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Transcriber's Office

Natural Resources Committee
January 31, 2018

[LB820 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Wednesday, January 31, 2018, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB820 and the gubernatorial appointment of Joseph Citta and Mohamed Dahab to the Environmental Quality Council. Senators present: Dan Hughes, Chairperson; Bruce Bostelman, Vice Chairperson; Joni Albrecht; Suzanne Geist; Rick Kolowski; John McCollister; Dan Quick; and Lynne Walz. Senators absent: None.

SENATOR HUGHES: According to my phone we're at 1:30, so we will call the meeting of the Natural Resources Committee to order. Welcome to the Natural Resources Committee. I'm Senator Dan Hughes; I am from Venango, Nebraska, and I represent the 44th Legislative District. I serve as Chair of the committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members might come and go during the hearing; this is just part of the process as we have bills to introduce in other committees. I would ask you to abide by the following procedures to better facilitate today's proceedings. Please silence or turn off your cell phones. Please move to the reserved chairs when you are ready to testify; they are the first two chairs on either side of the front row. Introducers will make initial statements followed by proponents, opponents, and neutral testimony. Closing remarks are reserved for the introducing senator only. If you are planning to testify, please pick up a green sign-in sheet that is on the table at the back of the room. Please fill out the green sign-in sheet before you testify. Please print, and it is important to complete the form in its entirety. When it is your turn to testify, give the sign-in sheet to the committee clerk or to the page. This will help us make a more accurate public record. If you do not wish to testify today but would like to record your name as being present at the hearing, there's a separate white sheet on the tables that you can sign in for that purpose. This will be a part of the official record of the hearing. If you have handouts, please make sure you have 12 copies and give them to the page when you come up to testify and they will be distributed to the committee. When you come up to testify, please speak clearly into the microphone. Tell us your name and please spell your first and last name to ensure we get an accurate record. We will not be using the lights today. There will be no displays of support or opposition to a bill or a candidate, vocal or otherwise, is allowed at a public hearing. The committee members with us today will introduce themselves starting on my left.

SENATOR KOLOWSKI: Senator Rick Kolowski, District 31, southwest Omaha.

SENATOR GEIST: Suzanne Geist, District 25, which is the east side of Lincoln and also includes the towns of Waverly and Walton.

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SENATOR QUICK: Dan Quick, District 35, Grand Island.

SENATOR WALZ: Lynne Walz, District 15, all of Dodge County.

SENATOR HUGHES: And on my right.

SENATOR ALBRECHT: Joni Albrecht from northeast Nebraska, Thurston, Wayne, and Dakota Counties, District 17. Welcome.

SENATOR BOSTELMAN: I'm Bruce Bostelman, District 23, Saunders, Butler, and the majority of Colfax Counties.

SENATOR HUGHES: To my left is committee legal counsel, Laurie Lage. And to my far right is the committee clerk, Mandy Mizerski. Our page for the committee today is Lee-Ann Sims from Lincoln; she is a junior at UNL studying political science and global studies. So with that we have a couple of confirmations up first this morning (sic-afternoon). If Mr. Joseph Citta would like to come up; he wants to be reappointed, my understanding, to the Environmental Quality Council, so welcome, Mr. Citta. And give us just a little background on yourself and why you would like to be reappointed.

JOSEPH CITTA: (Exhibit 1) Okay, thank you, Mr. Chairman, and glad to be here, Honorable Senators, I appreciate it. I always look forward to interactions with yourself. My name is Joseph Citta. This would be for reappointment to my third term at the Environmental Quality Council. A little history on myself. I am presently the environmental manager for Nebraska Public Power District. I've worked with the district for over 40 years, so I've been engaged in the environmental arena for a lot of years and have a lot experience in that area. I'm from Columbus, Nebraska; wife and kids are located in Nebraska and in the area; got two new grand kids that just came to Columbus, so that's pretty exciting times. But I'm Chair of the Council. I've been luckily enough from my peers to elect me chair. This will be my third term as Chairman of the Environmental Quality Council. And I've got to say, in all the things that I do, being on the council is one of the most very honorable thing that I really enjoy doing. So with that I would sure entertain any questions you may have for me. Thank you. [CONFIRMATION]

SENATOR HUGHES: Okay, thank you, Mr. Citta. Are there questions? Looking at your background... [CONFIRMATION]

JOSEPH CITTA: Yes, sir. [CONFIRMATION]

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SENATOR HUGHES: ...with NPPD, could you talk a little bit about the R-Project and the environmental issues that you looked at for that project. [CONFIRMATION]

JOSEPH CITTA: Oh, certainly, certainly. Of course one thing to remember, we've actually been working with the agencies, both the (U.S.) Fish and Wildlife Service and the Nebraska Game and Parks. We actually started our interactions with them on the R-Project back in 2012. So there's been a lot of interaction about the environmental impacts and what we do to address those. I'm sure you're aware of that because of this project and the idea that the fact that we need to do...get a federal permit because of incidental take that we will have on one of the endangered species which is the American burying beetle, we have had to undergo a very intense environmental impact statement. So we're in the throws of that, a couple of years into that. The draft statement has been finalized and advertized and the Fish and Wildlife Service has had two public hearings, I believe, and now they're into the public comment period, after which we will...the service, some of the comments will be directed at NPPD, others will be to the service. But all of the environmental impacts and various things that we're taking into consideration are outlined in that environmental impact statement. So when we approach a big project like this, and believe me, you know, we already operate over 5,000 miles of transmission line in Nebraska, so we have a lot of experience in what are the environmental impacts, whether it be to the American burying beetle or migratory birds, etcetera. But we have developed a very comprehensive habitat conservation plan which you can see and it's also on our Web site, which addresses all the various environmental impacts and what we're doing to avoid, to minimize, and to mitigate for those. If you have specific questions about certain criteria, I'd be glad to address it. But that is just kind of a general approach that we've taken on this project. And we will need to be issued a federal permit which would be, to allow us to do an incidental take on the American burying beetle. [CONFIRMATION]

SENATOR HUGHES: Is there any kind of time line that you can share with us at this point as to when that final permit will be issued? [CONFIRMATION]

JOSEPH CITTA: Yeah, I can share the best guess, we've gone to the best estimate, I would rather say. There's been some delays, I mean, this has been quite a process. And when you're involved in the federal permitting process, it's an interesting journey, believe me. Right now, the latest estimate is we would probably get their...what they call their record of decision which would be after all the comments are done and all the input has been made for the public...off the public hearing and whatnot, that would probably be looking at toward the late part of this year, maybe the fall, November, December. And we're anticipating that's when we may get the incidental take permit. Although the service said there could be some delays and we could get into mid-next year. But right now, the latest estimate they gave us was I think December of this year we might expect the record of decision and the issuance of the take permit. [CONFIRMATION]

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SENATOR HUGHES: Okay, thank you. [CONFIRMATION]

JOSEPH CITTA: Certainly. [CONFIRMATION]

SENATOR HUGHES: Are there any additional questions? Seeing none, very good job, thank you, Mr. Citta. [CONFIRMATION]

JOSEPH CITTA: Well, thank you, sir. [CONFIRMATION]

SENATOR HUGHES: Is there anyone who would wish to testify in support of Mr. Citta's appointment? Anyone wishing to testify in opposition to Mr. Citta's appointment? Anyone wishing to testify in the neutral position? Seeing none, that will close the hearing for Joseph Citta for the Environmental Quality Council. And we would invite Mr. Mohamed Dahab up. [CONFIRMATION]

JOSEPH CITTA: Thank you, Senators. [CONFIRMATION]

SENATOR HUGHES: Thank you. Welcome, Mr. Dahab, is that correct pronunciation? [CONFIRMATION]

MOHAMED DAHAB: That's very well. Thank you, sir. [CONFIRMATION]

SENATOR HUGHES: Okay, thank you. Tell us a little bit about yourself and why you would like to be reappointed. [CONFIRMATION]

MOHAMED DAHAB: (Exhibit 1) Yeah. My name is Mohamed Dahab, that's M-o-h-a-m-e-d D-a-h-a-b. Professionally I'm with the University of Nebraska and the department of civil engineering. I have been with the university for a number of years. My speciality is in environmental engineering. I teach design of water and wastewater systems and waste management systems. I have had the pleasure to work with the Environmental Quality Council, including our Chair, Mr. Citta, and the rest of the council members and the staff of the department. And I have truly enjoyed working with all of these people. I believe I bring a different perspective to the board in that...I'd like to think that I serve as a conduit between the University of Nebraska--the College of Engineering, and the environmental agency. And we teach environmental management; we teach stewardship, and this is something that I look for in the regulatory frame work of our state. So with that I'd be happy to respond to any questions. [CONFIRMATION]

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SENATOR HUGHES: Okay. Thank you, Mr. Dahab. Are there any questions? Senator Bostelman. [CONFIRMATION]

SENATOR BOSTELMAN: Thank you, Chairman Hughes. Dr. Dahab, thank you for being here and thank you for your willingness to continue your service to this...to the commission, to the board. Now my question is, is could you speak to maybe one or two issues, water issues specifically within the state, do you think that you deal with either through the university or through the board that are important for us to know about. [CONFIRMATION]

MOHAMED DAHAB: Well, I deal with...my first responsibility is to teaching is teaching design of water and wastewater systems. And the provision of potable water that meets and exceeds our drinking water standards is an important issue for all of us. I can tell you I grew up in north Africa and I can tell you about water and how little there is with it over there. And that appreciation I'd like...I always like to transmit to my students so they understand the criticality of protecting and preserving our water supplies. On the other end, I deal with wastewater which we all generate in our homes and businesses and industries. And we have the legal obligation to bring that water to standards that would permit the discharge of such water back into the environment without any dire consequences. So in those two issues, that's what I would deal with directly. I also work with various faculty members in the steward of agriculture and natural resources and our water/food institute. And we have an amalgam of issues that come up and I'm happy to talk forever about it, but I think that would be my short answer. [CONFIRMATION]

SENATOR BOSTELMAN: Thank you. And I did say one or two and you did that just fine. Thank you very much. We do bring a wealth of knowledge and experience and I do appreciate it. Thank you, sir. [CONFIRMATION]

SENATOR HUGHES: Are there any additional questions? Seeing none, thank you, Mr. Dahab, we appreciate you coming up and your willingness to serve. Is there anyone who would wish to offer testimony in support of Mr. Dahab. Seeing none, is there anyone who would like to offer testimony in opposition to the appointment of Mr. Dahab? Seeing none, anybody wish to offer neutral testimony? Seeing none, that will close the appointment portion of today's hearing. And we will begin with LB820 and I'll turn the meeting over to Vice Chairman Bostelman. [CONFIRMATION]

SENATOR BOSTELMAN: Thank you, Dr. Dahab. [LB820]

MOHAMED DAHAB: Thank you, thank you very much. [LB820]

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SENATOR BOSTELMAN: Welcome, Senator Hughes. [LB820]

SENATOR HUGHES: Thank you, Senator Bostelman and members of the Natural Resources Committee. I'm Senator Dan Hughes, D-a-n H-u-g-h-e-s; I represent the 44th Legislative District, and I'm here to introduce LB820. This bill came to me from the Nebraska Power Review Board. The Nebraska Power Review Board has run into this issue a few times since the passage of LB824 in 2016. LB824 allowed for the development of renewable energy facilities to bypass some state regulatory requirements making it easier for renewable energy to be built in Nebraska for export out of state. One of those provisions in Section 70-1014.02 which describes how a private renewable facility can become exempt from going through a Nebraska Power Review Board approval process provides a certification process for privately developed renewable energy generation facilities. To qualify, the private entities must submit certain certifications to the Power Review Board at least 30 days prior to construction for a qualifying renewable generation facility. Since 2016, the Power Review Board has run into some instances where a facility is constructed or installed without having submitted the required certifications at least 30 days in advance of beginning construction. Most instances involve smaller projects where the builder didn't know about the LB824 requirement. LB824 did not anticipate this scenario and did not provide a way for the Power Review Board to waive the 30-day prior notice requirement. This bill would remedy the issue by authorizing the Power Review Board to impose a \$500 penalty for certifications that are submitted outside of the 30-day prior to construction requirement. It allows entities to still use the certification project by paying the penalty and submitting the required certifications, even if they have already started construction. The Power Review Board is here to provide more detail, but I would try...I would be happy to try and answer any of your questions. [LB820]

SENATOR BOSTELMAN: Thank you, Senator Hughes. Any committee members have any questions for Senator Hughes? Seeing none; Senator Hughes will stay for closing obviously. [LB820]

SENATOR HUGHES: Thank you. [LB820]

SENATOR BOSTELMAN: Now ask for anyone who wish to testify as a proponent. Welcome, Director Texel. [LB820]

TIM TEXEL: Thank you, Senator Bostelman, members of the committee. My name is Tim Texel, first name is T-i-m, last name is T-e-x-e-l, and I'm the executive director and general counsel for the Nebraska Power Review Board. As Senator Hughes said, I approached him, after my board authorized, asking for this bill to be brought and we appreciate and want to express our appreciation for Senator Hughes being willing to bring this bill on our behalf. He did a good job

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of setting it out, so I might reiterate a few things in my testimony, if you'd bear with me. But I think as you know from your experience, it's very rare for the board to bring a bill on our behalf...or ask for it to be introduced before the committee. But a problem has arisen that can only adequately be addressed through legislative action in this instance. And as Senator Hughes mentioned, in 2016 the Legislature enacted LB824 and that replaced the language in Section 70-1014.02. That bill created a process whereby private entities can provide a notice to myself, the Power Review Board's executive director, making certain certifications regarding a privately developed renewable energy generation facility. If all the certifications are made and submitted to me at least 30 days prior to construction or installation of the facility I provide an acknowledgment letter within ten days confirming that the facility is exempt from the board's normal hearing process for generation facilities. When the parties involved drafted LB824, I think most parties, including myself, were focused on the larger commercial-type facilities and not on, for example, a 200 megawatts capacity size and not on the small facilities such as 200 kilowatt size. And we're seeing most of those examples of the...the submissions of the notices are the smaller facilities at this point. So the problem has arisen under the new law that individuals and community solar gardens do not know about the board or the certification requirement. They are not commercial operations that have attorneys and go through these processes in a lot of different states. And they are installing small facilities without providing the required certifications at least 30 days prior to construction or installation. Under the current language in the statute, there's no mechanism for a waiver of the requirement that the notice be submitted at least 30 days prior to construction. If a private developer wants to go through the state approval process or if a facility is over 80 megawatts and therefore not eligible for the federal approval process under the PURPA, the entity, if it misses the 30-day deadline, would have to go through the board's hearing process and through our normal, old, historical process where they would...we would issue notice and have a hearing and go through that. Avoiding the board's hearing procedures for developers of privately owned renewable facilities was the purpose of LB824...or one of the primary purposes, anyway. Of the ten facilities for which we have received notices under the law so far, four have already started construction or are already built prior to the 30-day window. One of them would have, but I caught it because of a newspaper article and I contacted them and we were able to catch it before they built, but there would have been five out of ten if I hadn't caught that in time. Technically, they're no longer eligible, I think, under the reading of the statute, to be a privately developed renewable energy generation facility under the law if they don't meet the 30 days, because that's one of the requirements set out in the statute. The people who are not meeting the 30-day deadline are, in my opinion, making an honest mistake. They don't know about the board; they aren't used to working with the board. They're primarily average citizens that either aggregate together to build a community solar garden or an individual that puts in something. They range in size from so far the ten that I mentioned at 2.8 kilowatt, very small facility, to a 350 megawatt facility on one of them. So we have had the commercial size make this mistake. It's not the common one, nine out of ten were the smaller ones. But we have had one that was considerable size. I don't believe there's any intention on any

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of their part to evade the law, it's an honest mistake and this is a way to address that. The purpose of LB820 is to explicitly provide a mechanism to allow entities that missed the 30-day deadline to pay a \$500 fine and continue construction or operation of their facility. So it's an attempt to help them, not to hinder them, and I think achieve the purposes of LB824 and now (Section) 70-1014.02. In arriving at an solution, I did want to let the committee know I worked with attorneys that represent private renewable energy developers and a representative of the American Wind Energy Association; they actually helped me, through several meetings, draft the language involved here. So I brought them in early on this so that they would be comfortable, and they agreed that this is a good option. They don't necessarily want to pay a fine, but they believe it's a good option if they missed that deadline that give them the ability to continue functioning or stop me from preventing bulldozers from keep going. So they thought this was a good remedy for that. The board isn't anxious to make anybody pay a fine, but I think the board wanted this size or amount of fine because it's large enough for a small entity that they aren't going to want to pay it, hopefully, but it's not so large we hope to prevent any projects. So we didn't want to make it like a parking ticket where people say we don't care about the 30 days. There is an important reason for that, the Game and Parks, we want them to be brought in so that there isn't any damage to the environment or the threatened and endangered species and that's one reason why prior to is important. So with that, that's the explanation that I wanted to provide to the committee. I'd be glad to answer any questions. [LB820]

SENATOR BOSTELMAN: Thank you, Director Texel. Senator McCollister. [LB820]

SENATOR McCOLLISTER: Thank you, Senator. Is there a fee associated with applying for one of your... [LB820]

TIM TEXEL: No. No, there's not. [LB820]

SENATOR McCOLLISTER: Just if they failed to meet the deadline. [LB820]

TIM TEXEL: Under this bill, there would be a penalty. But there is no fee for them to submit a notice to me and receive my acknowledgment letter, no. [LB820]

SENATOR McCOLLISTER: So all it really is is notice and that...so if they provide that notice, is there other process or evaluations that you do or is it just a notice? [LB820]

TIM TEXEL: When they submit that notice, they usually use a template. The first attorney who did one, is the example I gave everybody, and they kind of follow that. It's not a form, it's not a specific requirement under the statute, but it's a notice to me that sets out those certifications in

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the statute. And if they make all the certifications and at least 30 days prior to, then I send them a letter says, yes, you made the appropriate certifications and you're exempt from the normal hearing...the board's procedures including the hearing process. [LB820]

SENATOR McCOLLISTER: Tell me about the certifications that you require. [LB820]

TIM TEXEL: They have to certify that it's a renewable fuel that's being used; they're eligible to be a privately developed energy...make sure I get the term right...we got to come with an acronym for it, but, the privately developed renewable energy generation facility, that they will abide by any decommissioning requirements with the local jurisdiction that has authority to do that, or we're a backstop authority if the county or city has none, then they have to provide a decommissioning plan to us that my board accepts that would kick in after ten years. They have to agree to work with Game and Parks or consult with Game and Parks prior to beginning construction. So those are the types of certifications that they have to go through; and as long as they do those, they get the letter back from me. [LB820]

SENATOR McCOLLISTER: It's a checklist we established with LB824? [LB820]

TIM TEXEL: Yes. [LB820]

SENATOR McCOLLISTER: Okay. Have you denied anybody or just hold up the application until they finish the certification? [LB820]

TIM TEXEL: Well, currently of those ten, I've taken the position that technically I probably don't have the authority to do it, but I believe the legislative intent was to allow them to have that exemption and I've taken the stance that for now, until Legislature acts, that I've given them acknowledgment letter. That's why I have considerable discomfort with that because I think the letter of the law says you have to do it 30 days prior. What I've done is said you have to turn them immediately, the certifications, there's no fine provision, and I've made clear to the developers and others that I don't know that I can continue doing this because I don't have expressed authority to do it. And that puts me in a very uncomfortable position. So I'm asking for authority to do that, confirmation that what I've done is correct, because I believe it follows the statutory intent and the Legislature's intent of why the statute is there. So, so far I've let them do kind of what's in this bill without a fine, but this gives me a legal mechanism to do what I've done and not be overruled by a court. [LB820]

SENATOR McCOLLISTER: Thanks, Mr. Texel. [LB820]

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SENATOR BOSTELMAN: Other questions from members? Senator Kolowski. [LB820]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Texel, the...what would be the ways that if I'm going to put some project together that I could be notified or if I'm...it seems like these people are all cross referenced, they know each other, and a lot of them work on different projects in different places. And do you have a Web site? Do you have connections with the wholesalers that sell the equipment for solar or wind or whatever else that they would have a sheet that says, oh, by the way, don't forget you've got to do this before 30 days...it seems implausible that they wouldn't know or there's no way of getting the information in an advance notice. [LB820]

TIM TEXEL: And that's a good point of how do we get notice out to all these entities. [LB820]

SENATOR KOLOWSKI: Sure. [LB820]

TIM TEXEL: What I have done, so far we do have a Web site. There's not a form for it, but we have a link to the Legislature's statutes on there and we have the statutes set out, but unless you know we exist, they wouldn't go to our Web site. And so the utilities, obviously, know about us, and what I've done to try and address this is I sent a letter to all 165 of our utilities and explained this to them and, essentially, said you're the choke point in this, you know when somebody interconnects to your system. Hopefully they would always know. And they would always be able to tell us then do you have PRB approval or certification, because we're not going to interconnect you until you do. And I've asked them can you give me a list of those who are interconnected with you now. And I've gotten a couple of letters; I've dealt with a few of them. I have seven or eight more...my legislative duties have kind of taken the front burner right now that I've got to deal with. And so that's the mechanism my views, because it's hard for me to know all the wholesalers, all the entities that install these. [LB820]

SENATOR KOLOWSKI: Sure. [LB820]

TIM TEXEL: And I'm thinking that the utilities, the 165 of those, will know when these interconnect and be able to say we're not going to hook you up unless you got some authority...the FERC authority or the PRB authority; show us under what circumstances you have the authority to do it. So that's ordinate metering and if it's under 25kW, they almost always go with net metering and they're covered. So this catches 26kW up of private renewables. So that's the choke point that I've taken is with the utilities, try to coordinate with them, because I don't know how to get the notice out to all the wholesalers and where I get a list of what entities would install these. I don't know where I'd start getting that kind of list. [LB820]

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SENATOR KOLOWSKI: I appreciated you saying you're a little more lenient and giving them a little time to get that set up and make sure that they can get connected. Something seems missing somewhere as far as communication. And what the prior bill is doing compared to what we wanted it to do, perhaps that's an issue. Or maybe the days need to be changed from 30 to 60 to 90 or whatever else if you're working on a project to connect with you. I don't know the good or bad or indifferent on that. So I'm just wondering out loud. [LB820]

TIM TEXEL: And I, obviously, will implement whatever the Legislature wants me to. I don't know that the extending the time would matter, the 30 or 60 or 90, the developers may not like it because it slows down when they can start. The problem is that they don't know about us. They might be in operation for 120 days, so extending it may not fix what I'm talking about because some of these have been in operation for months by the time I find out about them, or a utility mentions it and I say--do they have approval? And it starts the process. So I'm hoping the utilities can be that intermediary that know about them and make sure about this so they can notify me and then we can handle it because some of the utility people didn't know to notify these and I'm hoping this fixes it with all the utilities having notice about this process, be aware of it, and make sure they get approval. So most...the ones I've spoken to have all said we're adding this to our check list; when you interconnect with our system is you got PRB approval or the PRB told me there's some other approval. If you can show federal approval, that's fine; if it's net metering, that's fine. But they've agreed they're going to put that in their checklist when you interconnect, along with the safety requirements that they have. So I'm hoping most of them do that and I alleviate this problem. I don't want anybody to have to pay a \$500 fine, but if they slip through it gives them an option of me not stopping them. [LB820]

SENATOR KOLOWSKI: I like the creativity that people are coming up with with connectivity to helping with power production, but I wouldn't want to see it turned into a power base in the sense that we have this over you, or we're trying to dominate, or stop others from growing, or doing something like this. So I just put that on the table as a "what if." [LB820]

TIM TEXEL: Well, and certainly this isn't meant to stop any projects. I'm trying to give them an option that...you know... [LB820]

SENATOR KOLOWSKI: Appreciate it. [LB820]

TIM TEXEL: ...it may not be the one they want, but I'm not requiring them to take it, but it gives them another option if they want it. [LB820]

SENATOR KOLOWSKI: Thank you. [LB820]

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TIM TEXEL: And hopefully the fine is small enough it wouldn't stop a project. [LB820]

SENATOR BOSTELMAN: Senator Albrecht. [LB820]

SENATOR ALBRECHT: Thank you. Okay, you're overseeing this Power Review Board, and you're the executive director. Right? So help me understand what happened in 2016, did you get that power taken away from you for some reason with renewables? [LB820]

TIM TEXEL: Well, it was modified. I mean, there was...prior to that, LB1048 had created the mechanism for how you deal with certified renewable of export facilities, and this LB824 in 2016 repealed that and replaced it with this process. There was some complaints from the private developers that our process was cumbersome. Can't argue that under the previous bill language it wasn't cumbersome; I think it was. It's not a policy statement, I think the process was...it's a very long statute, previously. There's a lot of parts to it. The developers did not understand it very well. And I think this was an accommodation by the Legislature and the introducer to try and deal with that to accommodate the developers. It makes the process much more streamlined... [LB820]

SENATOR ALBRECHT: What do you...what... [LB820]

TIM TEXEL: ...I don't know that it took away our authority, it changed it when it deals with private entities. [LB820]

SENATOR ALBRECHT: Okay, but what are you looking for with that private person that you want to see...what is it that they have to provide for you? [LB820]

TIM TEXEL: Those certifications that I mentioned; that they're going to work with Game and Parks, they're going to abide by decommissioning, that it uses a renewable fuel, those kind of certifications. [LB820]

SENATOR ALBRECHT: So if they've already taken it so far that they have by-passed all of those, what if they did interrupt the Game and Parks with something and they've already gone too far, they're going to get that \$500 fine, but what else are you going to do to say you didn't follow this procedure and you're doing something that you shouldn't be, can you stop the project and... [LB820]

TIM TEXEL: If...they have the option...once I sent them a letter and say I've been notified, you've started construction, you've started digging holes and erecting towers, whatever it is; and

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under the bill I send them a letter, essentially, similar to cease and desist say you need to go through this process and pay the fine because I've determined you have commenced construction. [LB820]

SENATOR ALBRECHT: So you'll make them go through the process. [LB820]

TIM TEXEL: They can decide we're either going to challenge that or they can say we're going to pay the \$500 fine and turn in those certifications now. And then I send them a letter saying, okay, you're exempt from our hearing process, you can go. They could provide me with a PURPA, if they didn't before; they could say we got federal approval. I can say, okay. In a rare circumstance, they could probably say we're net metering, but if it's under 25kW, I usually work with the utility and say--is this a net metering facility? and kind of informally deal with it. And if they disagree with my decision that they've commenced construction, there's some due process...that's why the bill is kind of longer than I prefer it to be, but since we're imposing a fine, they have a due process right that I thought was fair that if they disagreed with me on construction, because we only built a shed in a row and that's not construction. I say, well, you're moving dirt, you're changing the environment, that's construction. So they can challenge that and ask for a hearing before my board and my board can overrule me and say, no, it's not construction or yes it is, now you have the option to pay the fine and get his letter or you can take it to the court of appeals and challenge our decision. And so there's a mechanism for them to do that. [LB820]

SENATOR ALBRECHT: And wouldn't most public power folks be working with those people that would like to have solar or wind? (Inaudible). [LB820]

TIM TEXEL: I would expect, yes. And that's why I sent the letter out because they're working with them and I want them to be the choke point to help me catch these before it gets to this point. [LB820]

SENATOR ALBRECHT: Okay. [LB820]

TIM TEXEL: And when they're talking with their local utility they're going to interconnect with, I'm hoping the utility contacts me and said--did you know about this; or they go to their customer and say--did you talk to the PRB yet? And that's on our checklist; and if you didn't, go talk to them before we interconnect you. So I'm hoping that alleviates any of this. But there still might be some that fall through the cracks. [LB820]

SENATOR ALBRECHT: Thank you. [LB820]

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SENATOR BOSTELMAN: Senator McCollister. [LB820]

SENATOR McCOLLISTER: Yeah, thank you, Senator. I think we talked about this, this bill, three or four months ago. And you told me it's primarily real small solar projects. Is that correct? [LB820]

TIM TEXEL: Mostly, yes. We had the one anomaly that was very large, but most of them are smaller, individual, or community solar gardens that are 200 kilowatt, 100 kilowatt size. [LB820]

SENATOR McCOLLISTER: But wouldn't you say that most applicants, those folks that go through the checklist are pretty sophisticated in what they're doing and they invest millions and millions and millions of dollars in this process, so they know the process pretty well...or their lawyers do. [LB820]

TIM TEXEL: The large commercial ones, yes, absolutely. The smaller ones where it's a group of people...what I'm saying is a group of people, 15 people get together and build a solar...what's commonly called a community solar garden, they aren't sophisticated in this area because they don't operate in this area. They may be very intelligent people, but they aren't aware of the Power Review Board existence or the law's existence, and so they get together and build this little generator...solar generator and then I come along and they didn't know about it. And that's why I said...it's an honest mistake, they're not trying to evade the law. When I contact them, almost always ask me what law and how do I find it and how do I correct this? [LB820]

SENATOR McCOLLISTER: Would you be willing to elaborate on the checklist process that LB824 established here two years ago? [LB820]

TIM TEXEL: Elaborate on it... [LB820]

SENATOR McCOLLISTER: Just what kinds of controls exist, or what kinds of evaluations occur with the checklist. [LB820]

TIM TEXEL: Well, I just make sure that the certifications in the statute are met. So if they make those certifications, there are, essentially, promises that we...that the entity or the person will work with Game and Parks...that can coordinate with Game and Parks to protect threatened and endangered species; that it is renewable fuel they're using, that kind of thing. So I don't go through...I evaluate their certifications, but it's a...we make sure that they agree to work with Game and Parks, that they agree to abide by the decommissioning requirements that the entity

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and the local jurisdictional entity has imposed, or if they have...if there's a void of that, then they...we're the backstop authority for that; we're not expected to be the entity that sets the decommissioning. I think the Legislature decided that really should be the county, or if they're within a city's jurisdiction, the city would do it. And so I just evaluate to make sure they make those certifications. And as I said, everybody so far when they contact me, I send them an example, there's not a set form they're required to follow because it's a notice. It essentially is a letter. They all follow that first template, the first attorney who did it wrote, and I tell them you can follow that and it pretty much lays it out for them. Does that answer your question? [LB820]

SENATOR McCOLLISTER: Sort of. [LB820]

TIM TEXEL: Okay. [LB820]

SENATOR McCOLLISTER: So if a county hadn't approved the project or a zoning board, would you approve the project or would it move forward? [LB820]

TIM TEXEL: Ours is not related to whether a county approved it. They establish set backs; they establish whatever zoning requirements. They have decommissioning requirements; those are separate from our review. I just make sure when I get this under the 70-1014.02, I make sure that the entity sending me the notice agrees they will abide by the decommission requirements. So if the county or city set up a decommission requirement that you put a bond up or that they're not be a bond, whatever it is, I just...I just look at the notice that says we agree to abide by whatever decommission requirements the local jurisdiction has. I don't look at what those requirements are, the local jurisdiction gets to do that. I don't examine it or reevaluate it. [LB820]

SENATOR McCOLLISTER: Thank you very much. [LB820]

SENATOR BOSTELMAN: Other questions from members of the committee? I have a couple of questions...or one comment more so, I guess. Sounds like most of them that we're talking about are solar projects, for the most part. And I'm kind of curious, is there like a solar association that you've reached to, kind of like if there's one for...here we have the Wind Coalition, but similar type of an opportunity where maybe you could hit more of those companies that are out there that are putting solar projects in, it's just a thought. [LB820]

TIM TEXEL: There might be. I mean, there might be something similar to the American Wind Energy Association. I'm not sure how many of these very small groups of people and individuals are going to be a member of an association like that. Certainly, I would have no problem reaching out to a group like that to the extent they might have a newsletter or something to try

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and get the notice out. I'm not sure that would reach everybody, because some of these people...my experience and what I can tell, they aren't necessarily part of any association or group, they just want to be environmentally conscience. They want to put it in; they might want this for their pump out somewhere and so they want to put one in and they aren't necessarily doing it as part of a larger group. I'm not sure that would catch everybody. It's a good idea and I can certainly follow up on that and see if there's a wind group that I can try and go through to kind of get the word out. [LB820]

SENATOR BOSTELMAN: The other question I have, it sound like this bill may need an emergency clause. Would you want this bill to have an...I think this should have an emergency clause so it takes effect right away if it gets through? [LB820]

TIM TEXEL: It would probably be helpful. I won't...you know, I think that would be good on something like this because it give me an option of right away implementing it, as opposed to waiting until three months after the session. I think that would help any of the entities. I just need to move quickly on the ones that are in my queue right now, because I want to treat them the same way as the others before the end of the session... [LB820]

SENATOR BOSTELMAN: Sure. Sure. [LB820]

TIM TEXEL: ...because I said after that my lead goes from the Legislature, either you pass the bill or don't and that's my direction I would take as to whether I essentially give them a pass without direct authority or not. But I think it will be helpful because that three-month period I would be able...it would give me a mechanism to do this legally. [LB820]

SENATOR BOSTELMAN: Sure. Okay. Thank you, Director. Any other questions from the committee? Thank you, Director, much appreciate it. [LB820]

TIM TEXEL: Thank you. [LB820]

SENATOR BOSTELMAN: I would ask for anyone who would wish to testify as a proponent of LB820. Welcome. [LB820]

JOHN HANSEN: Mr. Vice Chairman, welcome. For the record, my name is John Hansen; I'm the president of Nebraska Farmers Union; John, J-o-h-n, Hansen, H-a-n-s-e-n. I think that Chairman Hughes has done a very nice job of sort of laying the issue out. And the always well prepared Tim Texel did a good job of answering a lot of the technical questions. And this area, having worked on the underlying legislation that sort of changed the rules of the game, we were

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not really...we have changed the way we do things. And we didn't really anticipate folks not knowing that they should do this. And so the most, not all, we have some out-of-state folks that come in and do solar projects, but a lot of these kinds of developers are really are the kind of the mom and pop local folks, they also do local welding, they fix other folks' equipment, they...these are handy folks who are farmers who have good shops. I've got a bunch of these kinds of solar installers in my organization. And so this is a case of didn't know that they were supposed to do it and were unaware of it. And so we are in support of the bill. And we think there is a fair amount of urgency. The lack of process for folks who missed that first hurdle is nonexistent currently. And so Tim has really kind of summed up the cost of not providing a process for folks who missed the first hurdle is pretty severe. And so we think that there is a sense of urgency. We think the emergency clause would be helpful. We hope that the committee can expedite this bill. It's already been vetted. We're comfortable with it. The only question that I have, based on my conversation with folks that would be impacted is, of course, what is the right level for the fine? Is it \$500 for the big guys; \$500 is nothing. That, you know, hardly gets their attention. For the little guys who operate, you know, much smaller mom and pop, \$500 is maybe a bit stiff. And yet, as Tim said, you want to make sure you get their attention; you want them to follow the process. We want an orderly system. And so I guess if I had my druthers I would fall closer to the \$250 area as a fine level. But we also don't want it small enough that people just ignore it either. But if I'd have my druthers, I'd probably lean more toward the \$250, but I certainly understand all the arguments for \$500. So with that, thank you very much for your kind attention. And we hope that this bill is one that moves quickly through the system, if there is such a thing this session. [LB820]

SENATOR BOSTELMAN: Thank you, Mr. Hansen. Any questions from committee members?
Senator Kolowski. [LB820]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Hansen, would you...in your organization be open for adding to your Web site a notice on renewables like this that...sort of a notice or attention or did you know whatever you could do to assist with the spread of the information? [LB820]

JOHN HANSEN: Yes. And we'd also be glad to help do some press. And, you know, this is an education effort and so talking to the public utilities, and I'm less than clear at this point whether we've seen this kind of big burst of activity and now we're kind of through with it, or whether we still have a bunch more to come. And the fact that there's been problems is in itself, as folks talk about these things, that information is being shared. But we should...we're more than glad to try and figure out whatever ways we can to do to help the education part of the process along.
[LB820]

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SENATOR KOLOWSKI: Thank you. [LB820]

JOHN HANSEN: That would be the first best step. [LB820]

SENATOR BOSTELMAN: Other questions from committee members? Seeing none, thank you, Mr. Hansen. [LB820]

JOHN HANSEN: Thank you very much. [LB820]

SENATOR BOSTELMAN: Next proponent, please, for LB820. Welcome. [LB820]

DAVID LEVY: Thank you. Good afternoon, Mr. Vice Chairman, members of the committee. David Levy, D-a-v-i-d L-e-v-y, Baird Holm Law Firm in support of LB820 on behalf of BHE Renewables, Geronimo Energy, and Sandhills Energy. I think the points have been made and made well. I did want to confirm the support for this bill though from those clients. And I want to thank Senator Hughes for bringing this bill. I want to particularly thank Mr. Texel and the Power Review Board for bringing us in early and allowing us to be part of the process and to work with them on this bill. As Mr. Texel said, we had a number of meetings and telephone calls and I think those came to a good result. And this is an important bill for clients such as the ones I mentioned, as well as some of the smaller solar developers as well. Just to address a couple of questions, Senator Bostelman, that you had. The one solar organization I know of is called Nebraskans for Solar. And they do have an electronic newsletter and they do have a Web site, so that might be one place to try and get this information out. I don't know what their membership is. But I do get their e-mails, and that's one opportunity. I think an emergency clause is a great idea, as long as it doesn't interfere or put Mr. Texel and the Power Review Board in a bind. I think that makes a lot of sense. So with that I won't belabor it, but I'm happy to answer any questions that you might have. [LB820]

SENATOR BOSTELMAN: Thank you. Any questions from members of the committee? Seeing none, thank you, Mr. Levy. [LB820]

DAVID LEVY: Thank you. [LB820]

SENATOR BOSTELMAN: (Exhibit 1) Anyone else who would like to testify as a proponent for LB820? Others who would like to testify as a proponent? We have one letter from Jeffrey Clark, Executive Director of the Wind Coalition as a proponent. And now I'll move to opponents. Anyone like to testify as an opponent to this, LB820? Seeing none, would anyone like to testify

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in the neutral capacity on LB820? Seeing none, Senator Hughes, you're invited to close.
[LB820]

SENATOR HUGHES: Thank you, Mr. Vice Chairman, members of the committee. This was good. I think as the word has gotten out, I don't think this is going to continue to be a problem, but I think it's very important that we give the executive director of the Power Review Board the authority to handle the situation that has arisen that we did not anticipate. I think a lot of...a very good example is my hometown of Venango, you know, a town of 120 people. Fortunately, they had NPPD to work with as a partner, but they put in a small community solar garden. I'm sure the town board had no idea that they needed to talk to the Power Review Board before they began construction. So the \$500 fine, you know, I think that's probably a good range. I don't think it's enough that's going to stop anything, but yet it is enough to get people's attention to make sure that we have a process and laws are in place and we need to adhere to those. So I'd be glad to answer any questions. [LB820]

SENATOR BOSTELMAN: Thank you, Senator Hughes. Are there any final questions from the committee members? Seeing none, thank you, Senator Hughes. [LB820]

SENATOR HUGHES: Thank you. [LB820]

SENATOR BOSTELMAN: This will end the hearing on LB820. [LB820]