

BOSTELMAN: OK. Good afternoon, everyone. Welcome to the Natural Resource Committee. I'm 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 the order posted. This public hearing today is your opportunity to be 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 there 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 an introducer opening statement followed by the 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 will be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the light go-- comes on-- when the yellow light comes on, you have one minute remaining. When the red light indicates, you need to wrap up your final thought and stop. Questions from the committee may follow. Also 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 have bills to introduce in other committees. A final-- 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 and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior 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 will be included in the record, must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at Nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included in the committee statement. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

will now have the committee members with us today introduce themselves, starting on my left.

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

HUGHES: Hello. I'm Jana Hughes, District 24: Seward, York, Polk, and a little bit of Butler County.

BOSTELMAN: On the far right.

BRANDT: Good afternoon. I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

JACOBSON: I'm Mike Jacobson, District 42. So I've got Hooker, Thomas, McPherson, Logan, Lincoln, and three fourths of Perkins County.

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

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

BOSTELMAN: Senator Moser also serves as Vice Chair of the committee. Also assisting the committee today, to my left is our legal counsel, Cyndi Lamm; and to my far right committee clerk, Laurie Vollertsen. Our page for the committee today is Ruby Kinzie. Thank you very much for being here with us today. With that, we will begin. We have 2 gubernatorial appointments. We'll take the first one up is Mr. William Austin. Will you please step forward.

WILLIAM AUSTIN: Good afternoon, Chairman Bostelman, members of the committee. My name is Bill Austin. The Governor has seen fit to appoint me to the Power Review Board, and I am here seeking confirmation today. Absolution would probably be better, but I'll have to use confirmation is the best.

BOSTELMAN: Spell your name, please.

WILLIAM AUSTIN: Oh, A-u-s-t-i-n. A little bit about myself, I'm Bill Austin. I was born in New York City on December 15, 1949, which makes me rather old. I went to McCook Junior College, went to the University of Nebraska and to the Nebraska School of Law. I have been in practice or have been in practice for 50 years. Actually, I retired as of December 30 from all legal activities, with certain minor exceptions. My background as an attorney is that I was city attorney for the city of Lincoln for 20 years. I went into private practice with various

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

firms, actually ended up with a firm of my own with a friend and partner, and we dissolved that a couple years ago. And as I said, I have pretty much eliminated all, all clients as of this date. My background, to some extent, has always involved power or energy issues to some extent. When I was with the city attorney's office, I dealt with the Lincoln Electric System on a regular basis. And then when I went into private practice, the firm with which I was associated had Lincoln Electric System as a client. And so I became somewhat familiar with, with Lincoln, Lincoln Electric System and its activities. Thereafter, I was the public advocate for the Public Service Commission for natural gas matters. And while it doesn't have much to do with electric, it did have to do with energy. And, as a member of NASUCA, that was a national utilities consumer advocates association. I did get to go to their various functions and was-- I encountered an awful lot of electric issues that, that they dealt with. I think that's really about it. To be honest with you, I don't know an ampere from an ohm, but I can study the statutes and will be familiar with the-- with the Power Review Board and its functions and duties. I have actually practiced in front of it a couple of times. Why would I want to be on the board? Well, as I said, I'm retired. I have time to devote to civic activities. I think this is a very worthwhile board to be a member of. I also think that energy is one of the cutting edge issues of our time in our nation and our state. And so it would be very interesting to be at one of the points of contact and interest on that issue so.

BOSTELMAN: Thank you, Mr. Austin. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Austin. Thanks for your willingness to serve. I just got to point out in your additional comments section--

WILLIAM AUSTIN: Uh-oh.

J. CAVANAUGH: --about any board experience you have, you said: Primarily, I just tried to stay out of the way so.

WILLIAM AUSTIN: I did say that.

J. CAVANAUGH: So I appreciate that note. And I guess my only question would be, how did we get you to get off of the sidelines and get involved now?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

WILLIAM AUSTIN: Well, as I said, my wife is here today. I think she's supporting me, I'm not sure, but I believe she wants me out of the house, so I figured this would be a good opportunity. I, I made an application last year and came around this year they needed a-- someone for the attorney position, and I just felt it would be a good thing to do.

J. CAVANAUGH: Thank you.

WILLIAM AUSTIN: Sure, you're welcome.

BOSTELMAN: Do you see any circumstances under which you might become involved in a conflict of interest in the position which you've been appointed?

WILLIAM AUSTIN: I can't imagine one. I have-- I'm not doing anything for anybody these days with one lawsuit that I am handling for myself and so that's it. No, I don't think so. I can't see any.

BOSTELMAN: OK. Other questions? And you've had the opportunity to be on the board, set in meetings already, have you?

WILLIAM AUSTIN: Well--

BOSTELMAN: Attend them anyway.

WILLIAM AUSTIN: Yes. I practiced in front of the board on a couple of occasions. I represented a client with a small, small public power district in northeast Nebraska, and so. And I, I have known Mr. Texel for a number of years. And so, yes, the answer is yes. And I have served on another state board. I was on Nebraska Liquor Control Commission, which I know a lot more about--

BOSTELMAN: OK.

WILLIAM AUSTIN: --from a personal standpoint.

BOSTELMAN: All right. Any other questions from committee members? Seeing none, thank you for your willingness to serve.

WILLIAM AUSTIN: Thank you.

BOSTELMAN: Thank you, sir. Anyone like to testify as a proponent for the gubernatorial appointment of William Austin? Please step forward.

Transcript Prepared by Clerk of the Legislature Transcribers Office

Natural Resources Committee February 7, 2024

Rough Draft

CHRIS DIBBERN: Good afternoon, Senator Bostelman, Ms. Lamm, and members of the Natural Resource Committee. My name is Chris Dibbern, C-h-r-i-s D-i-b-b-e-r-n, and I'm here in support of Bill Austin's confirmation to the Nebraska Power Review Board. Mr. Austin, as he said, served as the public advocate for 11 years and on the natural gas issues in front of the Public Service Commission. He has a long history of outstanding service to Nebraska through the law, through his clients, and through ratepayers in the state of Nebraska. So I would recommend to the committee to confirm his confirmation to the Power Review Board. I think he'll be an excellent addition. I have attended the Power Review Board for over 30 years, and you have sent very good people to the Power Review Board, and I think Mr. Austin will be one of those. Thank you. Any questions?

BOSTELMAN: Questions, committee members? Seeing none, thank you very much. Anyone else like to testify in support of the gubernatorial appointment of Mr. Austin? Any other supporters? Seeing none, anyone like to testify in opposition? Seeing none, anyone like, like to testify in the neutral capacity? Seeing none, that'll close our hearing of the gubernatorial appointment of William Austin to the Nebraska Power Review Board. Next, we'll have the gubernatorial appointment for David Liegl to the Nebraska Power Review Board. Good afternoon.

DAVID LIEGL: Good afternoon, Chairman, members of the committee. I appreciate your time and will try to be as brief as possible. My name is David Liegl, L-i-e-g-l. I'm an attorney and a CPA here in Lincoln, still practicing. I was asked by the Governor to be the accountant member of the board, and I think that I can bring some expertise from the business side to what the, the board needs when it makes its deliver-- deliberations in the particular cases that may come before it. I was born and raised here in Nebraska, graduate of the University of Nebraska undergrad and law school, been in practice since 1984 and have 4 kids and 20 grandkids. I'm not sure what else I can, can add to that other than I have a wide, varied background, not in-- not in the utilities. But I think that business is business, and I can help in that regard.

BOSTELMAN: OK. Thank you. Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Liegl. Thanks for your willingness to serve on this. So you point out kind of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

the big thing. You're to fill the specific position of the accountant on the board.

DAVID LIEGL: Right.

J. CAVANAUGH: I think, somebody can correct me if I'm wrong, we have a bill this year that would eliminate the requirement that there be an accountant on the board going forward. If that were to happen, would that affect your willingness to serve in the future?

DAVID LIEGL: No.

J. CAVANAUGH: I guess you were recruited to be there because we needed to fill a specific position, but your willingness to serve would go beyond just the fact that you're an accountant?

DAVID LIEGL: Yes.

J. CAVANAUGH: OK. Thank you.

DAVID LIEGL: Sure.

BOSTELMAN: Senator Jacobson.

JACOBSON: Yes. I guess my question is a little bit more of maybe even a comment. I think our paths crossed several years ago when--

DAVID LIEGL: Yes, it has.

JACOBSON: --you did some accounting work for me. And, and so I can personally attest to your skills there. And I'm just glad to see that you've agreed to come in here and take this job on. And I'm assuming when you say you're still practicing, you're still practicing as a CPA, is that correct, or an attorney also?

DAVID LIEGL: Both.

JACOBSON: Both. All right.

DAVID LIEGL: Primarily in the tax area.

JACOBSON: Gotcha. All right. Well, thank you.

BOSTELMAN: Other questions? I'll ask you the same question as I asked the previous person. Do you see any circumstances under which you

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

might become involved in a conflict of interest in the position of which you have been appointed?

DAVID LIEGL: I have no idea how that could happen. I suppose it's possible, but I can't imagine a situation.

BOSTELMAN: OK. Senator Moser.

MOSER: So you're an accountant and also an attorney. Which do you enjoy practicing more?

DAVID LIEGL: Well, that depends on the day, Senator, and the client, quite honestly. I, I don't have a preference really.

MOSER: Well, that's-- there's no wrong answer.

DAVID LIEGL: Yeah.

MOSER: It just seems to me like being an attorney might be more interesting than accounting. But that's just because I hate paperwork.

DAVID LIEGL: Yeah, well, and then in the tax world, it's all pretty, pretty plain.

MOSER: Do you know how to claim the extra property tax refund that you have to--

DAVID LIEGL: I do.

MOSER: --fill on line 43? Spread that around a little.

DAVID LIEGL: OK.

MOSER: Thank you.

BOSTELMAN: Senator Jacobson.

JACOBSON: I actually have one more follow-up. I'm, I'm trying to jog my memory. So did you go to the University of Nebraska-Lincoln?

DAVID LIEGL: I did.

JACOBSON: On the football team too?

DAVID LIEGL: I was.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

JACOBSON: That's what I thought. All right. All right, I rest my case.

DAVID LIEGL: I--

JACOBSON: That was back when we had a real football team.

HUGHES: Hey.

BOSTELMAN: OK.

DAVID LIEGL: Yeah.

BOSTELMAN: Go ahead.

DAVID LIEGL: I, I was-- I lockered next to the Governor for 2 years.

BOSTELMAN: Your position was that you played?

DAVID LIEGL: I was a defensive back, returned punts.

BOSTELMAN: Awesome. Other questions? Seeing none, thank you for willingness to serve and coming in today. Thanks, sir.

DAVID LIEGL: Thank you.

BOSTELMAN: Anyone like to testify in support of the gubernatorial appointment to the Power Review Board of Mr. David Liegl? Anyone to testify in support? Seeing none, anyone like to testify in opposition? Seeing none, anyone like to testify in neutral capacity? Seeing none, that will close our hearing of the gubernatorial appointment of Mr. David Liegl. Thank you very much for being here today. Next we will have the opening on LB956. Just for numberswise, how many people plan to testify on LB956 just so we prepare? OK. The clerk just likes to know to give the next testifier a heads up so we have a number there. Welcome.

SEAN FLOWERDAY: You've got a relief pitcher today.

BOSTELMAN: OK. Good afternoon. Welcome.

SEAN FLOWERDAY: Good afternoon, Chair Bostelman, members of the Natural Resources Committee. For the record, my name is Sean Flowerday, that's S-e-a-n F-l-o-w-e-r-d-a-y. Senator Bostar regrets he can't be here to present this bill. He's actually presenting 2 directly across the hall right now. We had a scheduling conflict and couldn't move it around. So I am here today to present LB956 to you, a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

bill to replace continuously blinking aviation warning lights that are mounted on top of wind turbines with light-mitigating technology systems approved by the Federal Aviation Administration. LB956 requires that any new wind energy development or any existing wind development that undergoes a repower, which constitutes a substantially physical modification of at least 75% of the wind turbines in the wind energy conversion system, shall make an application to the Federal Aviation Administration for approval to install a light-mitigating technology system. This light mitigating technology can detect nearby aircraft and allows for safe air travel in the area of wind turbines without the nuisance of continuous blinking lights. Aircraft detection light systems, sometimes referred to as aviation detection light-- lighting systems, are radar-based systems that prevent wind turbine lights from turning on unless an aircraft is approaching or descending toward a wind development. With ADLS, the Federal Aviation Administration requires lighting to be activated and flashing if an aircraft is at or below 1,000 feet above the tallest wind turbine and is approaching a 3-mile perimeter around the facility. This legislation goes on to clarify that all costs associated with installing light-mitigating technology systems will be incurred by the owner of the project and will not fall to taxpayers. We also have taken steps to make it clear that nothing in this regulation will be carried out in a manner that conflicts with federal law or requirements of the Federal Aviation Administration or the United States Department of Defense. This legislation is similar to legislation already passed in Wyoming, North Dakota, and Kansas. It's clear that many neighbors find the presence of blinking lights atop wind turbines to be a nuisance. This is an easily resolvable issue, and, quite frankly, a reasonable act that any good neighbor should be willing to accommodate. No one should be forced to look at continuously blinking lights that diminish the experience of living in rural America. Light-mitigating technology systems are a ready alternative to keep air travel safe and keep nuisance to a minimum. This legislation was brought forward with the intent to lessen the impact of wind development on neighboring communities. Thank you for your time and your consideration. I encourage you to support LB956. I'd be happy to answer any questions if you have them.

BOSTELMAN: Typically we only do technical questions to staff, but I, I-- does anybody have a technical question?

JACOBSON: I do.

BOSTELMAN: OK. Senator Jacobson.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

JACOBSON: And I appreciate the fact that, that you're here for Senator DeKay, and I would normally work him over, but I won't you.

SEAN FLOWERDAY: Bostar.

JACOBSON: Bostar, excuse me, Bostar. But I, I guess my question is I'm just thinking about up in the Sandhills we have a number of ranchers who will use small single-engine aircraft that likely do not have radar. They're not radar-equipped. I don't think they're wild about having flashing lights. In fact--

SEAN FLOWERDAY: Sure.

JACOBSON: --truth be known, I don't think they're wild about wind turbines.

SEAN FLOWERDAY: Sure.

JACOBSON: If we want to get right down to the truth of it all. But I'm just trying to figure out how that would work for the aircraft that do not have radar.

BOSTELMAN: Senator Jacobson, if I may, do you have an expert coming up behind you that's [INAUDIBLE]--

JACOBSON: Yeah, that's maybe my real question. Is there somebody that can answer that question?

BOSTELMAN: --to that? Do you know? Do you have someone?

SEAN FLOWERDAY: I don't actually know. I can get you an answer on that. I, I believe that the ADLS technology, I thought was required by FAA regulations in, in the, in the airplanes themselves. So I thought that if you were within FAA regulations that, that, that technology was [INAUDIBLE]. Now I can double-check that and get it to you this afternoon.

JACOBSON: And, and then that's fine. And I again, I was, I was concerned that there may not be any other testifiers. And that is an answer I'd like to get--

SEAN FLOWERDAY: Sure.

JACOBSON: All right--

BOSTELMAN: That's fine.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

JACOBSON: --question I'd like to get the answer to.

SEAN FLOWERDAY: Yeah.

BOSTELMAN: Is there any technical-- yes, Senator Hughes.

HUGHES: I don't know if it's, it's kind of technical. I don't know.

SEAN FLOWERDAY: Give it a shot. I'll do my best.

HUGHES: OK. I don't want to [INAUDIBLE].

BOSTELMAN: Typically it's if it's something write-- within writing of the bill. [INAUDIBLE].

HUGHES: Could it be on the research? I was just-- the question is Kansas passed this bill, so do you have feedback on how it's working there. Is that OK?

BOSTELMAN: If it-- sure.

SEAN FLOWERDAY: I don't have any particular feedback other than the, the news stories that I've read about it. It seems like it was well-received.

HUGHES: OK. And was it just passed last year?

SEAN FLOWERDAY: It was just passed this, this last so.

HUGHES: Yeah. OK, thank you. That's it.

SEAN FLOWERDAY: Yep.

BOSTELMAN: Any other technical-type questions? OK, seeing none. And we'll check with Senator Bostar on some of the questions we may have. If we don't get an answer here in the hearing, we'll check with him. So thank you very much.

SEAN FLOWERDAY: Thank you.

BOSTELMAN: We'll ask anyone who would like to testify in support of LB956 to please step forward. If you're going to testify on the bill, could you please come populate the front row so we can kind of get questions answered and we know kind of where we're at and move through the hearing? Good afternoon.

JOHN HANSEN: Chairman Bostelman, members of the committee, good afternoon. For the record, my name is John, J-o-h-n, Hansen, H-a-n-s-e-n, I am the president of Nebraska Farmers Union. This is an issue that we have been working on for some time and encouraging our friends in the wind development community to look favorably, and as soon as possible, at this particular kind of new technology, which is already being partially implemented across the state. There are some developers using it, some not. But we think it's a reasonable thing to do in order to better help alleviate some of the concerns of the-- of the community. And so if we can protect public safety and still reduce the amount of conflict at the same time, it seems like a good thing to do. And I know that there's been some problems, as there always is with new technology. Never buy the first model of anything. But at any rate, it's-- they seem to be working the bugs out. So I'm familiar with, with some projects that are using this and, and folks think favorably of it. And I, I don't think it's excessive regulation. So from a, a process standpoint, if you think about public power in our state putting out requests for proposals that are really driven in many cases by, you know, is it a competent developer and what is the price point? And knowing that we want to try to keep prices low in our state, I think from a process standpoint, I think this is good legislation because it says that everybody's going to be bidding with the same standards. And so one developer won't have an advantage over another one by virtue of the fact that they don't use this technology, if you follow my drift. And so that way, if we can raise the standard and everybody is bidding using that standard, then we sort of equalize the, the difference between bells and whistles, if you will, on the turbines. So with that, I would end my testimony and be glad to answer any questions if I could.

BOSTELMAN: Thank you, Mr. Hansen. Questions? One question. I-- when you said it's currently being employed just like in other states, we don't have the systems being employed-- deployed in Nebraska. Do we have them in Nebraska already?

JOHN HANSEN: Yes.

BOSTELMAN: So what's the need for the bill if we already have them? I mean--

JOHN HANSEN: Well, because some are, some aren't.

BOSTELMAN: Oh, I gotcha.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

JOHN HANSEN: I'm trying to be tactful here.

BOSTELMAN: Yeah. Are there more than one types of, of radar system, deployment system that they have? Are there more than one company, more, more than one types that they use, do you know?

JOHN HANSEN: I do not know whether there's, there's competing technologies that do the same thing.

BOSTELMAN: OK. Any other questions? You know, one question, I guess just if we had someone here, more technical person, question I have is just how they function, how they work, where they're placed on the turbine itself. Because if the blades are on one side and it's here and it's supposed to be looking out that way, is there interference from the rotation of the blades with that or not? And I, I'm sure you probably don't know that part of it, but it's kind of a technical question. I'm curious about how you make sure you've got 100% coverage, because my understanding is when they look at these, they go per turbine. So you don't do the whole field, you-- it's they look at one turbine, then they go to the next turbine to make sure that they have a proper coverage. And I just don't know how that works.

JOHN HANSEN: And I've never heard that-- a technical explanation by a company explaining exactly all of those kinds of things. And we do have a developer that has a relatively new project that uses this technology, and that was one of the reasons that we've been encouraging that developer to have an open house and explain how that technology works.

BOSTELMAN: Sure.

JOHN HANSEN: But so I'm-- it doesn't take very long to exceed my technical expertise.

BOSTELMAN: I think kind of going along what Senator Jacobson said, is there a size of a-- of a aircraft that it will or won't detect? off. So if you have a-- again, it's a technical thing. But I don't know if you've-- since you have a little bit-- you have more knowledge than I do, we do on it. It's, you know, if there's, if, if it's an Ultralight that, that a person is flying, if it's something like that is-- are those things picked up? Or are we mostly talking Cessnas and above?

JOHN HANSEN: I do not know.

BOSTELMAN: OK. That's fine.

JOHN HANSEN: Great questions, though.

BOSTELMAN: I mean, just curious.

JOHN HANSEN: Questions that we've sort of asked ourselves. But I don't have answers to them.

BOSTELMAN: Sure. Other questions? Senator Jacobson.

JACOBSON: Well, I just have one. I guess to be clear, the bill as I read it is basically requiring this new technology. And so I assume then the lights, current lights are going to go away. And so that-- I am very interested in knowing the answer to that question. I mean, obviously a number of these light aircraft are not going to be flying at night, but you could have foggy conditions. You could have other conditions where they're checking cattle, looking for stock tanks and all of a sudden they're crashing into a-- into a wind turbine because they couldn't see it and didn't know it was there. So that, that would be my primary concern. So I look forward to answers to that question. So thank you.

JOHN HANSEN: You bet.

BOSTELMAN: Any other questions? Seeing none, thank you for your testimony.

JOHN HANSEN: Thank you very much.

BOSTELMAN: You bet. Next supporter for LB956, please step forward. Anyone else want to testify in support? Anyone to testify in opposition to LB956? Seeing none, anyone like to testify in the neutral capacity? Good afternoon and welcome.

DAVID BRACHT: Good afternoon. Good afternoon, Chairman Bostelman and members of the committee. Thank you for allowing me to be here today. My name is David Bracht, and that's spelled D-a-v-i-d, last name B-r-a-h-c-t. I'm an attorney with Kutak Rock and a registered lobbyist with Catalyst Public Affairs. I'm testifying today in a neutral capacity on LB956 on behalf of Invenergy, LLC, which has had operating wind projects in Nebraska for more than ten years. First, to be clear, despite coming in the neutral position, we are very supportive of the general concept of LB956, particularly to the extent that it, it applies this light-mitigating technology to, to new projects. Because Invenergy, as in my experience, all of the, the good developers want to be good neighbors and respond and use new technologies when they

become available for the benefit of the communities that they work in. However, requiring this light-mit-- mitigating technology, or it's sometimes referred to as aircraft detection lighting systems, on existing wind projects outside of a repowering or recontracting, does not recognize the way these projects are financed or operated and will result in an extreme hardship on, on those current owners. I've spent much of my career in economic development in Nebraska, both in agriculture and in the broad range of renewable energy, both as ethanol and biodiesel. And I've done that both as a banker and as a lawyer. I also had the privilege to be the state-- Nebraska director of energy, during the prior administration, and served in that role from 2015 until late 2018. When I became director of energy, Nebraska had less or just barely over 700 megawatts of wind capacity in operations. Today, we have over 3,500 megawatts, representing a \$6 billion investment. Paying over \$37 million each year to landowners in lease payments, and in my mind, very important, \$17 million each year in property taxes to the local communities where those projects operating. And that doesn't even speak to the, the, the jobs that are held there. Some of those 33 wind projects that are currently operating today have been operating for nearly 20 years, which is nearing the end of a typical power purchase agreement that wind projects are generally constructed under, which are typically from a 20 to 25 years. The term of the power purchase agreement is really significant because it goes to the financing of how these projects are. Because there isn't a fuel cost, all of the cost is front-loaded and, consequently, financing becomes very important. And the way the power is sold is typically on a flat price or perhaps with an inflation-- inflator over a 20 or 25-year period. Adding at the end of 10 or 15 years of operation, after all of those contracts have been put in place, a new significant expense, is a really extreme financial hardship. And one, frankly, I'm not sure even-- we'd have to think about how it would even be reflected because these projects typically operate as standalone businesses. So that's the concern that we have and again are testifying in, in, a neutral position. I'd be happy to answer any questions.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Bracht. So I was kind of following along what you're saying and trying to find a spot in the bill. So your, your concern is about the requirement that by 2035, if folks haven't repowered by then, they still have to install?

DAVID BRACHT: That's correct. So under the terms of the bill, and perhaps going to what Senator Jacobson and asked about as well, the-- this requirement would apply to all new projects, which is dealt with just by it becomes a cost and would be calculated into that corporation. The second type of project, I would call, is any project that is being repowered or recontracted. And again, you'd be in a situation-- what we mean by repowering is, particularly as we've seen technology improve, I think about it and spent a lot of time in greater Nebraska talking with farmers. It's like having a combine, a really expensive combine-- although, combines are pretty expensive too, but a really expensive combine on the top of that tower. And so in a repowering situation, we've had one project thus far in Nebraska do this, they'll deconstruct either completely or just the, the turbine they sell and put in a new one, new ones for the project. This-- the bill as written would require in those situations that an ADLS system also be added. Where the concern comes from, and I kind of go in length in the hypothetical, let's say you had a project that began operating in, in 2020. And so starting in 2020, 15 years out under the law Section 2(b)(1) [SIC] of the, of the proposed bill, not later than 2035, that project would have to have this system added. And in that hypothetical, if I had a project that had started-- had been commissioned in 2020, 2035 comes around. It's been operating for 15 years, it only has 5 years left on its PPA, that owner, that business is going to be faced with a fairly significant-- more than fairly-- multi-million-dollar capital expenditure on a project that all the contracts are already fixed, all the lending arrangements are fixed and is only going to operate for another five years. And so that's really the challenge that we see within the bill. And, and I would note that in looking at Kansas, Colorado, Texas, I've listed them in my written testimony here, South Dakota, all of those, and I believe, at least in a couple of those states, a provision that had a "no matter what in so many years", was, was considered. And I don't believe any of the states adopted that for the very same concern. That you'd have, again, a business with fixed contracts and this new government regulation that imposes a new requirement that was unexpected.

J. CAVANAUGH: So I got two follow-up questions for you, sorry. One is, do you have any idea how many projects are in that kind of space that are already into effect, that will-- are not likely to repower between now and 2035?

DAVID BRACHT: Well, no. The energy office-- or the Nebraska Department of Energy and Environment does have a map that I don't have in front

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

of me right now, but that does have the starting, you know, when they were commissioned. And we have seen a fair amount of activity. I use the 2020, you know, so, so you're going to have a variety of-- and, and projects, if-- usually that repowering is pretty frequently somewhat dependent on did this site turn out to be as productive as we thought it was? And so they'll usually know that after the first ten or so years. And if they-- so I can't answer the question. I could look at the map, there will be some distinctions there.

J. CAVANAUGH: OK. And then my second question is, do you have a suggested change that would work here?

DAVID BRACHT: Again, what I understand in talking to colleagues that were watching it in those other states, they all, at least some of them considered. No one ended up adopting it. That maybe means to me that there's not just a whole lot that, that, that we can-- so I don't know that anybody else came up with a solution. And I don't have one either.

J. CAVANAUGH: All right. Thank you.

BOSTELMAN: Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you, Mr. Bracht, for your testimony today.

DAVID BRACHT: Sure.

BRANDT: Do you have any idea what the cost is?

DAVID BRACHT: I don't have a precise. I know that it's in the multiple millions, \$4 to \$6 million. And of course, that depends on the size of the project. So that, so the number that I saw in some background materials was, was on a, on an average-sized wind project. And our wind projects have now been in-- normally in about the 100 megawatt range.

BRANDT: OK.

DAVID BRACHT: And the ones that would likely be captured by this, I think.

BRANDT: So I spent some time in one of those farms in that-- in that range on a very dark night. Because it just happened they had a Christmas party there. It's blinding in the dark when all of these go

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

off and you're in the middle of these, of these towers. I would hope a solution could be found sooner than 15 years or 2035 for the people that just live right underneath these things.

DAVID BRACHT: Sure. And, and certainly I understand that. And Senator Brandt, you know, I think this reflects, among a number of different things that as we've seen the development, wind is somewhat newer here, although, as I said, we've got projects that have been operating for 20 years. Going to Iowa, they've been operating for 40 years. And so on-- this would be an example where the industry has been looking for, because of that reason, technologies that met the-- met the regulatory requirements, the FAA was, you know, had to meet all their requirements as well. So that certainly is, you know, something to consider. One of the things I'd underscore again, though, is this is a valuable natural resource to the state of Nebraska. It provides a significant amount of property tax to the local communities in there. Yes, there's things that aren't as nice. I grew up on a cattle yard. After it rains, you don't want to live on a cattle yard either. It's all those things that we have to think about how do we support the businesses and the communities that are there. And, and so I agree with you trying to come up with those things. I'm looking at it as an individual business though. If you had all your contracts set up, I only have five years, that multimillion dollar expense, there really isn't anywhere else for-- to go for that money at that point.

BRANDT: All right. Thank you.

BOSTELMAN: So is there, what's the market for this technology? Is there more than one company, do you know? Is it competitive, are are we tied to only one company that puts on the--

DAVID BRACHT: What I believe is-- and I, I didn't have it in the direct notes I could refer to when you had asked that earlier, I think the answer was that there's currently two vendors. And, and to dig a little bit deeper, you know, one of the concerns that we'd have is exactly that point. In a time of supply chain disruptions, and then if you've got limited number of vendors that, you know, being able to do that. But again, it's really an important technology. So in general, Invenergy and, and frankly, most-- many of the developers I work with, are in support of these kind of technologies. We just want to hope that there's given some flexibility to be able to work through that.

BOSTELMAN: But my-- I guess my comment or question would be, do you have, in your instance, something 15 years in. But the developer or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

the owner of that facility is the one who determines whether you continue on with that contract or not, not the property owner. It's, it's just the developer, the owner of that property. And what we've heard from public power over and over again is the need for new generation is significant in this state and that we're going to have to build new generation, a lot of it, to meet the demand, the load that's coming on. So my, you know, my question kind of comes down to at what point in time do you include these other ones? Because exactly what Senator Brandt said, we got to wait until 25 years to figure out something that's 15 years in. Well, then if we're another 5, 10 years out before you put these light-mitigation systems in, you're talking 20 and 30 years on the facility that could have had them 15 years ago. What-- where is that breakpoint? Where is that point that, that that company now makes that investment? Because the way it sounds to me, the need is the load is there, the need is there for a long time so--

DAVID BRACHT: So--

BOSTELMAN: --we can't--

DAVID BRACHT: I can't give a precise. But what I, I think that following your line of thought, which is-- and I can tell you this, it's ex-- there's a lot of front-end cost to building a wind project. And so the reason they get repowered is because I don't have to do all of those steps again, it's really just the technical, do I-- what do I replace? Do I have the transmission that's necessary? So in the scenario that you pointed out, which we've all heard, that the growing demand for power, that's going to likely mean many of these projects are going to be repowered. And so I'm really looking mostly at those relatively few. I, I'm speculating on relatively few, but that's what I think-- the relatively few that for whatever reason end up not being repowered. And so those will be the ones that are, are likely where that circumstance will, will occur. I had the, the occasion to actually a couple times on some projects in driving back and forth to far southwest Kansas, and something that was striking to me, and you see this too, when you're going from Omaha to Chicago, when you're driving across Iowa, you see the changes in technology, length of blade, shapes of blades, a whole variety of things. The first wind project I worked on in 2007, I think what-- I know it was less than a 1 megawatt. I think it was a 750 kW turbine, but maybe it was a 1 megawatt. Now we're talking about 3 or 4 because they're using these new technologies. That makes me think that hopefully in most locations that are in a place with good wind resource, the value of upgrading that technology is going to be sooner rather than later, and that's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

what we'll end up seeing. And so what I'm wanting to avoid, however, is that remote occurrence where it's not a great place, but it ends up really being a burden again on a business that's-- it's a Nebraska business generating jobs, lease payments, revenue. And under a set of contracts, that it's going to be hard to figure out who covers that expense.

BOSTELMAN: OK. All right, any other questions? Seeing none, thank you for your testimony.

DAVID BRACHT: Thank you. I appreciate the opportunity.

BOSTELMAN: Um-hum. Anyone else like to testify in a neutral capacity on LB956? Seeing none, unless there's some technical then that closes our hearing. We do have 10 proponent comments, 1 neutral comment on LB956. That will close our hearing on LB956. Our next bill will be LB969, Senator DeKay.

DeKAY: So this is Natural Resource.

BOSTELMAN: Welcome. Good afternoon, Senator DeKay.

DeKAY: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. For the record, my name is Senator Barry DeKay, spelled B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska, and I'm here today to introduce LB969. This is a very simple bill which would increase the dollar threshold for advertisement of sealed bids for public power districts. Currently, in a district with a gross revenue of less than \$500 million, which Norris Public Power would be a good example of, the threshold is \$250,000. In a district with a gross revenue of \$500 million or more, such as Nebraska Public Power, the threshold is currently at \$500,000. In LB969, the threshold for small districts would rise to \$750,000, while the threshold for large districts would rise to \$2 million. These thresholds were last updated in 2009, and LB969 would better reflect the current costs and needs of our public power districts. Both large and small districts support this bill. You will hear from others who will testify after me. With that, I am happy to try to answer any questions you have. Thank you.

BOSTELMAN: My first question, are you staying for closing?

DeKAY: I will be here for closing.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

BOSTELMAN: Are there other questions from committee members? Senator Jacobson.

JACOBSON: Well, first, I think I want to apologize. I referred to Senator Bostar as you earlier, so I'm sure I've insulted one of you. I just don't know who.

DeKAY: You should apologize to Senator Bostar.

JACOBSON: Thank you. I just want to clear that up. So I want to make sure and obviously I'm a cosponsor on this bill. My understanding is the reason for this is to be-- allow the boards to be a little more nimble. We're still having boards making decisions. So at the end of the day, we, we really want to get to the point where we can be as efficient as possible, make good decisions without being hamstrung with time delays doing RFPa and a lot of other nonsense for relatively lower dollar contracts. Is that essentially what we're doing here?

DeKAY: Absolutely. And, an example of that is, you know, prices have went up a lot over the last-- since I've been with Nebraska Public Power and time is money. And if you have to call a special board meeting to get a sealed bid process in place, such as if a facility like Cooper nuclear would be down, that's a astronomical price, because it costs over \$1 million a day to have that plant down. So if you can eliminate days on hold for meetings and getting repairs in, that would really support the cause for and it would help keep rates reliable and sustainable.

JACOBSON: And maybe a follow-up to that is and also I would assume in many cases there's really one supplier who is going to provide it. And the board still has the opportunity to negotiate pricing. But, but at the end of the day, you're, you're really going to end up probably the same provider, just spend a lot of time going through an RFP process that really doesn't provide any savings.

DeKAY: That would probably be true on the larger districts like Nebraska Public Power, but your local PPDs and your co-ops across the state with that threshold, when you're talking about bucket trucks and things of that nature, obviously \$250,000 is not going to buy a bucket truck. But those companies still have different avenues to explore as far as lifts and truck chassis and stuff like that. So there could be multiple vendors on the distribution side of it.

JACOBSON: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

BOSTELMAN: Other questions? Seeing none, talk to you at closing.

DeKAY: Thank you.

BOSTELMAN: Proponents for LB969, please step forward. Good afternoon.

SETH VOYLES: Good afternoon, Chairman Bostelman and members of the committee. My name is Seth Voyles, S-e-t-h V as in Victor-o-y-l-e-s, and I'm a registered lobbyist for the Omaha Public Power District. I'm testifying in support of LB969 on behalf of OPPD, Nebraska Public Power District, and the Nebraska Power Association. NPA is a voluntary association representing all of Nebraska's approximately 165 consumer-owned power-- public power systems, including municipalities, public power districts, public power and irrigation districts, rural public power districts, and rural electric cooperatives engaged in the generation, transmission, or distribution of electricity within Nebraska. Thank you for the opportunity to testify to the committee on this important legislation. Like to thank Senator DeKay for sponsoring this worthwhile legislation. As you said before, the statute 70-637 is designed to provide a method for public power districts to obtain competitive bids on larger dollar projects for the electric system. The \$500,000 level was established many years ago as a reasonable threshold to trigger the requirements of the statute. This threshold now needs to be raised to reflect the impact of inflation and the growth of public power districts. The change will result in cost savings, which LB969 does. Currently, it takes about 100 hours or so to perform a sealed bid from engineering process creation to execute a contract with a vendor. Under a nonsealed bid, the total time is cut in half. Estimates for us at OPPD on cost of this, we would roughly receive an 80% savings. In addition, the sealed bid process fails to account for a constantly changing conditions. These are local, national, even global impacts are impacting-- that are happening in real time would impact the utility's ability to procure goods and services in an efficient and cost-effective manner. This inflexibility generates bid proposal uncertainty for potential vendors. It creates ambiguity around the project schedules. LB969 is a worthwhile bill that should be supported and advanced out of the committee. Thank you for your time and I will try to answer any questions you may have. I'm not the expert on these kind of things. I even dressed up for you guys. I wore a tie first time this year.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

BRANDT: Thank you, Chairman Bostelman. Thank you, Mr. Voyles, for your testimony today. Is there a procedure in place using the scenario that Senator DeKay outlined, a nuclear plant goes down? You have a part critical that's several million dollars. Surely you don't have to wait to do a request for bid and put out a bid package and wait for that to come back before you can get, get back into operation.

SETH VOYLES: I'm going to be speculating a little bit so I can get back to you on it, but I believe that if there's something in emergency, we can do kind of an emergency procedure to do those kind of things, just in case.

BRANDT: All right.

SETH VOYLES: The other thing, too, on some of these things, no matter what happens, even if, you know, Senator Jacobson was exactly right. This is going to help us and alleviate our boards from having to do a lot of these things. But our board is also briefed on all this stuff, too, so they know what it is. It's just not having to go through the formal procedures of that as well so. But on something of urgency, yeah, we can-- in emergency situations, I think we can act.

BRANDT: All right. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here, Mr. Voyles. And I really do appreciate you wearing a tie. I didn't even notice. Mike and I are-- Senator Jacobson and I are like Abbott and Costello. So thanks for being here. So for those of us who are maybe a little less informed in how this process works, there are 2 purchase acquisition processes we're talking about here, sealed bids and nonsealed bids. Can you just sort of give me the broad strokes of how timeline, how each of those works, what's involved?

SETH VOYLES: Well, that is probably the broad strokes that I am able to give. I will get you a formal answer on that from my guys who do these bid process. I'm a-- I'm a registered lobbyist so I probably know as much as you do on that. Sorry.

J. CAVANAUGH: So-- well, I'll ask you a follow-up then. So do we have an idea of how many-- how many acquisitions exist in this delta between for a building or an organization like OPPD between was it \$500,000 and \$2 million right now?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

SETH VOYLES: Yeah, we're quantifying that now. We were trying to get that because we-- a lot of the things that we do are within that threshold anyway. It could be from switchgear or whatever it is. You know, even small things at times now with inflation it's getting over that threshold. So we're trying to quantify exactly how many of those things we have now, and we'll, we'll get that to the entire committee.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: I guess my question would be along the same lines I have if you looked at one these [INAUDIBLE], that \$250,000, \$500,000 was set, if you go to the CPI over years of growth over the years, where would we be today to where we're at now? I guess going from half a million to \$2 million seems like a bit of a jump. And I'm curious. I think it's along Senator Cavanaugh's question is like, you know what, what is this effect? How much-- what are we looking at, number of, of purchases, those type of things? So if you can get back with us, that would be great.

SETH VOYLES: I will absolutely get you those numbers.

BOSTELMAN: Unless you have that-- unless you [INAUDIBLE]

SETH VOYLES: I don't have those numbers off the top of my head, but I will-- I promise I will get them for you.

BOSTELMAN: OK. Any other questions? Senator Cavanaugh.

J. CAVANAUGH: Well, Senator Bosman again, this is like everybody's got inside my head today. Thank you, Chairman Bostelman. I did run the CPI numbers on this for us. So the \$250,000 adjusted for inflation from 2009 is \$363,196. And so the other part would be twice that, which I was just trying to do the math, but about \$720,000. So that's, that's the CPI adjustment from 2009, the 2 values.

BOSTELMAN: For the 500 or for the quarter million?

J. CAVANAUGH: The quarter million would go up to \$363,000, adjusted for CPI. And the 500 would go up to \$728,000 we'll say. I can-- I can get back to you with the actual math here in a minute. I was just doing it longhand while you guys were talking.

SETH VOYLES: And we can get that from our accountants too.

BOSTELMAN: That's fine. Any other questions? Senator Jacobson.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

JACOBSON: Just one, I guess maybe. I'm not asking for the technical side, but I would just maybe point out that, that when it comes to bucket trucks and some of these kinds of things, when you do bids, sealed bids, obviously the board or management would put together the specs for that bid. So you can imagine that if I spec out a truck that only, say, Mack or Kenworth or somebody builds, they're probably gonna get the bid. Because you can spec it out, that makes it very difficult for others to do it. So at the end of the day, I'm less concerned that it's going to be gamed. I think it's really more from my perspective it's an efficiency issue here with boards and management trying to do the right thing and try to hold costs down as opposed to driving business one direction or other, because they'd still have that opportunity in how they put the bid specs together is my thought.

SETH VOYLES: That's exactly right. Ours is about efficiencies here, just cutting some of the time down because we get a significant cost savings from that time that's cut down [INAUDIBLE]. And we still brief our board on everything that's going on anyway so that they can also see and provide that oversight if they need.

BOSTELMAN: OK. Other questions? Seeing none, thank you for your testimony.

SETH VOYLES: Thank you.

BOSTELMAN: Next proponent of LB969. Good afternoon

GWEN KAUTZ: Afternoon. Chairman Bostelman, Senators, I appreciate the opportunity to speak to you in support of LB969. My name is Gwen Kautz, G-w-e-n K-a-u-t-z, and I am the general manager for Dawson Public Power District. I am also representing the Nebraska Rural Electric Association in my capacity to testify today. I have worked under the \$250,000 bid for years, and it has served us fine. But with a lot of the changes that have happened in the last few years, I can tell you that it is no longer sufficient. I appreciated Senator DeKay's bringing this bill forward. So I want to give you a perspective using one distribution system component. I have a lot of numbers, and that's why I gave you a handout so that you can take a look at the changes. So in 2005 we purchased a 10 MVA transformer. And it is for-- it's a 3-phase transformer for a substation. We purchased one. We have 50 substations. So in addition to that, we try to have a spare. That's part of the deal. In 2005, it was \$168,000. In 2012, it jumped up to \$240,000. In 2017, it dropped. That was a federal administration change. And then in 2022, we had to look at \$532,000

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

for a transformer. Keep in mind, we still need to buy 2. We received 6 sealed bids and they ranged anywhere from \$1 million to about 400 and-- \$500,000 if we're going to round it up. What was interesting this time around is the bids came in a little differently. They were firm-fixed pricing bids or index-pricing bids. So in 2022 when that transformer cost us \$532,000, that was 154% increase over the last time we bought one. So we learned that waiting is a difficult area, but it's not just waiting for the bid process. I know you asked the questions about how long does it take. These transformers were anywhere from 55 to 104 weeks out. And when you're asking about contingency plans, that's what the second transformer is for. But if we lose 2 of them in a year, we're still 104 weeks out at the maximum. The other thing that is significant here is manufacturing processes. These transformers are typically either square core or round core. We have our own preferences. And whether or not the low bid was going to meet that, we wouldn't know until they came in. So the firm- fixed pricing indicate-- oh, I'm out of time?

BOSTELMAN: You can finish. Go ahead and finish.

GWEN KAUTZ: Firm-fixed pricing meant that they would give us the high price then and upon delivery, 104 weeks from now, we would still pay that price. Index-pricing mean we would have to pay for the price at the time of delivery, and that they could not guarantee that price to be the same. In fact, they guaranteed it would not be the same.

BOSTELMAN: OK. Thank you for your testimony. Are there any questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here. I appreciate the numbers looking at. So I guess my, well, first question is Dawson would fall in the first category of under \$500 million. Is that right?

GWEN KAUTZ: Yes.

J. CAVANAUGH: OK. And so can you kind of explain the distinction in the processes? So when you're talking about you guys had to do a sealed bid--

GWEN KAUTZ: Yes.

J. CAVANAUGH: --which it takes longer.

GWEN KAUTZ: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

J. CAVANAUGH: Can you just kind of walk me through how long that takes and what's all involved?

GWEN KAUTZ: OK. We have, first of all, we have to put the specs together of what we need, and that can take an engineer, depending on the engineer's boss, which is me, and I pushed it. So we had to get that going. And then you have to advertise in 3 newspapers, say, I think twice and that's another 6 to 8 weeks. And then you have to give the manufacturers time to bid. So technically we're looking at 2 or 3 months before we do the bid opening. Then you can do the bid opening. Then you've got to wait for the board meeting for them to approve the recommendation. And that could be anywhere from 1 week to 3 weeks from the time we open the bids.

J. CAVANAUGH: And the other is, I'm sorry, what's the name of the other method of purchase that we're talking about here?

GWEN KAUTZ: Are you talking about the firm-fixed pricing or the index-pricing?

J. CAVANAUGH: No, I'm talking about in this bill we're allowing you to do under \$250,000 or I'm sorry, under \$750,000 you don't have to do a sealed bid.

GWEN KAUTZ: That's correct.

J. CAVANAUGH: What's that called?

GWEN KAUTZ: Just an open. That's just an open.

J. CAVANAUGH: OK.

GWEN KAUTZ: It would all-- it would actually be a very research project meeting the specifications that we currently use. So-- and I really should say that we would-- this is not something that would be abused. Public power districts are charged with providing low cost reliable power and we do our shopping.

J. CAVANAUGH: So, well, OK. Just to go back to that process, how-- what-- what's involved there and how long does that take?

GWEN KAUTZ: That would be a matter of identifying the manufacturer and we would probably look at 2 or 3 of them and finding the best buy. And then there's some components in that. We pay for I think 30% upfront.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

When they deliver it, we pay another 40%. And by the time the process is over with, there's a testing and we pay the final 10% of that.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Senator Brandt.

BRANDT: Thank you, Chairman Bostelman. Thank you for your testimony. So we pass this, this becomes the law of the land. You burn up one of your big transformers here, the example that you've got. So the first thing you do is go to engineering. Either way, you have to have the specifications on what you need to purchase. At, at that point underneath the new law, do you, as general manager, then have the power to go out and spend \$750,000? Or do you have to wait for your board to give you approval to spend \$750,000?

GWEN KAUTZ: I guess it would depend on the circumstances, but I would say that if I wanted to keep my job, I would go to the board.

BRANDT: OK.

GWEN KAUTZ: But if there were some urgent, long-term outages, big outages.

BRANDT: But they could-- they could do that in a, I would assume, a Zoom meeting,--

GWEN KAUTZ: Oh, yeah.

BRANDT: --a special, special phone call. I'm not sure how the Open Meetings Act would apply to you, but I'm sure there's a way that you could legally do that. So probably inside of, if your engineer's on top of it, inside of 2 days, 1 day, you'd have enough information to go to the-- where you know you got to go to get a bid and you've bypassed all the advertising and newspapers and, and regular meeting bid opening. So you could conceivably cut, using your scenario, a couple months out of this process?

GWEN KAUTZ: I would say I could cut 4 months pretty easily out of this.

BRANDT: OK. Thank you.

BOSTELMAN: Senator Jacobson.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

JACOBSON: Well, to follow up on that, it, it seems to me that think about back in the pandemic. You could have run these ads in the paper and done all that and got no bids.

GWEN KAUTZ: Correct.

JACOBSON: Or you could figure out what your needs are, call the suppliers that you know are out there that provide the product, find out, first of all, if they got availability, find out what they're willing to sell it to you for, contact 2 or 3 others, figure out the lowest price, order it and have it delivered and you're in business. Is that pretty much the deal?

GWEN KAUTZ: Yes. That, that would be wonderful.

JACOBSON: And along with that, you've talked about there's a square core and a round core and I would assume you try to spec it out, but you're going to probably get bids that if you want-- let's just say round. I don't know whether that's your favorite one or not.

GWEN KAUTZ: [INAUDIBLE]

JACOBSON: I assumed it would be. I like round. So-- and they bid and say, here's the price and they send you a square one. You know, so I guess--

GWEN KAUTZ: We're still in the corner because we need the transformer.

JACOBSON: Exactly. So, it just-- I'm just-- I'm back again to there-- sometimes we get so caught up in government and governmental regulations that we drive costs higher. We cause significant inefficiencies. And I think you've shown here from 2005 to 2022 what price escalation has done to make a little better understanding for people as to why we're making this jump as high as we are. Because at the end of the day, we're all kind of on the same page here. And it's not like your, you know, Cousin Joey has a company out there that you're going to buy this product from.

GWEN KAUTZ: No.

JACOBSON: All right.

GWEN KAUTZ: And, and this is one component. But Senator DeKay talked about bucket trucks. We have a lot of other parts that we have to do that would be served well by this bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

BOSTELMAN: Senator Moser.

MOSEER: So this is just, just kind of a question about the cores of the transformers. Are some more efficient than others or more reliable over time? Why would you pick one size, one shape of core versus another?

GWEN KAUTZ: As it's been explained to me that when you select a square core, there's a little bit more pressure on the corners. And--

MOSEER: The connectors are bent in sharper angles.

GWEN KAUTZ: Um-hum, but--

MOSEER: [INAUDIBLE]

GWEN KAUTZ: --it doesn't mean that there aren't preferences for that in certain areas. It's not one of our preferences. We have square cores out there.

MOSEER: Yeah, well, that's more than enough for me to understand. Thank you.

BOSTELMAN: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. I'm glad we got to the answer on that one. So just kind of going off what Senator Jacobson said there, why do we have a distinction at all? Why do we not allow our public utilities just to purchase everything through a open bid process then?

GWEN KAUTZ: I don't know. It's been this way since I started in public power, which was almost 30 years ago. So we're, we're very cost conscious. We're very driven by our directors that are elected by the people. I would say that we would be responsible and accountable on any cost.

J. CAVANAUGH: I-- well, if anybody else can tell me what we're worried about, why we have this distinction? I'm just curious why we're.

GWEN KAUTZ: I don't know.

J. CAVANAUGH: In these-- if we were to make this change, the board could still choose to require certain items to be bid on under \$750,000. Right?

GWEN KAUTZ: Yes, sir.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

J. CAVANAUGH: So go through the other bid process. Thank you.

GWEN KAUTZ: Yes, sir.

BOSTELMAN: So in the-- in your example here, your transformer, I think 3-phase transformer, '05 is 168; '22 it was \$532,000. Where do most of this type of transformer substations and [INAUDIBLE] other types of equipment they're purchasing, where's that coming from?

GWEN KAUTZ: We have, there's a plant in Missouri. I know that their-- the larger transformers can come from Mexico, but we do have some vendors. Virginia has some.

BOSTELMAN: So it just depends on the size of the, the transformer or the equipment per se, as to where that's coming from or--

GWEN KAUTZ: Yes.

BOSTELMAN: --overseas. Other places overseas they come from.

GWEN KAUTZ: Yes, sir.

BOSTELMAN: OK. Thank you. Other questions? Seeing none, thanks for coming today. Next proponent for LB969. Any other proponents? Seeing none, anyone like to testify in opposition to LB969? Good afternoon. Welcome.

FELICIA HILTON: Good afternoon. Thank you, Senator Bostelman, and committee members. My name is Felicia Hilton. I am the political director of-- for the North Central States Regional Council of Carpenters. It's F-e-l-i-c-i-a H-i-l-t-o-n. I'm here today to testify in opposition of raising the thresholds this high. I do believe that it's been since 2009. And, you know, we, we definitely understand the, the need for raising the thresholds, but our concern is that the thresholds will be raised this high. Right now, the bill language says that the sealed bid threshold is \$250,000 for public power districts less than \$500 million, and then \$00,000 for more than \$500 million. Our biggest concern is it says in the bill, tThe original language is for the construction. So this isn't just maintenance and equipment. This is for the construction, reconstruction, remodeling, building alteration, maintenance, repair, and all of those things are also included in this \$2 million to \$500 million. So it's not just buying transformers or things like that. And our concern is the transparency piece of it, which is what I believe when you look at the lowest responsive-- responsible bidder and the reason why there were sealed

bids and the bid thresholds from the very beginning is so that there is transparency and fairness in the public bidding. And the-- I don't believe that when you look at the totality of public power districts across the state, small and large, when they're bidding out work, it isn't just for equipment here and one offs. I mean, they could be doing multiple different projects at one time in this threshold. So you could be doing multiple \$2 million contracts without them being up for bid. And, you know, them coming up with the specs and having engineer do their due diligence, but at the same time not going out for bid. It could be multiple projects, not just equipment. It could be construction, repairs, all that. And we just believe that in the integrity of transparency and fairness to contractors and those that are bidding and the men and women that do the work, that having a clear bidding process and what triggers the bidding process or the, the sealed bid is important. And \$2 million is a huge threshold, in our opinion, to do a ton of work without it triggering the bid threshold. And we believe that the board deciding who is selected as contractors based on the lowest responsive-- responsible bidder is important. We're not saying that staff and folks that are, you know, working hard to figure out these issues aren't doing their job. But we do believe that the bid threshold is to create transparency in the bidding. It has been a problem throughout the years. And this is something that is-- was fought for to create so that competitive, competitive bidding in construction is fair and open. And this, I think, does the opposite when it comes to public power.

BOSTELMAN: OK. Thank you for your testimony. Is there a different amount than the \$2 million or the \$750,000?

FELICIA HILTON: Yeah, actually, Senator Cavanaugh answered that. I was going to repeat it, but since he said that, that the bidding threshold is way higher than that, the, you know, inflation index. So, you know, \$350,000, \$750,000 seems more reasonable to not trigger the bid threshold. It has been a long time, but in, you know, a lot of states often, like, every 2 years, visit bid thresholds to make sure that they're keeping up with that. They don't have these gaps, but the states do that. I cover Iowa and Nebraska, I'm sorry, Iowa and South Dakota. But they all, you know, they do things like that so it's not big jumps. They can keep up by visiting the cost of materials and what is the market doing overall? But I think that keeping within that \$350,000 to \$750,000 is reasonable since it is 2024. But the \$2 million mark, that's a-- that's a large project for, for any contractor. I don't think there's any contractor that wouldn't want to compete for a \$2 million project.

BOSTELMAN: Thank you. Questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Ms. Hilton. And you know, I just love when I anticipate people's comments, I guess. So I think you brought up an interesting distinction between basically labor contracts and purchases for equipment.

FELICIA HILTON: Yeah.

J. CAVANAUGH: Do you think that there may be room for a distinction between those 2 types of thresh-- or the 2 thresholds?

FELICIA HILTON: Typically there is in procurement for, you know, equipment and things like that versus bidding out for construction or projects. I don't know all of the workings of NPPD or OPPD or the co-ops, but typically there is a distinction between, you know, whether you're, you know, procuring something or if you're bidding something out.

J. CAVANAUGH: Do you have-- we had the nice example from Dawson about the 154% increase, I think, in the cost of just one piece of equipment over a pretty short period of time. I think it was between 5 years was up 154%, which makes a good argument for some sort of flexibility, I guess. Do you-- do you know of any examples or anywhere we could maybe get some examples in terms of the-- these sort of labor costs related to purchases or construction-related purchases?

FELICIA HILTON: I don't. I mean, I don't-- I don't know anything about what the market is doing as far as what contractors are dealing with in the field. But on the labor side, I mean, I would, you know, say that when it comes to contractors bidding work, especially if they're contractors that, you know, have a real payroll, they have work comp, unemployment insurance, healthcare and all those things versus a contractor that has all their labor off the books and they're bringing in workers to do it off the books, that makes a difference. And so when you're competitively bidding, it makes sense to see those bids. If you see something really, really low and you see a couple of bids that are really close together, if you see one really low, then you can start to question, why is this bid so low and these bids are closer together. But, I, I can't really address what the market is doing in the energy sector because there's wind, solar, you know, there's all kinds of ways in which it, it varies.

J. CAVANAUGH: OK. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

BOSTELMAN: Other questions. Seeing none, thank you for coming in today.

FELICIA HILTON: Thank you.

BOSTELMAN: Anyone else like to testify in opposition to LB969? Any others in opposition? Seeing none, anyone like to testify in a neutral capacity? Seeing none, Senator DeKay, you are welcome to close.

DeKAY: Thank you again. I did take some notes. I'll try to put them in context for you and then dealing with the distribution companies. When it comes to normal purchases, most of those costs would be covered with their look ahead. They-- like when it comes to sealed bids on bucket trucks, diggers and stuff, the timeline on those or when those bids go out, they're looking at sometimes a year out before they are able to receive that equipment. So that would be covered under normal operating procedures. Where the problem would lie sometimes is depending on how much cash on hand for normal operations for any system, disasters like ice storms or tornadoes would probably take effect where some of this will be needed to get your large poles, your towers, your wire and your people that you hire off site that are subcontractors that come in. So those costs would-- might supersede what they do have on-- cash on hand. And nuclear facilities such as Cooper, from being involved with that station for a lot of years, it takes no time at all to go north of \$2 million for a breakdown. That's almost standard. And, and like I say, said earlier, time is money. If you can alleviate any time and that system's back up, it's generating again. So time is definitely of the essence with power plants such as Cooper, Gerald Gentleman, any of those. And Senator Cavanaugh asked a question, why not take off all constraints and just go with it? It does put some checks and balances in place for normal operations. So that would be covered. And when it comes to that, speaking from experience with being with from the distribution to the transmission and generation side of the whole business, I know there's always some concern do-- doing what this bill purposes. I will say that there is still transparency, since all bills still are subject to overview and approval of the board. And bidders that come in that might have a conflict of interest, say, family members, whatever, those are always going to be addressed before those bids go out. But on most of those jobs, they're not even going to be close to that threshold. Where the threshold comes in is on the big jobs when they have power outages at Cooper. Gerald Gentleman, those are the ones who are bringing in people from across the nation to-- on a national scope to do the work on those power outages is what's covered. And so that is-- that is

where those costs skyrocket. It's not local bids that you're worried about. You're dealing with a lot of people from across the United States. I can't tell you off the top of my head on a normal 30-day power outage what Cooper has. But they bring in close to probably a thousand different contractors to work on that, to get that scope of work done in 30 days. So Gerald Gentleman is the same day-- same type of deal. When that plant goes down for working, when they take one turbine off, those people are coming in and they're there for 2 weeks working round the clock. So that's where the money is spent and it's big money. So-- and again, it still goes back to time is essence. But with all of this, I would be willing to work and address these issues. And if there is a need-- if there seems to be a need to change the thresholds or the amount of cash on hand, I'd be willing to have those conversations. But other than that, I appreciate your time today and thank you.

BOSTELMAN: Questions for Senator DeKay? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you, Senator DeKay, for bringing this bill. It's interesting conversation. Just to clarify, so I went to Cooper for the last shutdown, which was last fall, I guess, about a year ago. And those contractors you're talking about, those wouldn't all be one bid, though, right? We're talking lots of different folks who are bidding.

DeKAY: Well, I-- and somebody might be able to correct me if I'm wrong, but you have different contractors doing-- they're doing-- you have contractors coming in and doing so when that plant is shut down and they're doing the scope of work that needs to be done for that shutdown, refueling is the major deal. So yeah, that contract is bid to the refueling. But while they're still shut down, they're doing maintenance, that normal maintenance that could be done in that timeframe so that another shutdown doesn't have to occur so that they could do that scope of work. So there's different contractors coming in from all across the United States doing different aspects of work at that plant at the same time during the normal refueling cycle so.

J. CAVANAUGH: Yeah, and I got to go inside and see the inside of the turbine and everything when I was there. But I guess my question is we're not talking about an aggregate of that-- all of those different contractors aren't pushing that one bid above \$2 million. It would be if the refueling contract itself is less than \$2 million, that would be one they could do without doing.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

DeKAY: I can't-- I'm pretty sure that the refueling contract would be north of [INAUDIBLE].

J. CAVANAUGH: I'm talking hypothetically. We're not talking about aggregate--

DeKAY: Right.

J. CAVANAUGH: --contracts for one facility.

DeKAY: Right.

J. CAVANAUGH: We're talking about each individual contract that is bid--

DeKAY: Yeah. Yeah.

J. CAVANAUGH: --is what we're talking about here.

DeKAY: Each contractor would have their own bids coming in on it. So they would try to address those and try to get the best contractors in the timeline that they can work on it at so.

J. CAVANAUGH: Thank you.

BOSTELMAN: Other questions? Seeing none, thank you, Senator DeKay, for introducing LB969. We had 1 proponent, 1 neutral on comments and that will close our hearing on LB969. Thank you.

DeKAY: Thank you.

BOSTELMAN: Next we'll open the hearing on LB1260.

JACOBSON: Feeling kind of naked. I don't have my tie on after Senator Cavanaugh's comments so. If I could borrow a tie from somebody, I'd do that.

J. CAVANAUGH: I have one in my office.

JACOBSON: You have one in your office. All right. If only there were time.

BOSTELMAN: Afternoon, Senator Jacobson.

JACOBSON: Thank you, Chairman Bostelman and members of the Natural Resources Committee. As you know, my name is Mike Jacobson, M-i-k-e

J-a-c-o-b-s-o-n. I represent District 42. LB1260 addresses a unique problem to the 3 public power and irrigation districts in the state of Nebraska: Central Public Power and Irrigation District, Middle Loup Public Power and Irrigation District, and North Loup River Public Power and Irrigation District. These 3 public power and irrigation districts were created under Chapter 70 statutes. The proposed revisions do not affect the ability of other public power district board members to carry on their duties. LB1260 allows members of the board of directors for public power and irrigation districts who are irrigation customers to discuss and vote upon annual irrigation delivery rates. It also allows directors who have homes/cabins at, at district-owned lakes to discuss and vote on lot leases. The bill does not give authority for individual accounts, just standard rates for all customers. Board members were elected by their constituents precisely because they are irrigation customers, lake residents, or lake-- and lake residents so they understand the issues related to the district's irrigation operations. They are elected to represent their constituents' best interests. Anyone who is familiar with rural Nebraska understands it is often difficult to find enough people who are willing to serve on boards. Constraining the ability of individuals voting on or discussing matters related to leases and water agreements places another obstacle to attracting potential quality board members. This does not affect other irrigation projects which were created under Chapter 46, which in most cases allow only those individuals who are irrigation customers or landowners to vote as per candidates. Central currently has 12 board members. This past year, only 6 of 12 were allowed to vote and discuss the yearly water rates for the district, as 6 were irrigation customers. Voters who live and recreate at Central Lakes want someone to represent them on the board that have a voice on the lake lot leases. Three counties, Dawson, Keith and Lincoln, each have only one representative on the board. If that member is a lake customer or irrigator, that, that county isn't represented in the vote as it currently stands. Because Central's project is so diverse and complicated, it is imperative that board members are fully educated, informed about district operations. No one is better qualified for-- than those who utilize the services the district provides. Central's hydroelectric and irrigation project benefits not only irrigation customers, but those who depend on groundwater recharge and take-- take part in the many recreational opportunities provided by the project or enjoy the, the enhancement to wildlife habitat along with-- along the river, canals, and many lakes within the district. Board members need the ability to effectively represent their constituents. Prohibiting them from voting on matters

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

pertaining to irrigation contracts and/or lake lot leases does a disservice to voters who elected them to represent their interests. LB1260 was prepared in consultation with the Accountability and Disclosure Commission, which had indicated they were comfortable with the proposed language. As you can see, LB1260 is a needed commonsense solution tailored to the needs of 3 combined public power and irrigation districts' governance and the best interests of voters in these districts, while still protecting against giving, giving direct individual preference to members of the board. I ask that you would advance LB1260 to General File and would answer any questions you may have.

BOSTELMAN: Thank you, Senator Jacobson. Are there questions? Will you stay for closing?

JACOBSON: I will. And I might also just point out, as you read the language that we've changed in the bill, I know the first time I read it on page 2, you can see what we're changing. It is the intent that there would not be the ability to vote on individual contracts that specifically impact that individual board member. However, they would be able to vote on projects. So, like, as I said, if they're an irrigation customer on these blanket contracts and, of course, also on the leases, those are all standard language. So if there were some other individual matter, that would be covered elsewhere in the statutes from an accountability and disclosure standpoint.

BOSTELMAN: OK. Very good. Thank you. Proponents for LB1260, please step forward. Good afternoon.

DEVIN BRUNDAGE: Good afternoon, Chairman Bostelman and members of the Natural Resources Committee. Thank you for taking time to hear from us. My name is Devin Brundage, spelled D-e-v-i-n B-r-u-n-d-a-g-e, and I am the general manager for the Central Nebraska Public Power and Irrigation District, headquartered in Holdrege, Nebraska. And today, I'm testifying on behalf of the Nebraska State Irrigation Association, the Nebraska Water Resources Association, the Nebraska Power Association, and of course, Central in support of LB1260. Thank you, Senator Jacobson, for introducing the bill on behalf of Central. Central Nebraska Public Power and Irrigation District is probably best known as the owner and operator of Lake McConaughy in Keith County. And I think most of the members of the committee have been on the Perkins tour so understand greatly the impact that has. With well over 500 miles of canals and laterals providing direct irrigation service to more than 100,000 acres, we are one of the largest irrigation

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

service providers in the state. Central also provides the most hydropower in the state and approximately 115MW of generating capacity for hydro, hydro facilities. And we also provide a number of additional benefits throughout central Nebraska, including the contract storage for water for other irrigation and hydropower systems, recreation and cooling for other generation facilities, aquifer recharge and natural resource enhancement. Public power and irrigation districts are political subdivisions governed by publicly elected boards, and though they are not public bodies, they are also not taxing entities. And instead, we finance our not-for-profit operations through the services we provide to their customers. In the case of Central, we have 12 directors, as you heard, across 6 counties. Our primary revenue sources are from those hydroelectric sales, providing surface water irrigation, residential leases around our area lakes. As you would expect, Central's irrigation and residential lease customers look to elect fellow customers to represent their interests on the board. These customer directors bring important perspectives regarding how district policies, including a direct personal understanding of how contract terms and rates impact the district's customers, a valuable perspective that the organization and I benefit from as general manager of the district. Approximately 4 years ago, a question was raised by a constituent, and an advisory opinion was provided by the Accountability and Disclosure Commission regarding the limits to the directors' ability to vote on these, these topics. Unexpectedly, that resulted in our irrigators not being able to work on general term water service agreements and the rates as well as our lease customers talking about lease terms and lease rates as a whole class of customers. Simply put, LB1260 would allow these directors and public power and irrigation districts with residential leases or water service agreements to participate in discussion and vote on those, those topics. This would restore the historic and important role whereby directors with the unique and-- with the unique perspective of the coming from a perspective of their customers would bring. I would add quickly that, as you heard, this does not affect irrigation districts formed under Chapter 46. And I thank you for your time and would welcome any questions you might have.

BOSTELMAN: Thank you for your testimony. Questions from committee members? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thanks for being here, Mr. Brundage. So Senator Jacobson talked about-- essentially he said this would allow folks who are irrigators or have leases to participate in

votes pertaining to those things, but still wouldn't be able to engage in self-dealing, essentially.

DEVIN BRUNDAGE: That, that is correct. This is for a class of customers. If you think about a traditional public power role, I pay for my electricity and I vote on the rates for that, that, class of customer. I can't strike a deal on my own rate for my own personal meter. Same, same concept. The ability for those directors to work on general form leases and general form water service agreements and the rates that would apply to all customers.

J. CAVANAUGH: And how many people are we talking about have leases?

DEVIN BRUNDAGE: Around-- are you talking residential leases or--

J. CAVANAUGH: [INAUDIBLE]

DEVIN BRUNDAGE: --water service agreements?

J. CAVANAUGH: Well, the-- when you're saying leases in the-- this section of statute, I guess I assumed they were leases on land.

DEVIN BRUNDAGE: So the, yeah, we'll go with lake leases. There's approximately, probably 800 to 900 total at all of our area lakes, maybe close to a thousand.

J. CAVANAUGH: OK.

DEVIN BRUNDAGE: With water service agreements, I'll just jump to that, probably around 1,100 different accounts from different unique customers.

J. CAVANAUGH: And so just to clarify, they would be able to set the rate of what each one of those 1,100 pay, but not pick one person's particular one. And on the leases, they wouldn't be able to say, give a lease to this particular person or vote on something like that. It would just be general rules about leases.

DEVIN BRUNDAGE: That is correct, Senator.

J. CAVANAUGH: OK.

DEVIN BRUNDAGE: And that it would even go to the-- to the point of if I have other dealings and it happens. It happened in our last board meeting, the ability to change a water right, for instance. That's an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

individual action. And if a director were part of that, they would have to abstain from that, that action.

J. CAVANAUGH: So a, a transfer of water rights that would affect them. Is that what you're saying?

DEVIN BRUNDAGE: Specifically, correct. So same concept.

BOSTELMAN: Senator Hughes.

HUGHES: Thank you, Chair Bostelman. Good to see you again, Devin. I'm-- I feel like I'm a little bit lagging behind, but the NADC had the problem initially 2 or 3 years ago, or whenever that happened. Right?

DEVIN BRUNDAGE: September 2019 was when the advisory opinion came out.

HUGHES: OK. And then you've worked with them on this bill. What, what language made them like, yes, this is now going to be OK?

DEVIN BRUNDAGE: Our general counsel worked with the commission to develop what we brought to the.

HUGHES: Just by having the exceptions for the specifics and things like that.

DEVIN BRUNDAGE: Right. It's, it's very-- it's very specific and very surgical.

HUGHES: OK.

DEVIN BRUNDAGE: It's these 2 items and--

HUGHES: And you work with them. They're good with it so.

DEVIN BRUNDAGE: Our legal counsel had worked with them to develop the language.

HUGHES: OK. Thank you

BOSTELMAN: Further questions? Seeing none, thank you for coming in, appreciate it.

DEVIN BRUNDAGE: All right. Thank you. Thank you very much.

BOSTELMAN: Next proponent on LB1260 please step up. Good afternoon.

DAVE ROWE: Good afternoon. Thank you. Good afternoon, Chairman and members of the Natural Resources Committee. My name is Dave Rowe. That's spelled D-a-v-e R-o-w-e. Now am-- I am president of the Central Nebraska Public Power and Irrigation District Board of Directors. I also own a home on Johnson Lake, one of Central's many reservoirs and pop-- popular recreation sites. I first joined the board in 2006, elected by the voters of Dawson County. I am the only Dawson County director-- current directors, and one of 2-- of 2 current directors that reside at the-- as tenants of Central on area lakes. Likewise, there are now and have been several directors on the board that are also irrigation customers of Central. The residential leases and irrigation contracts held by myself and other directors are not unique to just us. They are the same agreements used by the district with all other similar customers. Unfortunately, the recent opinion by the Nebraska Accountability and Disclosure Commission has greatly impacted the ability for other directors and myself to do the jobs that we were elected to do. The public we rec-- the public we represent are unrepresented. We are unable to participate in discussion or vote on the very issues that we are most qualified for and were elected to do. Today, counties are often left with no effective representation on issues of importance because their elected directors are unable to participate. LB1260 will remedy this situation, allowing directors of public power and irrigation districts with either irrigation service or residential lease contracts to participate in discussions and vote on matters related to those contracts. To be clear, this is narrow tailoring. It is intentional, limited to these types of agreements alone so as to not impact important, broader purpose of existing accountability and disclosure statutes and regulations. I thank you, Senator Jacobson, and-- for introducing this bill and the members of your committee and the time and consideration. I'd be glad to answer any questions.

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

DAVE ROWE: Thank you.

BOSTELMAN: Next supporter of LB1260. Good afternoon.

TOM SCHWARZ: Good afternoon, Senator Bostelman and members of the Natural Resources Committee. My name is Tom Schwarz, T-o-m S-c-h-w-a-r-z. I'm a farmer from Phelps County and an irrigation customer of Central Nebraska Public Power. I'm here to testify on behalf of the Central District Water Users Association, representing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

Central's irrigation customers in support of LB1260. Irrigation customers are arguably the single-most important constituency of Central. The water services Central provides from stormwater in McConaughy in the west to delivery of water to thousands of acres in the east is essential to the livelihood of our farmers, and the agricultural economy in general throughout several counties in central Nebraska. It is quite common for Central irrigation customers to elect people to the board, with the understanding that as customers themselves, they will have the insights to allow them to make the best decisions in the interests, interests of their constituents. I myself was a member of Central's board nearly 30 years ago, and I assure you that the perspective an irrigation-- of an irrigation customer was crucial in my role as a director. With the recent determination that the directors with irrigation or residential contracts may not engage in discussion or vote on these matters, there is a serious concern among Central's customers that their rights to elect the board members they believe are best suited to represent their interests are now undermined, and that important decisions will be made only by those with a much less-- lesser interest or understanding of the issues. This limitation hampers the ability of the board to execute its fundamental responsibilities to the people of the district. The Central District water users strongly encourage the passage of this legislation to restore the ability of public power and irrigation districts to discuss, consider, and vote on the issues that are of greatest importance to their constituents. I'll go off script here now just for a second. This is really a pretty simple thing. There's no evildoers involved in all of this. You know, when the Legislature set up these laws, they were doing the best they could. The Accountability and Disclosure Commiss-- Commission is doing the best they can to to represent the interests of Nebraska. And the district is doing the same. We're an unusual entity at Central, and we kind of fall in between the cracks here. Unfortunately, that results in our irrigators, in this case, being disenfranchised. You know, my county didn't have a vote or even ability to speak to irrigation issues the last time it was discussed. That's a problem. And I would like to think all the members of the Legislature would recognize that and fix the problem, because that's just not right in the long run. So with that, I'll finish.

BOSTELMAN: OK. Thank you. Questions from committee members? Seeing none, thank you for your testimony. Any other supporters for LB1260? Seeing none, would anyone like to testify in opposition to LB1260?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

Seeing none, would anyone like to testify in the neutral capacity on LB1260? Good afternoon.

DAVID HUNTER: Good afternoon. Chairman Bostelman and members of the Natural Resources Committee, my name is David Hunter, D-a-v-i-d H-u-n-t-e-r. I serve as the executive director of the Nebraska Accountability and Disclosure Commission. I'm appearing on behalf of the commission in a neutral capacity as to LB1260. The Nebraska Accountability and Disclosure Commission has addressed the same issue in Advisory Opinion 205, which was adopted in 2019. In that opinion, the commission took the position that members of the Central Nebraska Public Power and Irrigation District, who had contracts with the district, should not vote on such contracts. This Opinion was consistent with the commission's treatment of other elected officials under the provisions of the Nebraska Political Accountability and Disclosure Act. That is, an elected official who has a financial interest in a matter before his or her governing body is required to abstain from voting. LB1260 carves out an exception to the conflict of interest law, as it applies only to directors of public power and irrigation districts formed under Chapter 70 of Nebraska statutes. We note that LB1260 does not directly affect the Nebraska Political Accountability and Disclosure Act. Instead, it adds a provision to Chapter 70. Creating an exception to the general conflict provisions is a matter of public policy, which we leave to the Legislature. Therefore, the commission has elected to remain neutral while providing some context for LB1260. Thank you for the opportunity to testify today.

BOSTELMAN: Thank you for your testimony. Are there questions from committee members? Senator Jacob-- Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. It's just a day where we're confusing everybody's names. Thanks for being here, Mr. Hunter. Nice to see you. So, I mean, well, first off, can we get a-- can you provide us with a copy of that Advisory Opinion?

DAVID HUNTER: Yes, I have some with me.

J. CAVANAUGH: And then do you [INAUDIBLE] saying this is a policy matter that's left up to us. Is it, as written, is it clear enough in this proposed bill that someone can engage in the debate and vote on irrigation contracts, but it will not allow them to vote on their own personal irrigation [INAUDIBLE] contract or their own leases? Is that--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

DAVID HUNTER: It-- to me, I would have to get back to you on that.

J. CAVANAUGH: OK. Because it's pretty, pretty big distinction between voting-- with the equation we're having-- we're equating it to somebody being on OPPD board and voting on electrical rates, which makes perfect sense to me, and voting on the rates that we're charging irrigators makes sense to me. But if there's somehow we are missing something and we're allowing people to engage in some sort of self-dealing, that by doing this, I think that's the thing we're all-- we would all be nervous about doing by making this change. Is that clear enough?

DAVID HUNTER: Yeah, I agree it would apply to directors of public power and irrigation districts.

J. CAVANAUGH: I'm sorry.

DAVID HUNTER: I agree.

J. CAVANAUGH: OK. Thank you.

BOSTELMAN: Further questions? Seeing none, thank you for your testimony.

DAVID HUNTER: Thank you.

BOSTELMAN: Anyone else like to testify in a neutral capacity on LB1260? Seeing none, Senator Jacobson, you're welcome to close.

JACOBSON: Thank you, Chairman Bostelman. And, and I want to say thank you also to Mr. Hunter for his testimony here today too. I think when I first read through the language on the bill, I looked at that piece and I think to Senator Cavanaugh, evidently my twin here, the-- that was my question. And I would tell you that my commitment to the committee would be that if we need to modify that language to make it abundantly clear that this deals with form agreements as opposed to an individual contract between an individual director, and the-- and that particular district, that is not the intent of the bill. And we would be very welcome to add that, either as a committee amendment or as a-- as a floor amendment, as a friendly amendment to clean that up. So that's never been the intent. The intent is really the disenfranchisement of, of the directors that are there that have entire counties that can't be represented, who have an interest in the water rates and the rates for, for the cabins and so on, on the lakes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Natural Resources Committee February 7, 2024
Rough Draft

And there no-- there's no representation. That-- that's what we're trying to solve.

BOSTELMAN: Are there questions? Senator Hughes.

HUGHES: Thank you, Chair Bostelman. Thanks for bringing this bill, Senator Cavanaugh, I mean, Jacobson. Just kidding. So, like reading this, I'm guessing the issue is because the Central Public Power District represents-- do you know how many people total? Is it, like, 40,000? Whatever.

JACOBSON: Well, I think when you, first of all, you look at the irrigators.

HUGHES: But it's like a couple hun-- or 1,100, 1,200.

JACOBSON: Well, that's just the irrigators.

HUGHES: Yeah.

JACOBSON: And then you look at the-- if you--

HUGHES: And then the [INAUDIBLE]

JACOBSON: --look at the cabins or they do lease on the cabins, then you got the irrigators and, of course, then you're setting the rates for everyone else so.

HUGHES: Yeah.

JACOBSON: So yeah, it's a huge customer base.

HUGHES: Right. So as I say, if this makes sense, then we clearly shouldn't do it, right? Just kidding. Anyway, thanks for bringing it.

JACOBSON: Thank you.

BOSTELMAN: Other questions? There was 4 proponent comments on LB1260. And that'll close our hearing on LB1260. Thank you for coming to your Natural Resource Committee today.