accidents do happen. And I would point out, the inspections are just an annual requirement. So, you know, it's only inspecting the car that day. It's not really contributing anything a week after, a month after, 6 months after. And, instead, I think one of the advantages of the entire model for transportation network companies is the rider feedback that comes in. So as soon as you take a trip, you get the opportunity to rate the, the, the driver and the experience and to comment on any issues that were encountered. And so I think, Senator Brandt, that's when if a car was struggling to break or the tires were bald or is in bad shape, I think that feedback would be coming in at that moment. And Uber takes that very seriously. They have a process in place to monitor that feedback and potentially remove drivers from the platform if, if the situation warrants it. I'll stop there and answer any questions.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here.

**MATT SCHAEFER:** Yeah.

**FREDRICKSON:** Do you have an example of what this vehicle inspection form looks like?

**MATT SCHAEFER:** Yes. I only have one copy, but I do have a copy.

**FREDRICKSON:** OK. And is there-- who currently is sort of certified to conduct these?

**MATT SCHAEFER:** Yeah. I, I think you can take it to most any mechanic or repair shop. I think there are some that are familiar with it. And I think that's-- you can search on the Internet to find where some of those folks who do a lot of them are.

**FREDRICKSON:** OK. And do you know the average cost of getting one of these done?

**MATT SCHAEFER:** It, it varies. It's not set in statute. It's up to the repair shop, but I think I've seen anywhere from \$30 to \$75 or maybe even upwards of that.

**FREDRICKSON:** All right. Thank you.

**MOSER:** Senator Guereca.

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**GUERECA:** So currently what's required is just the one initial inspection, it's not, like, an annual requirement for inspection?

**MATT SCHAEFER:** I think it's an annual requirement.

**GUERECA:** It's an annual requirement?

**MATT SCHAEFER:** Yeah.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Mr. Schaefer, for your testimony. What percent of the drivers DQ because they can't afford a \$35 inspection?

**MATT SCHAEFER:** I don't know if we know whether it's because it's an inspection cost problem or whether it's just literally the, the effort that you have to go to to find, find a place, schedule an appointment, and, and go do the inspection.

**BRANDT:** But isn't that a little bit of a red flag? If you can't afford a \$35 inspection on your car, maybe you shouldn't be driving for Uber. And possibly some of these people aren't getting their cars inspected because they're going to find out they need new brake pads and that's \$500.

**MATT SCHAEFER:** It's certainly possible. I mean, I think a lot of these folks drive for Uber and Lyft and other services because they are trying to earn extra income. And I think that's part of the attraction to the model is that they can decide when they want to drive and, and how often and earn that income.

**BRANDT:** And then in your testi-- in your testimony, you stated a number of drivers have been removed. I guess, I'm not an Uber or a Lyft guy, so pardon my ignorance, but I assume then that these, these people that use these services are, are texting Uber or Lyft and saying, hey, this guy has got bad brakes or he's got, he's got bald tires or something. Do you have a number of how many drivers are removed for mechanical reasons?

**MATT SCHAEFER:** I don't have that number, but I, I can certainly ask.

**BRANDT:** OK, so then you're saying half the states don't have this, which implies the other half do. Is that correct?

**MATT SCHAEFER:** Correct.

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**BRANDT:** All right. Thank you.

**MOSER:** Other questions? Is there a policy on Uber drivers driving with their check-engine-soon light on?

**MATT SCHAEFER:** Probably not, but I do that myself, so.

**MOSER:** Yeah, I just had, I had a warning and I drove for a month with it.

**MATT SCHAEFER:** Yeah.

**MOSER:** One of my friends put tape over it so she didn't have to look at. All right. Thank you for your testimony.

**MATT SCHAEFER:** Thank you.

**MOSER:** Anybody else to speak in the support of LB465? Is there anyone here to speak in opposition to LB465? Welcome.

**KEVIN STOCKER:** Thank you, Chairman Moser. Good afternoon to the TNT Committee. My name is Kevin Stocker, K-e-v-i-n S-t-o-c-k-e-r. I'm a commissioner representing District 5 on the Nebraska Public Service Commission, and I'm here to testify in opposition of LB465. LB465 would remove the requirement for drivers of Uber and Lyft or any other transportation network company, TNC, to complete initial and annual inspections. Currently, the Commission may request reports of those inspections from the TNCs-- from the TNC operators at any time. People using Uber and Lyft expect the driver to take reasonable steps to ensure that their vehicle is safe. The current requirements weed out unsafe vehicles and encourage proper vehicle maintenance. According to Uber's website, vehicle inspection usually takes less than 30 minutes and normally costs around \$20 to \$40. However, for Nebraska, specifically, the average cost appears to be around \$75 annually. This is a minimal investment to ensure safe and reliable transportation. For all types of carriers other than Uber and Lyft, the Commission requires that all vehicles be kept in proper physical and mechanical condition, and allows the Commission to inspect any vehicle subject to its jurisdiction. TNCs and all other motor carriers are required to have initial and annual vehicle inspections. However, because LB465 would remove these safety provisions for TNCs, but do nothing about those same requirements for all the other motor carriers, it would result in a heavier regulatory burden for all other carriers when compared to TNCs. Regarding Section 1 of LB465, the Commission is opening-- is open to having discretion over the TNC annual fee amount. Currently, a TNC can either pay a flat fee of \$25,000 per year for

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their entire fleet, or a vehicle fee of up to \$80 per vehicle. LB465 would allow the Commission to set the annual fee at less than \$25,000 if passed. The Commission would look at the TNC regulatory fund each year to determine the appropriate fee amount. Thank you for your time. I would be happy to answer any questions you might have.

**MOSER:** Questions from committee members? Seeing none, thank you for your testimony. Is there other opposition to LB465? There are-- are there neutral testifiers on LB465? Seeing none, Senator, you're welcome to close. She waives her closing. Let's see, we didn't receive any online comments for LB465 at all. So that'll close our hearing on LB465. And we'll move on to LB176. Senator Hughes.

**HUGHES:** Are you waiting for me?

**MOSER:** No, we just took a 10-minute pause. Yes, we were waiting for you.

**HUGHES:** OK, we're still on our first bill in Education, so if anybody is jealous.

**MOSER:** Welcome.

**HUGHES:** Thank you.

**MOSER:** We're going to be nice to you.

**HUGHES:** OK, guys, I appreciate that. Sorry, let me-- can somebody hand-- it's my amendment. OK.

**MOSER:** Welcome.

**HUGHES:** Thank you, Chairman Moser and members of the Transportation and Telecommunications Committee. I am Jana Hughes, J-a-n-a H-u-g-h-e-s, and I represent Legislative District 24. And I am here today to introduce LB176. I ended up bringing this bill after numerous conversations with county and local officials in my district and those from other parts of Nebraska about a serious concern regarding the use of taxpayer dollars that is impacting our local control. I'm going to cut right to the point. We have companies that are getting grants for broadband projects from the Public Service Commission. These companies come to the local political subdivision after being awarded the grant and strong-arm them to approve the project, whether or not it fits within their local ordinance, planning, or zoning structure. The companies might send a postcard that tells the community that their services are coming to their area, but nothing further. The companies

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show up at the local village meeting, tell the village board that they already have approval of the state of Nebraska through the PSC, and then tell them to play ball or get sued. Here's the real kicker. They are building cell towers with these broadband grants. They aren't building fiber or line of sight, high-speed service, or anything that would be considered high-speed broadband. If you sign up for their services, yes, you can get the Internet by pinging off their tower, but only by using whatever excess bandwidth that they have left over after accounting for all their cell phone activity. This is not dedicated high-speed broadband. LB176 rectifies the problem of local government being contacted after the grant has been awarded. LB176 requires providers to provide a copy of a resolution of support from each of the appropriate local political subdivisions, as part of their grant application. The resolution of support has to include a map of the proposed project area, and acknowledgment that the applicant will apply for the appropriate permits, and a timeline for the proposed project. This requires meaningful communication between the provider and the local community, ensures that our taxpayer funds awarded by the PSC are going out to shovel-ready projects, and not being diverted into corporate bank accounts to earn interest because the project is held up in a legal battle between a disaffected community and the provider. I've also shared an amendment, AM147, with you. This applies the basic tenets of the original bill with local approval and notice for the projects to all broadband grant programs from the state of Nebraska. LB176 only applied to the broadband, broadband bridge grants from the PSC. But we learned that the problem was impacting more than this-- than just that grant program. The bottom line is that LB176 with AM147 protects the taxpayer. It protects our local communities. And it's a small ask. These are things that any private sector group should be doing when applying for grants from the state of Nebraska. It is also our responsibility to ensure that at the end of the day, whether it is our own Nebraska taxpayer dollars or the \$432 million the federal government awarded our state in BEAD money, that we do it correctly. We cannot afford to waste these dollars because they aren't-- because we aren't watching what we're doing. I'll let those from my local political-- or from some local political subdivisions behind me, testify with more specific examples of what's going on. I will say that this entire problem is only from a couple of providers operating largely in the wireless phone sector. Chairman Moser and members of the committee, I thank you for your time and consideration, and I welcome any initial questions that you might have.

**MOSER:** Senator Fredrickson.

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**FREDRICKSON:** Thank you, Chair Moser. Thank you, Senator Hughes, for bringing this bill. You kind of alluded at this towards the end of your introduction that you said you've kind of picked up on, maybe, a trend of a couple of new providers that have been doing this. Are you willing to share who those are?

**HUGHES:** I'm going to have the people behind me, and if they want to share any stories, specifically, and then I can come back to that at the end.

**FREDRICKSON:** OK. Sounds good.

**HUGHES:** OK.

**FREDRICKSON:** Thank you.

**MOSER:** Other questions? Seeing none, thank you.

**HUGHES:** OK. Thank you. I'll stay.

**MOSER:** Sure. Are there other supporters for LB176?

**MISTY AHMIC:** Good afternoon.

**MOSER:** Welcome.

**MISTY AHMIC:** Thank you. My name is Misty Ahmic, M-i-s-t-y A-h-m-i-c, and I'm a Seward County Commissioner here to testify in support of LB176. In 2024, our county received an application for a PSC-funded tower. This tower was not in compliance with our zoning regulations and, thus, the permit was denied. Because we denied their application, the provider filed a lawsuit claiming our regulations don't apply because the project was PSC funded. A few months later, the village of Beaver Crossing also received a tower application funded by the PSC. The site employee for the tower provider reported to that board that they were advised by their attorney that unless something is specifically written that says that they cannot put the tower in the ETJ, it's going there. There are five towers in the ETJ of Beaver Crossing, and the residents were concerned about a sixth. The provider stated that none of the other towers would work to colocate on, even though they all provided a similar service. The result was a tiny village with a small budget, having to engage with an attorney and utilize funds that they didn't have. Unlike the tower in the county, that provider pulled out of the Beaver Crossing project. The current process allows providers to apply for and receive funds without knowing if something will work with local regulation or, sorry, local

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zoning regulations, or if other public-private partnerships are already in play. State agencies who grant dollars do not require any local support or feedback before an award is given, possibly leading to the idea that they supersede local decision-making. Seward County is not alone in cases where there is a communication issue with a granted awardee. I hear from many others in my role of similar circumstances where they didn't know something was going to be funded and they already had a plan in play. Both of my examples and other situations lacking communication could have been prevented if, prior to applying for funds, the provider was required to present their project to the local board and receive confirmation they could obtain permits, and that nothing else was already planned for the proposed coverage area. If the project doesn't work under regulation or there is a chance for overbuilding, this legislation allows providers and political subdivisions to work together to find an alternative. LB176 is the opportunity to increase communication and project success, and decrease the number of project extensions and cancellations, overall, better, better utilizing public dollars. Thank you.

**MOSER:** Questions from committee members? Senator Bosn.

**BOSN:** Thank you. It's probably a question I should know the answer to, what is an ETJ?

**MISTY AHMIC:** Extraterritorial jurisdiction. Typically around smaller villages, it's 1 mile. It's like a 1-mile circle around them.

**BOSN:** Thank you.

**MISTY AHMIC:** Yeah.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. So is essentially the end game here of what's happening, there's just over-- overbuilding the curbs. Is that--

**MISTY AHMIC:** There is-- I think some situations are. Yeah, overbuild or potentially in our county putting up a tower where it maybe didn't fit. And another situation where there was already several others that maybe could have been colocated. I think there's several problems at play, but it all just boils down to communication.

**FREDRICKSON:** Thank you.

**MISTY AHMIC:** Yeah.

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**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Commissioner, for, for testifying today. We're both from rural areas. My experience with this in, in my district is these are not even company-owned towers. These towers would be put up by private individuals who, then, lease the space to other companies. Is that your experience also?

**MISTY AHMIC:** It is my experience. Yes.

**BRANDT:** And then also we've had a problem because they tend to oversaturate certain points, is they degrade service on existing carriers. And I didn't see anything in the bill that holds them liable for degradation of service. Do you think that should be in this bill?

**MISTY AHMIC:** Absolutely. Yes.

**BRANDT:** What do you think the penalty should be?

**MISTY AHMIC:** I don't think I should be the one to decide that.

**BRANDT:** It's an honest question. I mean--

**MISTY AHMIC:** Repayment of, of public dollars or pulling of local permits. I think those would be fair.

**BRANDT:** Removal of the tower?

**MISTY AHMIC:** Removal of the ability to provide the service, maybe using those public dollars.

**BRANDT:** All right. Thank you.

**MISTY AHMIC:** Yeah.

**MOSER:** Other questions? Thank you very much.

**MISTY AHMIC:** Thank you.

**MOSER:** Other supporters for LB176? Welcome.

**EMILY HAXBY:** Hello. My name is Emily Haxby, E-m-i-l-y, Haxby is H-a-x-b-y. I'm here to testify in strong support of LB176. This bill is just common sense. Following up on Misty's testimony, we also received an application for a communications tower within 3 miles of the proposed locations. 300 residents signed a petition opposing it. The affected residents had reached out to the provider to explore

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alternative locations that would be better suited, but the provider had refused to meet with them. As a result, the permit was denied and the funds were returned. I led the Gage County rural broadband project in 2022, and my commitment has always been to bring fiber to all of Gage County. Throughout recent broadband funding programs, I have raised concerns with this committee as well, as well as with the PSC. In 2022, Broadband Bridge Program, which was called the west Ellis application, overlapped our Gage County project area by 16 homes, which is about 37% of that application that was relayed to the PSC and it was still funded. The Capital Projects Program presented similar issues. A village had supported an application that scored higher, requested 33% less funding, had strong community backing, it was still not selected. How do we ensure local permitting agencies input is properly considered in future funding decisions? More recently, the 2023 Broadband Bridge Funding Program introduced additional concerns. Beatrice Rural 2 overlapped our project and I provided a map to show this. Yet, only-- the only awarded project in Gage County was that one. The grant provided \$535,000 to serve 21 homes, equating to \$25,500 per home. In contrast, our Gage County projects subsidized our-- the-- our service at \$4,210 per home. Despite serving the less densely populated areas, the math doesn't look good. Another troubling issue arose during the Beatrice 2 permit process. After denying the overbuilt permit, Pinpoint [PHONETIC] amended their application to avoid overbuilding with the subsidized funds and publicly committed on the record to amend their application with the PSC if we granted their amended permit. At the next meeting, we approved their amended permit and instead of going to the PSC, they filed a lawsuit. Their legal challenge argued that we do not have any legal authority granting it the authority to unwind a funding decision made by the PSC. This lawsuit directly pertains to a state-funded broadband infrastructure project, which isn't allowed in future funding. Not only are taxpayers now being-- taxpayer dollars now being used to deal with litigation, but this lawsuit also ties up funding in the, in the permitting process with extensions, and now makes the provider-- may make the provider ineligible to build out more of a broadband infrastructure, something that we desperately need. How does this benefit Nebraska residents? Collaboration is critical to ensuring that broadband expansion reaches everyone, and legal disputes like this only serve to hinder the process. While this specific lawsuit falls outside of the scope of LB176, it underscores the need for legislative measures that prioritize collaboration between providers and local officials. This bill would help ensure efficient use of funds, prevent unnecessary overbuilds, and streamline the permitting process. I urge you to support LB176 so that broadband expansion efforts in Nebraska are more

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coordinated and cost effective and inclusive to all local expertise.  
Thank you for your time and I would answer any questions.

**MOSEER:** All right. Questions from committee members? Senator Storer.

**STORER:** Thank you, Chairman Moser. Thank you, Emily, for coming. On the-- just so I can kind of get my head wrapped around the, the permit that was denied, was it based on where it was sited, I assume, like--

**EMILY HAXBY:** Which, which one?

**STORER:** For the tower.

**EMILY HAXBY:** Yeah, it, it was a siting-- it was a siting issue we had. And then the, the residents saw a need for it, but it wasn't necessarily there. And they were willing to work with the provider to try to find a better place. We had a guy that was on a fire district and talked about where the need was for their communications for just rural rescue and, and there wasn't any open communication on those locations.

**STORER:** So it wasn't their claim that you denied their project, just denied the whole project, really, you were just saying the siting was not--

**EMILY HAXBY:** The siting wasn't.

**STORER:** --in alignment with your zoning regulations, so they could have found another place to site there.

**EMILY HAXBY:** They were-- yeah, and the residents were willing to meet with them and do that, but I believe those funds were returned.

**STORER:** Yeah. Thank you.

**MOSEER:** Other questions from committee members? Seeing none, thank you for your testimony.

**EMILY HAXBY:** Thank you.

**MOSEER:** Anybody else to speak in support of LB176? Welcome.

**LOEL BROOKS:** Thank you. Good afternoon, Mr. Chair and members of the committee. My name is Loel Brooks, L-o-e-l B-r-o-o-k-s. I'm a telecommunications attorney and consultant for broadband deployment with offices at 13th and 14th and O Street here in Lincoln, Nebraska. I'm here today in my capacity as a consultant on broadband deployment

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matters. I'm in support of LB176 and AM147 as an important means of enhancing communications between granting agencies, grant applicants, specifically broadband providers, and political subdivisions, cities, villages and counties, in regard to the deployment of sustainable, affordable and reliable broadband infrastructure in rural high-care--cost areas of the state, which has been a priority of this committee in recent years. In my experience, a lack of early and consistent communications and collaboration between these entities has all too often resulted, as you've heard today, in unnecessary deployment delays, unauthorized overbuilds, project extensions, and confusion in the efficient deployment of crucial broadband infrastructure in rural areas. By way of example, data shows that the Nebraska Broadband Bridge Program, adopted by the Legislature in 2021, has indeed played a key role in connecting thousands of unserved and underserved locations across the state to next-generation broadband services. However, data shows that despite the program's success, approximately 43 projects approved in the first three rounds of the NBBP in the first round of the Legislature's recently adopted Capital Projects Fund have defaulted or required deadline extensions. Nearly one-fourth of the approved projects utilizing taxpayer dollars were not deployed on time or at all. Approximately 17 of those extensions cited delays relating to zoning or permitting. The change proposed in LB176 will require applicants to the Nebraska Broadband Bridge Program and other programs in the state that are authorized, either under federal law or state law, to engage the relevant local political subdivision to obtain resolutions of support prior to applying for grant dollars. This required process would provide uniformity in the information presented to communities, and an open dialogue between applicants and permitting authorities before funds are obligated, thus ensuring that the relevant permitting entities are fully apprised of the scope of the proposed projects, allowing them to make informed decisions and offer recommendations to expedite deployment. Counties or municipalities would also be able to flag possible overbuilds, reducing the burden on the Public Service Commission during the challenge process, as you've heard earlier in testimony. AM147's requirement that grant applications obtain a resolution of support from the political subdivision where the deployment project is located before funding awards are approved, will serve to avoid these undesirable consequences and avoid unnecessary delays and extensions. Collaboration and communications by those among us and by these parties is essential to the orderly and efficient deployment of broadband infrastructure in rural areas across the state. Thank you. I'd be happy to respond to any questions you may have.

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**MOSER:** Questions from committee members? Senator Ballard.

**BALLARD:** Thank you, Chair. Thank you for being here. It's good to see you again.

**LOEL BROOKS:** Good to see you.

**BALLARD:** So I just want to make sure. So if I understand right, the primary objective behind this is for zoning and permitting by cities and counties?

**LOEL BROOKS:** I think that's a significant issue. Certainly, anyone who gets grant awards from any agency has to come into the county or the local jurisdiction and ask for a construction permit. Protecting rights-of-way is the obligation of the counties and the cities, particularly in this case, we're talking about counties in rural areas. So zoning and permitting is required no matter what. But oftentimes there is a lack of communication about what that means and what the requirements of permitting may be. The fact that permits are in fact required, we've had providers in some political subdivisions say if I apply for it, you have to give it to me no matter what. It's also an opportunity to engage in what's happening with other activities that the local political subdivisions are involved in. As Ms. Haxby indicated early, Gage County was a leader in the state in providing ARPA funding directly from the county to assist in the development of a multimillion-dollar broadband project, and this was fiber optics throughout the northern half of Gage County about 3 years ago. And it's important that whenever the county is permitting and whether the-- whenever the county is dealing with other deployment in their rights-of-way, that all parties concerned have knowledge of what has been invested and what may be being invested by other programs and through other programs in those political subdivisions. It makes for efficiency. It allows the parties to understand where conflicts may exist, where served and unserved areas may be located, which certainly the county boards and their respective jurisdictional operatives know more than, I think, many of the funding agencies do, and it's a, it's a way to collaborate with the providers and with the funding agencies in a more upfront way to avoid the kinds of delays and misunderstandings and, and project extensions, etcetera, which are not always caused by permitting, but they can be caused by other things. But it's a way to open the dialogue and allow these dollars to be spent wisely on the front end, without a lot of communication problems and misunderstandings.

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**BALLARD:** OK. And one more if I might, and which I appreciate, and I appreciate the map, the acknowledgment of the applications, the timeline. But tell me if I'm thinking about this incorrectly. Does the word-- does the phrasing provide at least the following information, that's a floor, but there's no ceiling?

**LOEL BROOKS:** Well, I think that's up for discussion. Right now, I take it as a, as a request for at least these things. If there might be more information that's necessary, I suppose that could be part of it. That's up for discussion by the author of the bill. But the minimum things we need to know, or the counties need to know and cities need to know, is what's going in and where. And the other items on here give you a basic understanding of the nature of the program that's being sought. There will be a permitting process that's independent of this. This support resolution does not end the analysis or examination of the application. It is simply to say we've had a dialogue. We have a sense of what each other is doing and what our activities are and how they can be coordinated, but it doesn't end the permitting process because that has to go forward in any, in any event as an obligation of the political subdivision's duty to protect its interests.

**BALLARD:** OK. So you don't foresee any-- oh, go ahead. So you don't foresee any dialogue between speed or price or--

**LOEL BROOKS:** No.

**BALLARD:** --that part of the resolution?

**LOEL BROOKS:** No, I think this is-- for the most part, service requirements are covered by other appli-- other applicable laws. This is a-- an opportunity to have a dialogue that money is being spent in accordance with the duties and obligations of state law and federal law with regard to the deployment of the proceeds, but also it's consistent with the economic development activities of the local jurisdictions and the protection of their public rights-of-way. That's really what it is, so that everybody can be on the same page as they move forward towards deployment. But other elements that would be considered later or in other circumstances, the FCC has service jurisdictional control over, over wireless activities, for example, that's prohibited by the state. So we're not trying to put in another layer of regulation. We're trying to establish a favorable up-front communication system to allow efficient deployment with all parties on the same page.

**BALLARD:** OK. Thank you so much for being here. Good to see you.

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**LOEL BROOKS:** You're welcome.

**MOSER:** Senator Storer.

**STORER:** Thank you, Chairman Moser. Can you-- and thank you for coming--

**LOEL BROOKS:** My pleasure.

**STORER:** --and providing testimony. Can you help me understand, currently-- I'm just going to focus on the overbuild aspect of this. Who's really responsible for kind of the oversight or determining the needs in the community today? Like, how is, how is that-- is that coming through our new broadband office? Is that PSC?

**LOEL BROOKS:** It is, it is a bit of a patchwork, to be honest. We have programs that are administered by the Public Service Commission, the Broadband Bridge Project, which we talked about and others. We also have the new Broadband Office of the state, that is the agency that's going to deploy all the federal funds that come in later this year and into the next 2 or 3 years. The rules require of deploying federal funds that they not be used for overbuilding. That's not the purpose of broadband funds, whether they're administered by the state or federal law. So there's a fundamental understanding and a presumption that overbuilding will not occur, but the communications between the funding agencies and the governing entities in the areas where deployment is going to occur needs to be improved so that the funding agencies are aware of, on a current basis, what projects may be underway or may have been deployed in those areas. Gage County was an example of this kind of problem. The authorizing state agency was not aware, for whatever reason, that commitments had been made for construction of broadband deployment in Gage County, and then issued approval for an application that would have, in essence, overbuilt those areas. That was a communication problem that we're trying to avoid because that's now created a lawsuit, and that's not where we want to end up. We want to be efficient. We want to be communicative. And that's where we want to try to coalesce these varying agencies so that they're communicating with one another. I do-- I will say on, on the side that the federal law with regard to BEAD requires and mandates that the state agency administering those funds must collaborate, partner, and, and, and cooperate with local agencies and political subdivisions, including specifically counties. That's a requirement of federal law. So this is not something that's new. It is just a way that can provide uniformity in how those communications are dealt with, so that there's current and accurate information from the

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funding agency, along with the agencies that are responsible for or are the location of the deployment, and involve the responsibilities of those local government entities to protect the rights-of-way of the people who are residents in those areas.

**STORER:** So how are they currently meeting that requirement for the federal funds? How, how is that being established or determined that they are indeed collaborating on every--

**LOEL BROOKS:** That's under, that's under-- in, in process through the Broadband Office, rules and regulations and application processes are being developed now and will be available for review as the spring goes forward. So those applications may well be ready to be applied to their office this coming August, or maybe even sooner if, if everything goes well. But pretty soon those applications will be heard and seen. And we're trying to be sure that, as that occurs, that the communications that we hope happen, that are required to happen, in fact, do happen, so that everybody's connected and coordinated in how this deployment occurs.

**STORER:** And we anticipate that, that will come, that, that compliance is going to come through basically rulemaking through that new--

**LOEL BROOKS:** It may not be rulemaking, it may be policy, it may be guidelines that are established by the office, by the Broadband Office, rather. But in a sense, yes.

**STORER:** Right. Thank you.

**MOSER:** Senator Brandt.

**BRANDT:** Thank you, Chairman Moser. Thank you, Mr. Brooks, for your testimony. When Senator Hughes testified, she indicated that there was money in accounts, which taxpayer money-- my understanding of these programs is they don't get any money until they build something and then they get reimbursed. Is there money being put out ahead of time, in particular, where you testified 25% of the projects do not go forward? So, I mean, do these projects have \$1 million in the bank? And a year later they give that back, but they made \$50,000 interest on it?

**LOEL BROOKS:** I, I couldn't comment on whether there are accounts with money in them. Generally, it's a reimbursement program you build. You're required to demonstrate your expenses and that you've deployed, and then you get reimbursed on a, on a regular basis, so.

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**BRANDT:** Well, maybe somebody from the PSC when they get up here can answer that.

**LOEL BROOKS:** Yeah.

**BRANDT:** Thank you.

**LOEL BROOKS:** My pleasure.

**MOSER:** OK. I have a question. Do you see this bill as trying to control where providers put their poles in the right-of-way?

**LOEL BROOKS:** No, I don't think that's a part of this bill at all. I think that providers are, are very sophisticated, as are their contractors, in terms of where they want to go and what they want to do in order to properly and efficiently deploy. It's, it's the goal of all of us right now to, to coordinate that deployment in a way that's consistent with the county, county standards. And we're trying to establish and define what those county standards are. And it's just really a matter of safety and, and managing public rights-of-way so that they aren't destroyed, that we don't have competing contractors running over each other or cutting each other's cable all the time, or not providing. But it's not a, it's not a locational issue, maps are provided to whoever the funding agencies are by the providers. They have sophisticated mechanics of how far they go and what their standards are. We want to make sure that they utilize those standards and deploy not in the middle of a county road, but on the side or, or over [INAUDIBLE], etcetera. So I don't think that's, that's the goal.

**MOSER:** I don't think anybody would suggest they build in the middle of the road. Although we've got one in Omaha somewhere where the-- almost the sidewalk around it.

**LOEL BROOKS:** They, they, they-- I will tell you, I will tell you that my experience shows that that has happened.

**MOSER:** Yeah. OK. Thank you very much for your testimony.

**LOEL BROOKS:** Thank you. Appreciate you.

**MOSER:** Are there more supporters for LB176? Welcome.

**LASH CHAFFIN:** Thank you. Good afternoon, Senator Moser, members of the Transportation and Telecommunications Committee. My name is Lash, L-a-s-h, Chaffin, C-h-a-f-f-i-n, and I represent the League of Nebraska Municipalities. I would like to, to echo the prior supporters

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and offer my strong support on behalf of the League for this measure. The-- not all, not all applicants to the right-of-way are created equal. Some applicants can fly through an application process, they can breeze through it. They're very hands-on. They understand what a city or village or county wants. Some applicants mess around for years trying to get their application through. So the person who's in-- similarly, some applicants show up with a cool computer and CAD maps of the entire city or village showing you where the lines are going to be and when they intend to, to dig, and how they can be least disruptive. Some people literally show up with a torn napkin that says, we're going to go do something out by the fairgrounds. So the-- and the, the person that's in the best position to determine what that applicant is, is the local government. And, and I think this, this adds a level of communication that will not slow down the process. It will speed up the process. The-- I think if an applicant comes forward and says to a village or county, look, we'd like to do this. Can we get a resolution of support? I think what's going to happen is that the city or the county or the village is going to say, yeah, great. OK, Joe, when that comes in, you put that at the top of the pile, you know, and if you tell them, if someone says where they're going to dig, then you can say, OK, tell them you-- start thinking about it, when, when, when is a bad time. During the county fair? No, we don't want you tearing up all the streets during the county fair. So, so it sets the-- sets into motion a collaborative process. And, and right now, I'm not sure that the process captures that in a way that's, that's collaborative. For instance-- and I'm-- this is not a real situation, but suppose a carrier and a city had a 5-year lawsuit on a sharing agreement on some facility. Is that a carrier that the city wants to deal with for complete overbuild of the entire village system? Probably not. So I, I think it puts into play some level of, of collaboration with the carrier and, and the, the local government, so. I'll certainly answer any questions.

**MOSER:** Questions from committee members? You don't see this as trying to control where they put their towers?

**LASH CHAFFIN:** I do not. I don't think they can be--

**MOSER:** They can put their towers anywhere they want, anywhere the engineering tells them would be the most used?

**LASH CHAFFIN:** I, I think it has to be a collaborative effort to control. Sometimes the-- I, I think the astute carriers and local governments try to reach a compromise so the tower works well and it-- and it's in a place appropriate. And, and I think it becomes a, it

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becomes a-- so, yes, in a, in a way, in a sense, I guess, a matter of words, there may be an effort to control where the tower is, but hopefully it sets forth a collaborative effort to determine that.

**MOSER:** OK.

**LASH CHAFFIN:** You know-- and with respect to, I, I guess in, in my discussions with the two county commissioners who, who, who testified prior, I don't think their, their intent is to litigate this prior to development. The-- with respect to the at a minimum language, I mean, I think-- you know, and, again, it's dangerous to speak for somebody else, but I think the intent is, is to set in motion getting the proper, whatever might be useful for the city to say, look, you're perfect for us. We want you, we want to recommend you. We hope, we hope the PSC funds you. We hope you can get funding for this project. I, I think the intent-- and if the, if the wordsmithing is inappropriate for that, that-- I, I give you that. But there, there may be, there may be-- that's not the intent, I don't think of the, of the testifiers.

**MOSER:** OK. Thank you. Other questions? Seeing none, thank you for your testimony.

**LASH CHAFFIN:** Thank you.

**MOSER:** Anybody else to speak in support of LB176? Welcome.

**JON CANNON:** Thank you. Good afternoon, Chairman Moser, members of the Transportation and Telecommunications Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the Executive Director of the Nebraska Association of County Officials, also known as NACO, here to testify in support of LB176. We certainly appreciate Senator Hughes bringing this bill. We've had a lot of conversation to her prior to and during the legislative session. I think prior testimony sums it up as, as more ably than I ever could. So my testimony will be mercifully brief. I do want to just mention a couple of things, though. We believe that this is the least stringent means of having very basic accountability for folks that want to make use of, of public dollars to put these projects in. And I also want to mention this is a priority of the NACO Board. We are very invested in how this conversation unfolds. We're happy to participate in it, and I'm happy to take any questions you may have.

**MOSER:** OK. Questions for Jon from the committee? Seeing none, thank you for your testimony.

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**JON CANNON:** Thank you very much. Got me off easy.

**MOSER:** Yes. Anybody else to speak in support of LB176? Is anyone here to speak in opposition to LB176? Welcome.

**TONYA MAYER:** Good afternoon. I am Tonya Mayer. I am Chairperson of the Board of Directors of the Nebraska Telecommunications Association. My name is T-o-n-y-a M-a-y-e-r. I am representing the NTA in my testimony today. The NTA is comprised of 20 companies providing broadband and landline telecommunications services in Nebraska. We oppose LB176. In my current role as General Manager and CEO of Hemingford Cooperative Telephone Company and Mobius Communications, I often deal with public officials both inside and outside of our service territory. I have built strong relationships with those public officials. Projects to improve rural telecommunications services often overlap into several counties, particularly in sparsely populated rural areas in the Panhandle of Nebraska, where we are located. In many instances, time is of the essence in filing applications for projects so that work can be completed during the times of year when the weather will, will permit construction. Many times, county boards, city councils, and village boards may meet only monthly. This could have an impact on our ability to timely file a project application. We are also concerned that a resolution of support requirement could allow political subdivisions to choose which applicant to support merely for personal or political reasons. I believe the PSC with scoring and weighting parameters or assisting grant applications in Broadband Bridge Program is a better arbiter in determining which grants should be approved. Again, the NTA opposes LB176. However, I am going to add to this real quick. So we've been deploying fiber since 1999. We've deployed over 1,000 miles of fiber. Sometimes it's 1 mile to 2 miles before we can reach each location. These grant dollars are very important to us, and we contact all of our locals. We have a good relationship with our road departments. They're often involved in our planning. They see our maps. They have access to all of what we do. And I feel that's why we've been as successful as we have. We have to have their partnership in order to do that. And so with that, I'll complete my testimony.

**MOSER:** Senator Fredrickson.

**FREDRICKSON:** Thank you, Chair Moser. Thank you for being here and for your testimony. So my, my read on this is that-- I mean, it seems like the majority, if, if not in the vast majority, are, are, are really good actors with, with, with, with this process.

**TONYA MAYER:** I would agree.

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**FREDRICKSON:** And, you know, my sense from this bill is that it's kind of looking to tighten up guardrails perhaps on, on some of the-- on bad actors, inappropriate phrase, but folks who might maybe not be engaging in the spirit of what, of what, of what, hopefully, would get around this. Is, is, is your primary opposition that this is going to create additional burdens for the good? Is that kind of the--

**TONYA MAYER:** Yes, I do.

**FREDRICKSON:** --the sense that I'm reading from you?

**TONYA MAYER:** Um-hum.

**FREDRICKSON:** OK. That's helpful. Thank you.

**MOSER:** Other questions? Senator Storer.

**STORER:** Thank you, Chairman Moser. And thank you for your testimony today. I, I guess just, do you-- would you have any recommendations or any comments that you think would-- to the issue of improving communication, like statewide, for, for appropriate siting and making sure that we're not overbuilding, is there-- are we missing something in, in your experience?

**TONYA MAYER:** There's a lot of different ways you can see if a customer is served or not. And in my experience, and there's people behind me that will follow, but in my experience it doesn't pay for us to go where there's already something been built. The margins are too small in order to do that. Nobody's-- nobody really wants to deploy where I deploy. You're familiar with rural Dawes and Sioux County and Plattsmouth County, those are very, very rural and you don't find a lot of people that want to serve those areas. BDC mapping, we report all of our locations to a federal BDC map. It's called the fabric. We report all of our locations to that. Not everybody does it very well, with our challenge processes with that, just like with the broadband bridge, there's challenge processes if somebody is going to come in. We've gone through that. We've had a couple of just a few conflicts here and there, things that it served and we pulled that out of our grant application. But the BDC map is getting better, it's just not perfect yet. But that's where we go to look for serviceable locations.

**STORER:** Do you foresee that the new state Broadband Office, I'm probably not referring to it exactly right, will, will help in that communication?

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**TONYA MAYER:** I think it will help. I don't know that it will be perfect, but it will help.

**STORER:** Thank you.

**MOSER:** Other questions? Seeing none, thank you.

**TONYA MAYER:** Thank you.

**MOSER:** Anybody else to speak in opposition? Welcome.

**BRIAN THOMPSON:** Hi there. My name's Brian Thompson, spelled B-r-i-a-n T-h-o-m-p-s-o-n, and I am the Vice President of external relations for Consolidated Companies. And today I'm here on behalf of the Nebraska Advocacy Group, and wanted to just talk a couple of things about this bill, specifically, and I have not seen the new amendment that I've just been made aware of. But today here, I oppose LB176 due to several additional burdens that it would add to the cost of the build-out process for broadband. This cost for building out in this network is already very expensive, and will only go up as the next federal grant program, BEAD, comes on board. The Nebraska Transportation and Telecommunications Committee created the Broadband Bridge Program, and my company has won 9 of those grants, and we've applied for 12 to 13 of them. And the reason we didn't get the last few grants was because they were out of money when we applied for those. This bill would add an unneeded level of burden to areas that already have a permitting process that must be accomplished after the project is awarded. In central and western Nebraska, the county boards only meet once a month. And in many counties, if an application window opens at the Public Service Commission, that's 21 days long and the county has just met for their board meeting, there's no way that I'll ever be able to get onto the agenda. So that means that county will not be able to have the opportunity to pass a resolution for me so that I can put it in my application. Secondly, the PSC already provides extra points in the bridge application if a provider has public letters of recommendation or support. So there's already an incentive to get this resolution built there. And it, and it helps if you have city councils or county commissioners. Third, if the bill was originally directed toward wireless tower placement, that has not been the focus of the bridge program at all. And, in fact, the bridge program focuses mostly on fiber to the home and business across the state, and a buried network or a network attached to already existing power poles. Most counties already have a zoning process for building wireless towers, which include permits and comment periods, and sometimes hearings, at least in our communities. Fourth, the money for ongoing bridge

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projects beyond the grants given in 2024 is in a group of money that is set to be swept away by changes in the budget. Therefore, we will not have bridge grants probably available to us in the future as an industry. Every county, village, and city has a different permit process and this would add to the burden. In the new language on page 3 of this bill, maps are already required for any permits providers receive today, and they're required for bridge grant applications. The proposed timeline is also required in the application for bridge and county permits, in my experience. I also would say that I don't--

**MOSER:** Your red light is on.

**BRIAN THOMPSON:** All right.

**MOSER:** So if you could conclude and wrap it up.

**BRIAN THOMPSON:** I would be happy to answer any questions.

**MOSER:** That was a good line. Senator Guereca.

**GUERECA:** Continue what you were saying, Mr. Thompson.

**BRIAN THOMPSON:** Well, what I was going to say was that I'm not understanding where one of the prior testifiers came up with the 25% not getting done, because I'm not aware of that to be the case. Every single project that we've started, we've built within the 18-month period of our 9 grants and have filed all the paperwork and so forth. These grants almost always don't allow for any money to flow to the provider in bridge, particularly, until you provide information that has your costs and you can initially possibly receive an up front of 25%, but it's usually, you know, most of the bridge grants are around \$100,000 to \$500,000 total. And if you receive the first 25% to, to purchase your fiber and so forth, that's, you know, not even enough to get the job done, typically. We also have at least a 25% match, and in most of the cases that we did on bridge, it was 50% match. So I, I don't-- I'm not quite sure that's accurate. And I would ask the Public Service Commission about the accuracy of that number. Any other questions I can help?

**MOSER:** Other questions for the testifier? Yes, Senator Storer.

**STORER:** Thank you, Chairman Moser. And thank you for your testimony today. This-- and this question may not be specifically relevant to this bill, but, but because you're here and because I think you can answer my question and because this is an issue I don't fully understand yet, what, what are the requirements once you receive the

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bridge broadband funds? Is there sort of a, a full-circle audit, maybe isn't the right word I'm looking for, but to, to ensure that those projects are indeed completed--

**BRIAN THOMPSON:** Yes.

**STORER:** --once the grants are--

**BRIAN THOMPSON:** Yeah. The way that it works in that process is that as the project is built, the provider, like me, would basically create a file full of all of the invoices that came along with that project. We would capture all the data around labor and, and construction contractors, whatever is involved in that particular project that was the outline for the Commission. We would then put it all together in one packet and send it into the Commission. The Commission would then look at the numbers on that project based on what we submitted as our budget initially, and they gave us an award based on our budget, and then they would reimburse us, as well as if they felt those costs were accurate and if they were germane to that project.

**STORER:** So it's 100% reimbursement? It's, like, it's always after the--

**BRIAN THOMPSON:** It's after the fact, and it is on 100%, we, we usually have between 25 and 50% match on the total project.

**STORER:** OK.

**BRIAN THOMPSON:** So we would only submit the receipts necessary to meet the amount that we were awarded.

**STORER:** And-- but there is sort of a, a finalization where companies that have applied for those moneys are required to submit evidence of the completion of the project.

**BRIAN THOMPSON:** Oh, yes. And then we also have to do speed testing at the locations of the customers in order to prove that we built to the accuracy and speed level that they-- that we told them that we would in our application.

**STORER:** OK. Thank you.

**BRIAN THOMPSON:** Yeah.

**MOSER:** Other questions? Seeing none, thank you for your testimony.

**BRIAN THOMPSON:** You bet.

**MOSER:** Other opponents to LB176? Opponents? No more opponents. All right, how about neutral testifiers? Welcome.

**DAN WATERMEIER:** Good afternoon, Chair Moser and Transportation and Telecommunications Committee. My name is Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, represent the Nebraska Public Service Commission's First District, and I'm testifying in neutral capacity today on LB176. The Commission has been administering the Broadband Bridge Program since 2021. We just released our fourth grant awards in January of this year. I did pass out a handout that talks about all four of the years in each program year separately. While a future of the Broadband Bridge Program is uncertain, if this bill passes, we would implement it for any subsequent grant years. This bill amends the Broadband Bridge Act to require applicants to obtain a resolution and project support from every county, city, and village in the project area. These resolutions would need to be filed with the project application. We interpret this bill to mean that the applications meeting any resolution-- missing any resolutions or project support could not be considered for funding. We continue to see high demand for the program, meaning that not every project application can be funded. Also, some applications do not receive funding if they are successfully challenged by another provider. Because of this, we haven't required applications to demonstrate support from local entities. It is unclear that local authorities might require an issue, an issue to resolution of project support, and applications may find it costly to seek a resolution of support for a project that has no guarantee of being funded. However, we also want to ensure that projects awarded will not face opposition from local authorities and we would be able to implement these new requirements if the bill is passed. This concludes my testimony and I'll be glad to try to answer any questions, maybe from the earlier testifiers if need be.

**MOSER:** All right. Any questions? Seeing none, thank you.

**DAN WATERMEIER:** All right, letting me off easy. Nobody else wanted to testify.

**MOSER:** Yeah.

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

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**MOSER:** There may be other neutral, I don't know. Anybody else neutral? OK. Senator Hughes, you're--

**HUGHES:** Thank you.

**MOSER:** --welcome to close.

**HUGHES:** Thanks for your time today, guys. I just want to, to touch base on a couple of things. And a reminder that we-- these issues are not occurring with the fiber. It's not occurring with the good actors. It's not-- that's not what it's occurring with. It's occurring with these cell phone towers that are being approved as cell phone towers, but also provide Internet. And so it's like overflow. Our town of Beaver Crossing in my district is 370 people with a circle, 1 mile around that town, and they have 5 cell phone towers, and there's over 100 towers in our county, which is 640 square miles. We could ask the PSC to start requiring it, but they-- their lawyer said you have-- we have to have it in statute. So-- and I know there's points given on the, on the form if they get it, but they don't have to do it. It's the bad actors that do this. It's not the majority. You know, I would like to-- for our county and the other rural counties, I would like to see this going forward. It's not right to come up to a, a village and basically say this is happening. And when they balk or want to change, you know, change a little bit that, then, they're threatened with a lawsuit because they've already gotten the go ahead to do it. So anyway, I appreciate your time today. I am not even going to pretend to know all the details of these forms and when they go through it, but I'm happy to take any questions or whatever from anybody.

**MOSER:** Senator Storer.

**STORER:** Thank you, Chairman. Thank you, Senator Hughes. I'm trying to wrap my head a little bit around the-- every-- if a county is zoned that they have the ability to control the siting of cell phone towers within the perimeter. I mean, they have the authority to do that, right?

**HUGHES:** It's my understanding that when they come, they are threatened that if you say, well, our zoning says we can only have one every 5 square mile, like-- or for a 5-mile radius, that they'll sue you. So now the village has to get a lawyer and, and prep for that. So something's missing there.

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**STORER:** And so have there been lawsuits that have successfully found the county on, on the wrong side of the decision or is it just a threat of this?

**HUGHES:** Let me dig into that and give you the answers for our district.

**STORER:** Cherry County was zoned, most of our county-- majority, not most.

**HUGHES:** We have zoning

**STORER:** Right, but that--

**HUGHES:** And we have-- the city-- the village or cities have their little-- it's like-- somebody described it to me like a piece of Swiss cheese, right? Like, the little city or villages have their area, and then the county has what's in between those little villages and towns.

**STORER:** So have to wonder why, like your area isn't--

**HUGHES:** It just seems like-- I don't know why it's--

**STORER:** --as concentrated as--

**HUGHES:** Yeah, I don't--

**STORER:** Thank you.

**HUGHES:** Maybe because of the interstate going through. And I still don't have a good cell phone service. I always drop a call on Highway 34, but that's another story. So.

**MOSER:** All right. More questions for Senator Hughes? Thank you very much for your testimony and for bringing the bill.

**HUGHES:** Are you guys done now?

**MOSER:** That'll conclude our hearing for today.

**HUGHES:** Thank you, guys. Appreciate it.

**MOSER:** Oh, we received three opponent letters, no neutral, and no proponent letters. If the committee can stick around, I'd appreciate that.