

SENATOR WEHRBEIN: ...that...this would definitely...I want to make that clear,...

SENATOR KRISTENSEN: Yes, if you do not notify peop...if you do not make that call and you dig, you take a larger risk at this time, because it's easier to find you responsible.

SENATOR WEHRBEIN: Okay, thank you.

PRESIDENT MOUL: Thank you, Senator Wehrbein. Senator Withem.

SENATOR WITHEM: Yes, Madam Chair, members. I'd like to get into the debate on the liability a little bit. And I think I agree pretty much with the way Senator Kristensen described it, but from maybe a nonlawyer explanation, maybe ending up saying the same thing. I think this question of responsibility for the repair liability is definitely a key question and an important question. One of the things that in areas where they now have the one-call that make it work is that there is, in fact, because nobody legally is...the law doesn't say who has a responsibility, it is part of common law, and it's determined by judges and juries, everybody has a responsibility to be careful. The contractor, the excavator knows that if he runs into something and he has not used all due diligence, hasn't been careful, hasn't dotted every "i" and crossed every "t", and he hits something, he may be liable for damages. On the other hand, the owner of the facility knows that if they aren't out there helping the contractor locate it, and the contractor can prove to the satisfaction of a judge and a jury that...that he has done all that he could possibly be expected to do and still runs into something, that he may not be held liable, and the utility will be held liable for it; will have to repair and deal with all of the damages. And that's not a bad system, I don't think, to have pressures on both sides to work together. Somehow, from some of the utilities that are opposing the one-call there appears to be this sense that once they have an easement, and I know that Senator Vrtiska used that term, once they buried something in the ground, they have an absolute right in perpetuity to walk off, ignore that property and have it protected. Well, keep in mind all of us in here have a vested interest in whoever it is that's wanting to lay that new fiberoptic cable that's running through, that wants to connect the sewer line, the electrical service, the telephone line to that new Campbell Soup plant that's going to be built in Omaha. We all have an interest in that. Society needs to go on and we