

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee January 24, 2024

BOSTELMAN: OK. Welcome to the Natural Resources Committee, everyone. I am Senator Bruce Bostelman from Brainard representing the 23rd Legislative District. And I serve as Chair of the committee. The committee will take up the bills in, in the order posted. This public hearing today is for your opportunity to be a part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill out-- fill it out completely. When it is your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back on the table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We'll be using the 5-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes on you have 1 minute remaining, and the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, the committee members may come and go during the hearing. This has nothing to do with importance of the bills being heard, it is just part of the process as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 10 copies. That's 10 copies and give them to the page. Please silence or turn off your cell phones. A verbal outburst or applause are not permitted in the hearing room. Such behavior may be-- may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees states that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only-- the only acceptable method of submitting is via the Legislature's website at nebraskalegislature.gov. You may submit a written letter for the record or testify in person at the hearing, not both. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be indicate-- included on the committee statement. I will now have the

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committee members with us today introduce themselves starting on my far left.

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

BOSTELMAN: And my far right.

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

JACOBSON: I'm Senator Mike Jacobson, District 42. I represent Lincoln, Hooker, Thomas, McPherson, Logan, and three-quarters of Perkins County.

J. CAVANAUGH: Senator John Cavanaugh, District 9 and midtown Omaha.

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

BOSTELMAN: Senator Moser also serves as Vice Chair of the committee. Also assisting the committee today, on my left is legal counsel Cyndi Lamm, and on my far right is our committee clerk Laurie Vollertsen. Our pages for the-- our pages for the committee today are Ruby Kinzie and Ella Schmidt. Thank you very much for being here today and your assistance. And I also have Senator Slama has joined us to introduce herself.

SLAMA: Julie Slama, District 1: Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

BOSTELMAN: Thank you very much. We will begin with the opening on LB868 and will turn it over to Senator Moser.

MOSER: Thank you, Mr. Chairman. All right. LB868. Senator Bostelman.

BOSTELMAN: Thank you. Good afternoon, Vice Chairman Moser and members of the Natural Resources Committee. My name is Bruce Bostelman, spelled B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I'm here today to introduce LB868. I'm handing out AM2136. You already have it, which is a white copy amendment which replaces the bill. Unfortunately, when the bill was drafted we did not catch all the locations in statute that had the June 30, 2024 date which needed to be amended and AM2136 amends those location-- additional locations and I'll be speaking on the amendment. LB868 simply extends a sunset date for the Petroleum Release Remedial Action

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Cash Fund from June 30, 2024 to June 30, 2028. The fund currently has a balance of \$1,333,018 and is managed by the Department of Environment and Energy. It is used to help clean up petroleum storage tank contamination resulting from leaking aboveground and underground storage tanks, and to provide financial assistance to the individuals responsible for investigating petroleum releases. The fund has-- is financed through a yearly fee of \$90 on the petroleum tank owners, as well as through a minimal motor fuel excise tax. As of December 31, 2023, a total of \$281,805,461 has been expended through the program to clean up sites. In the handout that you have, it describes the funds expended and sites that are, are being remediated, investigated, or backlogged. There will be someone testifying behind me who can provide some more specific information on this important fund, and I ask the committee for their support and advancement of LB868 to General File with AM2136. I'll answer any questions you may have. Thank you.

MOSER: Questions for the testifier? Senator Slama.

SLAMA: Thank you, Mr. Vice Chairman. And thank you, Chair Bostelman, for bringing this bill. Am I correct in assessing this bill and seeing that it just changes 2024 to 2028 in 5 places?

BOSTELMAN: Correct.

SLAMA: Outstanding. Great bill. Thank you, Mr. Chairman.

MOSER: Senator Jacobson.

JACOBSON: Thank you, Mr. Vice Chair. I-- Senator Bostelman, I-- and this may not be the question for you, and if not that's fine. I can ask one of the testifiers. But with regard to the fund and the projects that are out there, I'm assuming we're going to need every penny in that fund plus the ongoing assessments to really accomplish the cleanup effort that needs to occur. Is that correct?

BOSTELMAN: That would be the intent of the fund, but there will be someone behind me that I think--

JACOBSON: Thank you.

BOSTELMAN: --can address that too.

JACOBSON: Yeah. I, I keep hearing about raiding of funds and I'm certainly hoping this is not one on the list.

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BOSTELMAN: This is-- so the funds are funds-- let me ask-- see if I understand the question. The funds are funds that are not general funds or cash funds. These are funds of the petroleum users themselves we have, but there is some excise tax given, so.

JACOBSON: I've, I've just heard that that maybe doesn't matter.

BOSTELMAN: Oh, OK.

MOSER: I think there have been attempts to raid these funds before.

SLAMA: Yep.

JACOBSON: Thank you.

MOSER: Other questions? Looks good. More supporters for LB868. Welcome to Natural Resources.

TIM KEIGHER: Thank you, Mr. Vice Chair, and good afternoon. My name is Tim Keigher. I am the executive director and registered lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association. That's spelled T-i-m, last name K-e-i-g-h-e-r, appearing before you today in support of LB868. We'd like to thank Senator Bostelman for bringing this bill forward. NPCA represents petroleum marketers, convenience store operators, and truck stop operators throughout the state of Nebraska. A little history of how the, I guess, the LUST Fund came along. Back in 1988, the federal EPA came out with some new regulations for underground tanks, owners, and required that they upgrade their tanks to prevent releases putting reduce-- or detect releases that may occur and also provide financial responsibility. I won't bore you with a lot of the details of, of the upgrading and the technical aspects of it. But it is required for, you know, anybody that owns an underground tank, with the exception of farm and residential tanks under 1,100 gallons used for noncommercial purposes are not covered by these regulations. So when they came up with the financial responsibility part, it requires that if you handle more than 10,000 gallons of petroleum per month, you must provide \$1 million worth of coverage per incident and \$1 million in aggregate if you own 100 tanks or less. But if you own 2-- 100 or 101 or more, you must provide \$2 million. Well, no insurance company wanted to provide this coverage because it was kind of like buying the burning building, because there was already some, you know, contamination in the ground. So all the states, I believe, came up with some type of state fund to help fund this. We fund ours through 9/10 of a cent on gasoline and 3/10 of a cent on diesel. It brings in approximately, I think, 11--

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\$11.5 million a year. And I think it's worked well. I do have larger members of mine who would rather pay a private insurance company \$300 to \$1,500 a tank. The problem is, is that the insurance companies only want to ensure the new sites where there is all the bells and whistles, virgin property, and that. So we as an organization support the underground tank fund and the 9/10 and the 3/10 because it covers everybody. Everybody pays the same fee. The more gallons you do, the more you pay. If you're a smaller marketer and had to go to private insurance, you know, you'd be paying more per gallon than you would if you're paying this 9/10, so. To try and address your question, yes, the fund has been raided many times. I know that a former Governor took \$10 million out of it to balance his budget. There's been money taken out of it to help with ethanol production credits, cattle waste operations, and a lot of other things which we have never agreed with. But, you know, that was the will of the Legislature, so. I guess with that, I'll try and answer any other questions you may have.

MOSER: Senator Jacobson.

JACOBSON: Well, thank you, Mr. Keigher, for testifying today. I, I, I would say it, it kind of also for part of my colleagues to understand it, being a banker I remember when the Leaking Underground Storage Tank Fund was first created, also known as LUST, which is why I always remember it, but, it's, it's it's a very valuable fund from the standpoint that when you really look at the domino effect, you have an old underground tank back before anybody knew this was could be a problem. They rust out, the tanks leak. They contaminate water supplies, contaminate soil. All of a sudden now somebody gets ready to sell that site, nobody's going to touch it with a 10-foot pole because there's cleanup cost. And then you look at lenders out there that are trying to take collateral, they're trying to go out and get an SBA loan, for example, and they're saying we're, we're not going to touch those sites. So this, this fund has done a lot to really help clean up sites and actually make properties more usable. And, and I think without the, the, the laws that were put in place, it would be almost impossible for a lender to go out and, and loan against that for collateral. Because if they ever had to take possession of it, they don't want to find themselves in the line of liability. So this is an important fund. I don't know, I'm curious how much is still out there? I'm guessing probably in the rural areas, we've got potentially some sites that have been abandoned. But do you have a read on how big this problem still is today?

TIM KEIGHER: Well, first of all, I'd, I'd also like to thank the Department of Energy and Environment for catching the date in

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different sections. I didn't catch that, they did. They submitted some comments online and they provided you with these two pieces of paper I have here that talk about how many sites that they have cleaned up over the years. So this is as of December 31, 2023. My other thing is when you buy glasses, make sure you get the ones with the readers in them because it doesn't work otherwise. So there's 617 known leaking sites. There's 390 active investigations. There's long-term monitoring on 48. There's also a backlog of orphaned tanks where there's no responsible party, 179. And like was mentioned earlier, you know, the \$47,400,000 that has been spent, the estimated future leaking underground tanks through 2024 is about 50 to 60 a year. The one thing I do give DE-- or-- I keep calling them DEQ, but Energy and Environment, credit for is that they've been very good about allocating the money as the claims come in, so that there is not a lot of excess there for any of our friends to steal it, so. You know, they've closed-- since 1983, they've closed 7,523 sites. So I, I think they're doing a very good job. You know, and, and going forward, while we have all these bells and whistles on everything, you still have some releases and, and for those smaller marketers out there in rural Nebraska this is the best, you know, form of insurance for them, so. I don't know if that answered your question or not.

JACOBSON: It does. Thank you.

MOSER: Senator Brandt.

BRANDT: Thank you, Chairman Moser. Thank you, Mr. Keigher, for your testimony. Does this just cover petroleum? So if we have a liquid fertilizer-- a massive liquid fertilizer leak--

TIM KEIGHER: It's just petroleum.

BRANDT: [INAUDIBLE]

TIM KEIGHER: Petroleum and hazardous materials, I believe, is the correct term. Yeah, so.

BRANDT: OK.

TIM KEIGHER: I mean, yeah, it's petroleum, gasoline, diesel fuel.

BRANDT: And then how many dollars are in the fund today?

TIM KEIGHER: You know, I don't know the answer to that.

BRANDT: It didn't really say.

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TIM KEIGHER: I know they bring in about \$11.2 million.

BRANDT: Yeah, it said a year. It doesn't say--

TIM KEIGHER: I'd say probably less than \$4 million, I would guess.

BRANDT: All right. Thank you.

TIM KEIGHER: Just basing upon previous numbers I had.

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

TIM KEIGHER: Thank you.

MOSER: Appreciate your testimony. Other supporters?

ROBERT J. HALLSTROM: Mr. Vice Chairman, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB868. Mr. Keigher did a nice job of giving you the historical background. The bankers were involved in the original drafting and, and adoption of the Leaking Underground Storage Tank Fund, if you will. And the fund serves two important purposes, as, as they've noted already. One is it's kind of a backdoor insurance for smaller petroleum distributors and so forth. And it also provides the good duty of, of cleaning up contaminated sites. Lenders are involved because they obviously either have ongoing financing or they may be financing a, a corner lot in the future where a gas station used to be located where there could be some hidden contamination. We go through a lot of due diligence in terms of things that are generally referred to as Phase I and Phase II Environmental Site Assessments to make sure that there isn't any contamination or if there is we know how to respond and react. The one nice thing about the law is even though the responsible person is generally considered to be the owner or operator of the facility, voluntarily third parties, including lenders, parties who have a security interest or take a title by foreclosure can come in and also tap into the fund to better ensure that a contaminated site will be cleaned up. So for those reasons, we support the legislation and would encourage the committee to advance the bill. Be happy to address any questions.

MOSER: Questions? Oh,--

ROBERT J. HALLSTROM: Thank you.

MOSER: --you got off easy. Thank you.

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ROBERT J. HALLSTROM: Thank you, Senator.

MOSER: Other supporters? Any opponents to the bill? Anyone to speak in a neutral capacity to LB868? Senator Bostelman waives closing.

BOSTELMAN: That will end the hearing of LB868. Our next--

MOSER: Oh, proponents and opponents.

_____ : Online.

MOSER: Let's see, there were-- there was 1 proponent, no opponents, and 1 neutral letter that we received on LB868.

BOSTELMAN: Our next hearing is on LB880. Good afternoon.

MATTHEW HOWE: Good afternoon, Chairman Bostelman, Vice Chair Moser, members of the committee. My name is Matthew Howe, M-a-t-t-h-e-w H-o-w-e. I'm the legislative aide to Senator Jana Hughes. She represents District 24 and is currently before the Judiciary Committee opening on another one of her bills. Therefore, I'm here today to open in her place on LB880. LB880 simply makes a technical amendment to the clean water and drinking water state revolving fund statutes. Specifically, LB880 strikes 2 references to the Nebraska Department of Health and Human Services in the Drinking Water State Revolving Fund Act. When the Legislature passed LB148 in 2021, the administration of the Public Water System Program that was previously delegated to the state of Nebraska by the U.S. Environmental Protection Agency switched from DHHS to NDEE. So as a result, LB880 was introduced simply to remove those obsolete passages in statute. Director Jim Macy of NDEE is here to answer any technical questions you have about the bill or the loan program. On behalf of Senator Hughes, I thank you for your time and consideration.

BOSTELMAN: Thank you for your opening. Committee members, unless there's a technical question on the writing of the-- of the bill, otherwise, I see none so thank you.

MATTHEW HOWE: Thank you.

BOSTELMAN: Those who wish to testify in support of LB880, please step forward. Afternoon, Director.

JIM MACY: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. My name is Jim Macy, spelled J-i-m M-a-c-y. I'm the director of the Department of Environment and Energy. I'm here

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today to testify in support of LB880. Before we begin, I want to thank Senator Hughes for agreeing to sponsor this bill on behalf of the department. As Mr. Howe stated earlier, this bill is a simple cleanup. It strikes two references to the Department of Health and Human Services, or DHHS, in the Drinking Water State Revolving Fund Act. In 2021, the Department of Health and Human Services' environmental health programs merged into the Department of Environment and Energy under LB148. NDEE now administrates both the Safe Drinking Water Act programs and the Clean Water Act programs delegated to us to the state from EPA. There's one location in statute under the Drinking Water State Revolving Fund Act that still references the coordination between DHHS and NDEE where the two agency programs are working independently. LB880 simply strikes the references to the NDEE being required to coordinate with DHHS to be consistent with NDEE's role after the merger. Thank you. I'm happy to answer any questions you may have.

BOSTELMAN: Thank you, Director. Are there questions from committee members? Seeing none, thank you for your testimony.

JIM MACY: Thank you.

BOSTELMAN: Anyone else would like to testify in support of LB880, please step forward. Any other testifiers in support? Anyone like to testify in opposition to LB880? Anyone like to testify in opposition to LB880? Seeing none, anyone like to testify in the neutral capacity? Seeing none, that will close our hearing on LB880. And we will-- next bill will be LB866.

SLAMA: This is such a happy place.

MOSER: You have the proponents and opponents for this? Zero for all three? OK. For LB866, there are no letters of support or opposition or neutral. Senator Bostelman.

BOSTELMAN: Well, thank--

MOSER: The floor is yours.

BOSTELMAN: Play musical chairs today. Thank you and good afternoon, Vice Chairman Moser and members of the Natural Resources Committee. My name is Bruce Bostelman, spelled B-r-u-c-e B-o-s-t-e-l-m-a-n, and I represent Legislative District 23. I am here today to introduce LB866. LB866 was brought to me by the Nebraska Power Review Board. The board is the agency with primary jurisdiction over electric utilities in the state of Nebraska. The board believes the proposed changes are needed

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to address concerns over succession planning for the one board member designated to represent the board and, and the state of Nebraska on the Southwest Power Pool's State Regulators Committee to alle-- to alleviate recruitment difficulties for the board's required accountant position and to preserve continuity and technical expertise on the board. The board would like to make the following 4 changes to current law: It eliminates the requirement that one of the members of the board must be an accountant. I'm also bringing you AM2112, which has been handed out, which clarifies the board can consist of three additional persons. During the drafting process, two laypersons were struck and three additional persons was mistakenly left out. It allowed-- it would allow one person at any-- second, it would allow one person at any one time to be appointed to the board, even though the person had been an employee, officer, or director of an electric utility within the 4 years prior to his or her appointment. Third, it would increase the term limit for board members from 2 to 3 consecutive terms. And finally, it would increase the per diem for 4 of the board members from \$60 to \$100-- to \$100. I will briefly explain each of these in order. Regarding the accountant position, the board has found it increasingly difficult to find accountants willing to serve the board. The board has gone as long as 2 years without finding someone willing to serve the accountant on the PRB. The board has-- was fortunate in that-- in that instance that the accountant on the board was willing to continue serving until a successor could be appointed. The board's most recent accountant resigned effective August 1, 2023. The board went without an accountant member-- accountant member through December of 2023. The board's request to remove the accountant requirement is an acknowledgment of the difficulties of finding an accountant willing to serve on the board. Next is a change to allow the one board member to have been an employee, director, or officer of an electric utility without regard to the length of time since they separated from the utility. The current requirement is that to be eligible for appointment to the board a person must have-- must not have been an employee, director, or officer of an electric utility within the previous 4 years. The board has found that numerous people who work at the utility then retire, change jobs, or otherwise separate from utility are interested in serving on the board. After 4 years in retirement or at a nonutility job, that interest wanes and it is far more difficult to find people interested in serving on the board. By making it difficult for retirees to serve on the board, the state loses a wealth of experience and expertise that could be well used on the Power Review Board. This is especially true when it comes to a board member who agrees to represent Nebraska on the Southwest Power Pool Regional

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State Committee. In 2009, the Lincoln Electric System, Nebraska Public Power District, and Omaha Public Power District joined the Southwest Power Pool Regional Transmission Organization. SPP is a critically important entity when it comes to the electric industry in Nebraska and the entire central United States. An important entity that is-- an important entity that is part of the SPP system is the Regional State Committee, or the RSC. The RSC is comprised of one commissioner or board member from each state that has transmission owning utility that is a member of the SPP. The vast majority of Power Review Board members have been people with a full-time job ever since Nebraska's utilities joined the SPP, and the Power Review Board was able to appoint a member to serve on the RSC. The board member involved has had to take time off from the regular job to attend RSC and SPP meetings, sometimes using vacation time to do so. This creates an enormous burden for them. By allowing one member to be appointed without regard to how recently he or she worked for an electric utility, the board believes that it will be a great deal easier to find an interested person who has recently retired from a utility. Not only are those people often the most interested in serving, but it would be-- but it would allow recent retirees to serve. Such retirees would likely have the time to commit to service of the RSC without requiring such sacrifice to their regular job. In essence, this is a succession planning issue for the board to eliminate any concern that the board member that recently worked for a utility might be biased in favor of the utility where he or she worked. A provision was added requiring that member be-- to recuse himself or herself if a matter involving the utility where they work comes before the board. The recusal requirement remains in place until the board member has been separated from the utility for 4 years. The change allows-- the change to allow board members to serve 3 consecutive terms instead of the current 2 is intended to provide for more consistency, retention of institutional knowledge, and greater experience on the board. As with the Legislature, it often takes 2 or 3 years to really learn how an agency functions, especially with all the technical issues involved in the electric industry. Allowing the option to appoint a board member for a third term would allow the state to take advantage of the knowledge board members have gained while on the board. This could help not only the board, but also the electric industry members and the public that the board works with and regulates. Finally, the bill would increase a per diem from 4 of the board member-- for 4 of the board members from \$60 to \$100 for each day in which they are engaged in board business. The board's RSC member al-- excuse me, already has a higher per diem due to the much greater workload they face. The board's per diem was set at \$50 in 1971, and increased to the current

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\$60 in 1978. The per diem has, therefore, not increased since 1978. It seems only fair with the increase in the board's activities and the passage of 45 years-- and the passage 45 years of the per diem be increased slightly. The statute caps the total per diem payments for each member at \$6,000. The bill would increase it capped to \$7,000 to mirror the increase in per diems. The Power Board-- Power Review Board members perform their duties out of the sense of civic responsibility. I ask for the community to support and to advance LB866 to General File with AM2112. I'd be happy to answer any questions, but if they are detailed, technical, I would defer to the board's executive director, Mr. Tim Texel, who is here today to testify after me on this bill. Thank you.

MOSER: Questions for the testifier? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chair. Thank you, Chairman Bostelman, for bringing this bill to us. And it's the first hearing of the year. And this might be a technical question, so forgive me and we can [INAUDIBLE] Mr. Texel with it. So my read of it would be one person could be appointed who has been a prior-- prior have been involved in a electrical generation, essentially. Right? Right now, a person could be appointed if they had been and sat out for 4 years. So is your intention that once that person has been appointed they could serve for their 3 terms, and then no other person who had worked in the electrical generation industry could be appointed during that 4 years?

BOSTELMAN: They would have to be and then come back for reappointment each time.

J. CAVANAUGH: But do they--

BOSTELMAN: But they could do 3-- they could serve.

J. CAVANAUGH: But there's only one spot for a former, former employee executive.

BOSTELMAN: Correct. And I'll-- and Mr. Texel probably can answer that.

J. CAVANAUGH: I'll talk to him about that then. And then this, again, might be a technical question I can ask him. Is raising it to \$7,000 enough? We're raising-- essentially raising the per diem by \$40 from \$60, we're only raising the total amount by \$1,000. I don't know-- like-- I guess that's-- well, I can ask him that question.

BOSTELMAN: No, that's a good question.

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J. CAVANAUGH: Now you know what's coming at you.

BOSTELMAN: Actually, and, and, and, and, you know, the, the executive director could answer that. I agree. You know, is, is that enough? I'm not sure, but it's what the board has asked for so-- the members asked for so, again, I would defer to Mr. Texel.

J. CAVANAUGH: OK. Thank you.

MOSER: Other questions? Thank you, Senator. Are there supporters for the bill that want to come up and testify? Welcome.

TIM TEXEL: Vice Chairman Moser and members of the Natural Resources Committee, my name is Tim Texel. That's T-i-m, last name is T-e-x-e-l, and I am the executive director and general counsel for the Nebraska Power Review Board. As Senator Bostelman mentioned in his opening, we're the state agency that has primary jurisdiction over electric suppliers in the state of Nebraska. And we'd like to first thank Mr.-- thank Senator Bostelman for bringing this bill on the board's behalf. We appreciate that. And he framed the background on this very well and gave you a lot of the facts. I will try to just go through briefly on the 4 issues and, and point out a little bit more context, perhaps, and answer any questions. On eliminating the requirement that one board member be an accountant, first of all, the board wants to convey that the board has no problem with an accountant on the board, as Senator Bostelman mentioned, we've just had a lot of difficulty over the years finding one. And we've been very lucky that one of them served a total of 20 years, so we didn't have to look, it was broken up because you can only do 2 consecutive terms. And then he came back after a 4-year hiatus and served for quite a long time. Other than that, we've had great difficulty finding accountants to be on the board. It's just an acknowledgment of the difficulties we face. Nothing against accountants at all. Regarding the one board member to be appointed even though he or she had been an employee, officer, director of utility within the past 4 years, this is probably the crux of the purpose of LB866. And, and we do consider this a kind of succession planning bill, primarily to deal with our RSC issue and trying to be proactive. In 2009, when Nebraska became eligible to have a member of our board on the Regional State Committee at the Southwest Power Pool, we did appoint someone, and the RSC is an influential committee in the Southwest Power Pool structure, and it has authority over the costs for a new transmission and how they're allocated. Doesn't tell you where to place them at that point, but they do deal with the cost allocation issue. And, of course, how billions of dollars of, of costs are allocated is of enormous importance to our

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utilities, the state, and the electric customers. Ever since 2009, the board has been concerned what would happen if no board member were willing to volunteer to be the member designated to serve on the SPP, RSC. There's a lot of travel involved, a lot of meetings involved, calls involved, so there's a lot of work involved, which is why the Legislature agreed to increase the per diem for that person. And the board wants to be proactive to prevent that from happening that nobody would raise their hand. And we weren't, weren't sure what would happen. We haven't faced that yet so we're being proactive. We have found that a lot of well-qualified applicants that work for electric utilities after they retire can't be on the board because of the 4-year hiatus requirement. And we found that after 4 years, a lot of them are, you know, want to golf and spend time with the grandkids. And they've learned, you know, I don't want to be on the board anymore and have that commitment. So we lose a lot of people that would otherwise be on the board with a lot of experience. And there's a lot of-- there's some work involved to it. The recent retirees seem more willing to do that. Although, we have had people up to now that have been willing to. The board does plan to work closely with the Governor's Office to recruit individuals specifically to serve on the regional state committee, which would eliminate the concern of who might take over of the current board members we'd have somebody lined up. So we're trying to take a lot of precautions about this. Regarding the term limit from 2 to 3 years, this is partly due to continuity in that, but it's also to help the Regional State Committee member who once they get the experience not only on our board and with the industry if they don't have that, they also have their knowledge about the Regional State Committee and the Southwest Power Pool, which is a whole nother learning curve involved. So 3 terms would help both our board members and especially the board member on the Regional State Committee, we believe. Regarding the per diem increase from \$60 to \$100, this, as Senator Bostelman mentioned, applies to 4 of the 5 members. I mentioned earlier, the fifth one is the RSC member. They get \$250 a day because they do so much more work. They don't just come in monthly for the board meeting, get emails from me and read some orders. The board member that served, I mentioned that. As Senator Bostelman mentioned, the current \$60 was set in 1978. So part of this-- the board thought if we're going to have a bill on the rest of this, it was a good place to put this in. We didn't want to do it as a freestanding bill, but it's been 45 years since any per diem increase. And the \$6,000 to \$7,000 increase I calculated in the fiscal note, and my business manager and I went through and we thought \$1,000 was reasonable given the time frames, the 3 years we use for an average. If the committee would like to increase that, we'd be very open. We

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tend to be very fiscally conservative, and I'm cautious about that, making it look like we're asking for a lot more than we might need. If you'd want to make it another \$1,000, we're fine with that. And finally, I'd like to say that we did coordinate with the electric utilities before bringing this and they were supportive, so. My light is red.

MOSER: Questions for the testifier? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman. Thank you for being here, Director. Well, yes, that was my-- I just did the quick math here. My math was at \$6,000 limit, that's 100 days for the \$60, right? So if we raise it to \$100 at \$7,000, we're not going to get as many days out of it.

TIM TEXEL: It's only 4 members, too. The fifth-- the, the, the one member is separate, the RSC member. So this would only apply to 4 of the 5 members. The fifth one has a separate limit in the statute because they make \$250 instead of \$60.

J. CAVANAUGH: So just to clarify, maybe I'm confused, the \$7,000 is a total limit?

TIM TEXEL: For the 4 members that the \$60 applies to.

J. CAVANAUGH: For the-- so it's not \$7,000 a person?

TIM TEXEL: It's--

MOSER: Could be maybe.

TIM TEXEL: The \$7,000 is a-- is a-- and I'd have to check the statute again for the-- for the limit on that.

J. CAVANAUGH: My read of it would be \$7,000-- the limit is \$100 a day and then-- but not to not exceed \$7,000. So my read of that would be not to exceed \$7,000 for a person.

TIM TEXEL: And it's been a while since I looked at that. Apologize.

J. CAVANAUGH: I, I guess I, I don't know if it makes a difference, I'll have to think about it, but.

MOSER: [INAUDIBLE]

TIM TEXEL: And I, I-- I'd have to look at it-- but I'd have to look at it quick. But I go through in the fiscal note why that makes sense

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with the increase. And we thought that this would probably cover it. Like I said, if the committee would want to increase it, that'd be fine. We didn't look like we're-- we didn't want to make it look like we're trying to pad the numbers and put a lot into it. So we thought that would increase it. But the \$60, I think, would be for each person that was in there so that's why I chose that number. The number of meetings that most of the board members go to on the days they're involved is not anywhere approaching what the RSC member does. So-- and then there's only 4 out of 5 that do that if that makes sense, so.

J. CAVANAUGH: Oh, I got you. And could I go back to my question I asked Senator Bostelman about, is this a total bar on-- is the intention that it would be only one person could be an alumni of a [INAUDIBLE]?

TIM TEXEL: At a time.

J. CAVANAUGH: In, in, say, a 12-year period because a person could serve--

TIM TEXEL: If the other person was serving at that time. There's-- so there's one person at a time on the board that it had been the 4 years. But after they've met that 4 years then that would go away. Because--

J. CAVANAUGH: So once they get reappointed, they would no longer take up that spot.

TIM TEXEL: They'd be past the 4 years. Right.

J. CAVANAUGH: OK.

TIM TEXEL: Because they'd be-- because it talks about the 4-year separation in current statute and we would build that into this one to give that bias protection. But once the 4 years is passed, they wouldn't be someone within 4 years anymore. So if they got reappointed, assuming they served the whole 4 years, this would be a new appointment and they'd be beyond 4 years with-- from their separation with a utility. So you could, theoretically, put a new person on. There can only be one person at a time that has served for a utility within 4 years. So necessarily the reappointments would take you out of that window unless you're appointed to fill somebody else's slot and you're only there for a year.

J. CAVANAUGH: OK.

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TIM TEXEL: Does that-- does that make sense?

J. CAVANAUGH: I, I think I follow you. I'm not sure I'd agree with you 100%, but I'll reread it to see if that's-- last question, kind of unrelated but this includes someone who is any elected official in the state or was an elected officer of a public utility?

TIM TEXEL: Oh, because it talks about an elected state official or someone who's an officer, employee, or director of a utility.

J. CAVANAUGH: Right.

TIM TEXEL: So it has 2 separate parts and the Legislature put that in where there's elected offi-- state officials and officials from utilities, I assume, because of potential bias on both parts. I'm not sure, that was done long before I was around.

J. CAVANAUGH: So, I'm sorry, kind of lost the thread there. Is it-- would it be a bar from Mike Jacobson serving because he was, we'll say in the future, Mike, because he was an elected official of the state of Nebraska or do they have to be an elected member of a utility? So OPPD or NPPD board.

TIM TEXEL: If a-- if there's a state senator, they have to wait 4 years--

J. CAVANAUGH: OK.

TIM TEXEL: --from their separation from being a state senator. If they're a director, employee, or officer of a utility, they have to wait 4 years, too. So there's 2 different groups. There's the elected state officials, I assume the Governor and Treasurer and state senators. And then there's the officials from utilities, was built in, in 1963 for whatever reason. I mean, I'm pretty sure the utility officials, obviously, was because they didn't want somebody on it. It was either angry at their utility or very happy with their utility and they were, you know, biased toward their utility, so if that makes sense. And so we wanted to build in that 4-year protection. And if that comes up-- if they're voting on a matter before our board within 4 years, then they're going to recuse themselves until the 4-year separation has occurred. So if they're in there, they get reappointed and it's the fifth year, then they, they don't have to recuse themselves anymore. And they could, if they were from NPPD, Nebraska Public Power District, after the fifth year they could vote on an NPPD application again, because that same separation that is built in the statute now would apply after the change of the statute, too.

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MOSER: Senator Jacobson.

JACOBSON: Yeah, I just want to clarify. So we're talking about a per diem here. Are we also saying that then there would be mileage on top of that?

TIM TEXEL: Mileage is also covered. We didn't increase that, but--

JACOBSON: But I assume you pay-- would pay--

TIM TEXEL: We pay for all out-of-pocket expenses.

JACOBSON: Gotcha. And then this is a per diem on top of it.

TIM TEXEL: This is a per diem--

JACOBSON: Gotcha.

TIM TEXEL: --payment for their service.

JACOBSON: So if a state senator wanted to leave and go into this, it, it would be an appropriate wind down from the \$1,000 a month to [INAUDIBLE]. Yeah, OK.

TIM TEXEL: So you would get-- you would get paid out-of-pocket expenses and, and--

JACOBSON: Gotcha.

TIM TEXEL: --travel and lodging and you get the meals under the-- under the current per diem amount and not--

JACOBSON: Right.

TIM TEXEL: --the reimbursement they used to use.

JACOBSON: Well, and I-- and I really appreciate, again, Senator Bostelman bringing this because I, I really believe that-- I just see this across the state and particularly as I get into rural areas. We've got-- we are so caught up in people having a potential conflict that we seem to eliminate people with great expertise to serve on these boards, and we don't get good decisions because we have, in some cases, we need that expert there. They-- there-- it's good to have a cross section of people, but you need somebody that's a subject expert, I think, and that's missing if we eliminate that, that option. So I'm, I'm glad to see the change. I think it's appropriate and thank you for your testimony.

TIM TEXEL: And, and I would agree with that. And, and I think my board would too. We don't want all utility people on there. It's intended to be somewhat a lay-person board, I know Bill Drafters came up with the language in the amendment and we're fine with that. But we don't want all utility people on there. But it really helps to have some utility people on there, in my experience, because they know what's going on in the industry so well. And I'm an attorney, and over 25 years, I've got a lot of experience with the electric utilities. But the engineers on our board are very helpful with the technical side. And when you come down to the SPP, it's very helpful to have-- we've always had an engineer on-- that went to the SPP because they find that very interesting. It's usually the lawyers and engineers that find that very interesting. Unfortunately, the accountants have always told me they're-- they want to be involved with the civic responsibility but our particular board with electric utilities doesn't really excite them. And it's just the nature of the beast, I guess.

MOSER: Accountants might be hard to get excited about a lot of things.

TIM TEXEL: Well, if it had something to do with accounting, they might be very interested, finances. But our board has not been and we've, we've tried but-- so it's, like I said, it's an acknowledgment of the reality. Nothing against accountants. We'd be happy to have one on the board. And we have one now who, fortunately, we, we filled that slot for the moment.

MOSER: Further questions for the testifier?

J. CAVANAUGH: I-- one brief one.

MOSER: OK. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Chairman. He's already cutting me off early in session. Does this rule apply to anybody that's currently on the board or in contemplation of anybody currently on the board?

TIM TEXEL: It would apply if you-- like, if you extend the, the term limits, I think it would apply to the people who are on the board now because you'd be able to serve 3 instead of 2. So anybody who's in their second term, the Governor could choose to reappoint them if he was so inclined.

J. CAVANAUGH: But none of-- none of the other concerns are arising out of a result of anybody that's on the board currently?

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TIM TEXEL: No. It's like the accountant member, our accountant member just started. It was his first meeting last time. You, you will be seeing him shortly for his confirmation. He was appointed during the interim. So he's an acting board member now. It has nothing to do with him. The accountant members, we're lucky we got him. Actually, you know, until December, we didn't have him-- late December, we didn't have him on the board. So we just have these hiatuses where we don't have any accountant member. And we've gone to the Board of Public Accountancy to find one and they can't find one and it's been difficult. And if we didn't have the one gentleman I mentioned earlier who held over for 2 years on 2 different occasions, I think we'd be having a lot longer periods where we don't have one. So this isn't--that wasn't the crux of the bill, but it is something to fix. And we went with utilities and they agreed that we don't have to have an accountant on the board. The lawyer and engineer is very helpful and important on the board.

J. CAVANAUGH: Thank you.

MOSER: OK. Further questions? Thank you for your testimony.

TIM TEXEL: Thank you.

MOSER: More supporters for LB866?

SHELLEY SAHLING-ZART: Good afternoon, Vice Chair Moser and members of the Natural Resources Committee. For the record, my name is Shelley Sahling-Zart, S-h-e-l-l-e-y, Sahling-Zart is S-a-h-l-i-n-g-Z-a-r-t. I am here today-- I'm vice president and general counsel for Lincoln Electric System and I am here today testifying in support of LB866 on behalf of the Nebraska Power Association, which represents all of Nebraska's public power electric utilities, including municipalities, public power districts, public power and irrigation districts, rural power districts, and cooperatives. Senator Bostelman spoke to me right before the hearing and said he heard a, a crazy rumor that I was coming in to testify in support of one of his bills. And it's true. Here I am. It's his final year. I couldn't resist that opportunity. He may not feel that way next week, but we'll talk about that then. I want to thank Senator Bostelman for introducing this bill on behalf of the Power Review Board. I also want to thank the Power Review Board, especially Chuck Hutchison, Kristen Gottschalk, and the executive director, Tim Texel, for reaching out to the industry and engaging us. And you wonder why that's important? It's important for a few reasons. Most of you probably know the Power Review Board is a cash-funded agency, so it is funded solely through assessments on the electric

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utilities. So we, we pay the costs you all are talking about. And we are very supportive of this bill. I've been in this industry for 35.5 years. I have had a front-row seat to a lot of changes in the industry. It is-- we've had a lot and the SPP has certainly added a level of complexity that requires a lot of oversight. Those of us that are in SPP think the Regional State Committee representation from Nebraska is incredibly important. And we do want to make sure we have good quality people in that position. Senator Cavanaugh, you asked if the amounts are enough. I think we would tell you, no, they probably aren't. But that's, that's what the Power Review Board is comfortable putting in. I think the industry would support a little bit more, again, because our focus is to make sure that we have good quality and continuity of representation for Nebraska. So I think you've covered most of the questions. You all have expressed concerns on a number of our bills about utility experience. I think that's really important on this board. I'm really glad to see that open up. And I'm really glad Senator Bostelman didn't put in an amendment that would preclude me from doing that someday. I don't have any intention of doing that, though.

MOSEER: OK. Questions from the committee? Wow, you get by easily. Thank you.

SHELLEY SAHLING-ZART: I did. Thank you.

MOSEER: Anybody else to speak in support? Anybody here to speak against it? Anybody to speak in opposition? Is anyone here to speak in a neutral capacity? Seeing none, Senator Bostelman waives his closing. That concludes our hearing for today. Thank you for attending.

JACOBSON: Letters. Letters.

BRANDT: Letters.

MOSEER: There were no letters.