

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Natural Resources Committee
March 07, 2013

[LB522 LB601 CONFIRMATION]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, March 7, 2013, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB601, LB522, and gubernatorial appointments. Senators present: Tom Carlson, Chairperson; Lydia Brasch, Vice Chairperson; Annette Dubas; Ken Haar; Jerry Johnson; Rick Kolowski; Ken Schilz; and Jim Smith. Senators absent: None.

SENATOR CARLSON: Welcome to the Natural Resources Committee. I am Tom Carlson, state senator from District 38 and Chair of the Natural Resources Committee. Committee members, he's not in the chair yet, but to my far left will be Senator Rick Kolowski from Omaha, District 31. And then next to him is Senator Ken Haar from Malcolm, District 21; then Senator Jim Smith from Papillion, District 14; then Senator Ken Schilz from Ogallala, District 47. To my immediate left is Laurie Lage, committee counsel, and to my far right Barb Koehlmoos, the committee clerk. And then next to her is Senator Lydia Brasch from Bancroft, District 16, she is the Vice Chair of the Natural Resources Committee. Next her is Senator Jerry Johnson from Wahoo, District 23. And then Senator Annette Dubas from Fullerton, District 34. Our pages for today are Tobias Grant from Lincoln and David Postier from York and they'll be serving us today. Today we have confirmation hearings on Tod Brodersen, Mark Ondracek for the Nebraska Ethanol Board; and then we have LB601, Senator Bloomfield, and LB522, Senator Christensen. If you're going to testify, please have picked up a green sheet by either door and fill that out before you come to the chair to testify; give it to Barb, the clerk, in that box there. And if you don't wish to testify, but want your name entered in the record, there's a white sheet that you can sign back there and that will make you an official part of the record without testifying. If you don't choose to testify, but you want to have something written entered into the record, to be read into the record, you can hand that out, give it to the clerk, and we'll see that that gets read into the record. If you have handouts, there needs to be 12 pages, or 12 of them, and if you don't have 12, then tell our pages and they will try to help you out on that. When you come up to testify and sit down at the chair, you'll have the lights in front of you and the green light comes on and that means you've got four minutes; and then when the yellow lights comes on that warns you you've got a minute to go; when the red light comes on, it's time to wrap it up and if I don't think you're wrapping it up, I'll try to encourage you. So...and then we ask questions and that doesn't have anything to do with the clock. So, that's the way we operate. When you do get in the chair to speak, tell us your name and then spell it for us for the record and if you don't do that I'll stop you and remind you to do because it's important we get that in on the transcript. It's not necessary to mess with the microphones. So if you have an unconscious habit of doing that, try and restrain yourself, because it will pick you up and even if I sit back in my chair and whisper, it will pick me up. So that's pretty important; it's not necessary to change the mike. Nobody on our committee uses any electronic devices during the hearing and so we would ask that you turn off your cell phones or put them on silence or vibrate so that we don't interrupt

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the hearing. We don't allow any public displays of support or opposition to a bill based on what somebody says and that keeps everything civil and in the right order, so we'd ask you to follow that as well. Any questions before we begin? All right, we'll open the confirmation hearing on Tod Brodersen. And, Tod, you want to come forward and get into the chair. We'd ask you to...of course you're going to have to give your name and spell it, but then we'd ask you to tell us a little bit about yourself and your responsibilities on the Ethanol Board and any other information that you think would be pertinent, so welcome. [CONFIRMATION]

CHARLES BRODERSEN: (Exhibit 1) Thank you. Yes, I'm...my given name is Charles, C-h-a-r-l-e-s, Brodersen, B-r-o-d-e-r-s-e-n. Tod is a nickname I've had my entire life and that's what everybody knows me as. I was born and raised on a farm in Washington County not far from Herman; graduated from Herman High School; spent a hitch in the Marine Corps, got out and went to Dana College and graduated in 1962. I went to work in the sales department for Phillips 66, part of ConocoPhillips now; spent 13 years on the payroll with them. The last eight were in Grand Island as a district rep for the south central part of the state, and called on Thomson Oil. When Mr. Thomson got ready to retire, he called me up one morning and asked me if I wanted to buy him out and that seemed like a pretty good idea. So that was in 1975 and I've been there ever since. My son and I have a petroleum business there in Hastings. We've got a couple of convenience stores and then a conventional service station, bulk plant, tank wagon and a transport. We started marketing ethanol in 1979 when it was quite new. The alcohol had to come in from Des Plaines, Illinois, in transport lots; had to blend up our own; not near as convenient as it is now days. But it worked out well for us. It has worked out well for all the people in the petroleum business, I believe. There seems to be some changes in the wind with it right now. I don't know if you're aware the Magellan Pipeline has notified us that as of the...I believe it's the first of September they're not going to put any 87 octane gasoline through anymore. The 87 octane is what we blend with 10 percent ethanol to get the E10 for the 89 octane gasoline. Well, they'll put through an 84 octane product that the major companies will blend with ethanol to bring it up to an 87. Well, so it will be 87, but it will be in no shape to blend...for us to blend up with 10 percent. You can't put another 10 percent with what's already got ethanol in it. So this is kind of a bad...a question as far as we're concerned what's this going to come to. We feel that the oil companies are taking advantage of us on the other end, on the distributor's...and on the public. It's not going to save the public any money, I don't believe. [CONFIRMATION]

SENATOR CARLSON: All right. Thank you for your testimony today. And you are a reappointment on the Ethanol Board? [CONFIRMATION]

CHARLES BRODERSEN: Yes. I've been on the board since 2000. [CONFIRMATION]

SENATOR CARLSON: Okay. All right. Well, thank you. Are there questions of the

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committee? Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Carlson. Thank you, Mr. Brodersen, for your service. I had not heard of what you just raised as far as what the Magellan Pipeline will be carrying. And so they'll be...am I understanding right, they're going to be blending the ethanol into it and then putting it through the pipeline so you... [CONFIRMATION]

CHARLES BRODERSEN: That's the way...well, it will be blended at the terminal, that's the way I understand it. [CONFIRMATION]

SENATOR DUBAS: At the terminal. [CONFIRMATION]

CHARLES BRODERSEN: But that no product can go out of the terminals that isn't 87 octane. So what it's going to mean is the oil companies will put that alcohol in it there at the terminal. [CONFIRMATION]

SENATOR DUBAS: So will we be getting the same product at the pump that we're getting now currently from you? [CONFIRMATION]

CHARLES BRODERSEN: If you get 87 octane...if...now you're getting 87 octane, you get straight gasoline, no alcohol. [CONFIRMATION]

SENATOR DUBAS: Okay. [CONFIRMATION]

CHARLES BRODERSEN: Come fall when you get 87 octane, it's going to be 84 octane product with the alcohol to boost it up to 87. [CONFIRMATION]

SENATOR DUBAS: All right. Very interesting. Probably have to visit with the Ethanol Board some more so I understand this a little bit better. But thank you for bringing this to our attention. [CONFIRMATION]

CHARLES BRODERSEN: This...it's just coming to us now. We're just getting wind of this. [CONFIRMATION]

SENATOR DUBAS: All right. I appreciate you bringing that up. Thank you. [CONFIRMATION]

SENATOR CARLSON: Okay. Any other questions? Senator Johnson. [CONFIRMATION]

SENATOR JOHNSON: How widespread...thank you, Senator Carlson; Mr. Brodersen, for service. I serve...I'm on an ethanol board at a plant so very interested in what's happening here. How...is this going to be statewide? Or how...this line that comes

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through, how much does that serve? [CONFIRMATION]

CHARLES BRODERSEN: It feeds a terminal in Omaha, in Lincoln, in Grand Island, and Sioux City, Iowa. [CONFIRMATION]

SENATOR JOHNSON: East and north. [CONFIRMATION]

CHARLES BRODERSEN: Now there's another terminal, the NU Star terminal comes up through Geneva. [CONFIRMATION]

SENATOR JOHNSON: Okay. [CONFIRMATION]

CHARLES BRODERSEN: Osceola, Norfolk, Yankton; it has not announced anything that it's going to make any change. So we don't know yet. [CONFIRMATION]

SENATOR JOHNSON: So do you know why your pipeline is doing it? Or is this just...do you think this could spread? [CONFIRMATION]

CHARLES BRODERSEN: I think the... [CONFIRMATION]

SENATOR JOHNSON: Industry. [CONFIRMATION]

CHARLES BRODERSEN: The industry is doing it. I don't believe the pipe...what do I want to say, I don't think it's the pipeline's idea. They're a carrier. [CONFIRMATION]

SENATOR JOHNSON: Right. Right. [CONFIRMATION]

CHARLES BRODERSEN: And I think it's the Exxons and the Conocos. [CONFIRMATION]

SENATOR JOHNSON: It's just the first one they picked on. [CONFIRMATION]

CHARLES BRODERSEN: Yes. [CONFIRMATION]

SENATOR JOHNSON: Okay. Thank you. [CONFIRMATION]

SENATOR CARLSON: Senator Haar. [CONFIRMATION]

SENATOR HAAR: Yes, thank you. I read in the newspaper the other day that some of the ethanol producers are starting to ask for sorghum instead of corn. Is that a trend in ethanol production, do you know? [CONFIRMATION]

CHARLES BRODERSEN: I think it's an economics, depending on if the sorghum can be

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processed and so it's economically feasible. [CONFIRMATION]

SENATOR HAAR: Because it takes...sorghum takes a little less water, is that right, or is more drought resistant? [CONFIRMATION]

CHARLES BRODERSEN: More drought resistant as far as growing. Right now I...throw in, not with your question, but when I first went on the board there were four ethanol plants in Nebraska...well...four...five, one at Sutherland that was in and out of production. Now there's 26. And I think as of right now three of them are on a shutdown...temporary shutdown strictly because of the economics. It was...that was one of the big things the ethanol was going to help the corn prices and everybody was pleased about that, but when the corn prices get up to \$6, \$7 and the ethanol plants can't make it work, then that's not as good. [CONFIRMATION]

SENATOR CARLSON: Okay. Any other questions? Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Chairman; and thank you, Mr. Brodersen, for your willingness to serve again and also for serving our country. [CONFIRMATION]

CHARLES BRODERSEN: Thank you. [CONFIRMATION]

SENATOR BRASCH: My question is, in your business you carry more than just ethanol...how broad is your knowledge base? Do you know about diesel? You know, are you... [CONFIRMATION]

CHARLES BRODERSEN: Oh, somewhat. [CONFIRMATION]

SENATOR BRASCH: Somewhat... [CONFIRMATION]

CHARLES BRODERSEN: Yeah. [CONFIRMATION]

SENATOR BRASCH: And as I've been visiting with ag producers in our district, they raise a lot of questions, mostly about diesel. [CONFIRMATION]

CHARLES BRODERSEN: Sure. [CONFIRMATION]

SENATOR BRASCH: And, you know, I'm wondering if you believe anything can be done in the industry to help situations that you've just described. We had a bill earlier that the petroleum industry was concerned about labeling on the pumps at the gas stations. [CONFIRMATION]

CHARLES BRODERSEN: Yes. [CONFIRMATION]

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SENATOR BRASCH: And how can we make any changes when it's not truth in advertising or...do you see us moving in too many directions, or what should our focus be with ethanol at this point moving forward? [CONFIRMATION]

CHARLES BRODERSEN: Oh, in the past I questioned whether we needed to have pump labeling...to have, say, E10 or E15. As you know, there's lot of chemicals and various additives in gasoline that aren't posted, that are a lot more hazardous than ethanol. So I don't know that we need that...the labeling as such. But the way it is now, yes, we have the law in the state, everything has to be labeled. [CONFIRMATION]

SENATOR BRASCH: And perhaps this new change, what's coming from Magellan would need to be labeled as well? [CONFIRMATION]

CHARLES BRODERSEN: This...this may make...this may necessitate some changes. [CONFIRMATION]

SENATOR BRASCH: Okay, very good, thank you again. [CONFIRMATION]

SENATOR CARLSON: Thank you. Any other questions? In fuel that's delivered to you at 87 that has ethanol in it, so whereas now your 87 has no alcohol in it. [CONFIRMATION]

CHARLES BRODERSEN: That's true. [CONFIRMATION]

SENATOR CARLSON: After this takes place, and it's not an issue with me, but are people going to be able to buy gasoline without any alcohol in it? [CONFIRMATION]

CHARLES BRODERSEN: I think they're probably going to have to buy premium. We...say, at the present time now we have the 87 octane with no alcohol. [CONFIRMATION]

SENATOR CARLSON: Um-hum. [CONFIRMATION]

CHARLES BRODERSEN: And then the 10 percent ethanol, the E10 is 89 octane. [CONFIRMATION]

SENATOR CARLSON: Um-hum. [CONFIRMATION]

CHARLES BRODERSEN: And then we have a straight premium that has no ethanol, but it's 91 octane. [CONFIRMATION]

SENATOR CARLSON: Okay. [CONFIRMATION]

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CHARLES BRODERSEN: And the Harley riders, some of the Jaguars, they need this premium. But that premium, it depends on where you buy. As a distributor I just checked yesterday, after Todd and I had visited, and the premium costs anywhere from 30 to 40 cents more per gallon than straight no lead. So that's why I say, I don't think this is going to be a good deal for the public. [CONFIRMATION]

SENATOR CARLSON: As...do you have the knowledge of the 87 then that will already have ethanol in it, what percentage is in it? [CONFIRMATION]

CHARLES BRODERSEN: I would presume that probably will have to be 10 percent. [CONFIRMATION]

SENATOR CARLSON: You think that would be 10. [CONFIRMATION]

CHARLES BRODERSEN: At the present time, see we don't...15 percent is not legal. [CONFIRMATION]

SENATOR CARLSON: Yeah. [CONFIRMATION]

CHARLES BRODERSEN: So I would say it would be an E10. [CONFIRMATION]

SENATOR CARLSON: So without a change in law, you could not add anything to it. [CONFIRMATION]

CHARLES BRODERSEN: Right. [CONFIRMATION]

SENATOR CARLSON: And that would be it. [CONFIRMATION]

CHARLES BRODERSEN: Yes. [CONFIRMATION]

SENATOR CARLSON: Okay, you can't lift the octane any higher than 87. [CONFIRMATION]

CHARLES BRODERSEN: Yes. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any other questions? Well, thank you for coming. Thank you for your service and we're done with you. [CONFIRMATION]

CHARLES BRODERSEN: All right. Thank you for the opportunity. [CONFIRMATION]

SENATOR CARLSON: Thank you. Do we have anybody testifying as a proponent? Anybody as an opponent? Are you a proponent? [CONFIRMATION]

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LORAN SCHMIT: I believe so, Senator. [CONFIRMATION]

SENATOR CARLSON: I hope you would be. (Laughter) [CONFIRMATION]

LORAN SCHMIT: Senator Carlson, members of the committee, my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I'm testifying here today in support of Mr. Brodersen. He's been a friend of mine for a long time. He's had longtime service with the Ethanol Board. In addition to that, he has...as he indicated been a retailer of the ethanol blend fuel for almost 25, 30 years. So he has been a very strong spokesperson from a sector of the economy that does not often speak well of the ethanol industry. He's been a powerful person on the board and he's a knowledgeable person. He's been very helpful to the board. And I strongly support his reappointment. Answer any questions.
[CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. [CONFIRMATION]

LORAN SCHMIT: Thank you. [CONFIRMATION]

SENATOR CARLSON: Any questions of Senator Schmit? Okay, thank you. Any opponents? Or anyone in a neutral position? If not, that closes the hearing on Charles Brodersen and we'll open the hearing on Mark Ondracek. So Mark, tell us again a little bit about yourself and you're going to be new on the Ethanol Board and whatever information you think we should have. [CONFIRMATION]

MARK ONDRACEK: (Exhibit 2) All right. My name is Mark Ondracek, M-a-r-k O-n-d-r-a-c-e-k; born in Omaha, Nebraska, live outside of Blair, Nebraska, presently. I've been a steamfitter for 35 years, 15 years in the field, 20 and a half years in the office. I was financial secretary-treasurer of the Steamfitters Local in Omaha for 19 and a half years, and the past nine months I've been business manager representing 850 members of our local. Our steamfitters...the work that is done in an ethanol plant, a lot of that work...the piping work is done by people of our craft. So that's why I'm up for this appointment. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you. Questions? Senator Johnson.
[CONFIRMATION]

SENATOR JOHNSON: Thank you, Senator Carlson. Thank you, Mr. Ondracek, for coming in. The fact that you work on ethanol plants and the fact that I'm a board member of one, and we seem to have some issues periodically with the federal agencies on how long are these plants going to last; and they want us to test the piping on our...the thickness of our walls and see what ethanol...do you have any insight as to where that...how severe those issues are going to be? Are you pretty comfortable that these plants are going...not be at risk? [CONFIRMATION]

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MARK ONDRACEK: I don't believe the plants are going to be at risk. It's high-quality stainless steel pipe used in most instances; the same type of pipe that's used in nuclear power houses. It's designed for its longevity. So I don't see that as a problem.
[CONFIRMATION]

SENATOR JOHNSON: I appreciate that. I think...I thought they were on a fishing trip, but...(laugh)...so, no, I...and I appreciate, you know, your willingness to look at an appointment and also coming from the industry that's involved in the construction. Thank you. [CONFIRMATION]

SENATOR CARLSON: Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Mr. Chairman, and welcome and appreciate your willingness to serve. And do you see any changes that could be made or solutions? Do you have, you know, on serving on this committee are you bringing anything fresh or new to the table or something more that we could do to benefit ethanol and its use?
[CONFIRMATION]

MARK ONDRACEK: I think my position on the board would be more of the expertise of the construction and the maintenance of the facilities. [CONFIRMATION]

SENATOR BRASCH: And I'm also curious, as a steamfitter, is that self-employed or is it...my husband is a farmer, we write self-employed on forms. [CONFIRMATION]

MARK ONDRACEK: Okay. [CONFIRMATION]

SENATOR BRASCH: Are you at a certain company? [CONFIRMATION]

MARK ONDRACEK: No, all of our members work...they're either a contractor; we have a few that are contractors themselves. Most of them work for contractors; none of them are self-employed. [CONFIRMATION]

SENATOR BRASCH: Good. Is your work mostly within Nebraska? Are you...
[CONFIRMATION]

MARK ONDRACEK: We have almost the entire state of Nebraska, except for the Panhandle, we don't have that jurisdiction. We have, I believe, 14 counties in the western side of Iowa, so we encompass a large area. [CONFIRMATION]

SENATOR BRASCH: Very good. Well, thank you again for your willingness to serve.
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MARK ONDRACEK: Thank you. [CONFIRMATION]

SENATOR CARLSON: Senator Dubas. [CONFIRMATION]

SENATOR DUBAS: Thank you, Senator Carlson. What has, aside from the obvious, how much of an impact did the ethanol industry have on people who are employed in your industry? [CONFIRMATION]

MARK ONDRACEK: It's...I mean, lately not as much, although up at the Cargill plant up in Blair, it's an ongoing thing. There's always something going on up there. We're just coming down off of a huge expansion of NatureWorks, which is a by-product. I don't know exactly what they do with that. But we had, I think, 70 or 80 men up there since last spring working on that project, working six days a week, ten hours a day, trying to get it completed. It's just about done now, another month or so and it will be completed. So it's been huge. [CONFIRMATION]

SENATOR DUBAS: Are you involved with maintenance as well as new construction? [CONFIRMATION]

MARK ONDRACEK: Yes. [CONFIRMATION]

SENATOR DUBAS: Did your...did the people in your industry have to go through any specialized training in order to be able to address the needs of ethanol infrastructure? [CONFIRMATION]

MARK ONDRACEK: Ethanol specifically, no. But ethanol encompasses, you know, a lot of the things that we do. The weld training that we do is huge. We have certification processes. They have to be x-rayed; they have to cut pieces of the pipe out and they bend them different ways to make sure that they have the integrity of the weld and stuff like that. We have a five-year apprenticeship program. When our apprentices turn out, most of them are certified in at least one or two weld processes. There is multiple, multiple weld processes and every instance asks for a different type of process. But all of our apprentices are trained in welding and are certified. [CONFIRMATION]

SENATOR DUBAS: Were there any cooperative efforts with community colleges for the work that you do? [CONFIRMATION]

MARK ONDRACEK: When we...we'll have people...welding...when people think of welding, they think that all welding is the same. And welding on pipe is 180 degrees from welding on anything else because of the different angles, the different positions and stuff. So we do get a lot of people from community colleges who have welding degrees. They're not certified in piping processes like our guys are. We will give them credit coming into our apprenticeship program because they are aware...they do know

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how to weld, they're just not aware of the processes on the pipe that they have to do. So, we do hit the community colleges quite a bit looking for people. [CONFIRMATION]

SENATOR DUBAS: Very good, thank you. [CONFIRMATION]

SENATOR CARLSON: Okay, thank you. Any other questions? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Ondracek, thank you for your willingness to serve. And it's particularly good to see someone involved in the craft or trade serving on this board in this capacity, so appreciate your willingness to do that. Kind of following up on some of the questions that Senator Dubas had, a little bit, not so much to do with ethanol, but how is the outlook for your trade right now? Are you seeing a lot of folks coming into the pipeline that are going to pursue that type of a trade? [CONFIRMATION]

MARK ONDRACEK: We're currently taking applications for apprentices right now. Typically, when we...and we only take them once a year, and typically we have around 300 people apply for 15 positions. So we're not at a loss of anybody looking for work or looking for a career with us. [CONFIRMATION]

SENATOR SMITH: That's great, thanks. [CONFIRMATION]

SENATOR CARLSON: Okay. Any other questions? Okay, seeing none, thank you for coming and that's it for you right now. [CONFIRMATION]

MARK ONDRACEK: Thank you. [CONFIRMATION]

SENATOR CARLSON: Proponents? Welcome back. [CONFIRMATION]

LORAN SCHMIT: Thank you, Senator. Senator Carlson and members of the committee, again my name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I've known Mr. Ondracek for many years. I've had a long relationship with himself and Local 464. For those of you who do not know, the organized labor has always been strong supporters of the ethanol industry. And we have...we were wise to place a member of their profession on the Ethanol Board when the bill was originally passed and that has been very beneficial to us. I can tell you very frankly that the members of our industry who use the services of Local 464 are very proud of their work. They have told me many times that when they shut down for their routine maintenance they call in these people; they come in, they do their work, they do it in a timely fashion and when they leave they never have to worry about any more problems. It's done well, it's done professionally, and it's well worth the cost. So, but also as with Mr. Brodersen, Mr. Ondracek will bring to the board his particular area of expertise in that area and he will be a valuable member of the board,

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as was his predecessor, Mark McColley, and many other of those people before him. The ethanol industry has been very strong beneficiaries of the support of the organized labor and their legislators and we look forward to seeing Mr. Ondracek serve on that board. And I'd be glad to answer any questions. [CONFIRMATION]

SENATOR CARLSON: Okay. Thank you for your testimony. [CONFIRMATION]

LORAN SCHMIT: Thank you. [CONFIRMATION]

SENATOR CARLSON: Any questions of Senator Schmit? Okay. Thank you. Any other proponents? Anyone as an opponent? Anyone in a neutral position? Seeing none, that will close the hearing on Mark Ondracek, and thank you for coming. We're ready to open the hearing on LB601; and, Senator Bloomfield, the chair is yours. [CONFIRMATION]

SENATOR BLOOMFIELD: (Exhibit 3) Good afternoon, Chairman Carlson and members of the Natural Resources Committee. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent the 17th Legislative District. I'm proud to be here today to present LB601 to the committee for your consideration. The goal behind LB601 is to ensure that subcommittee meetings of natural resources districts are open to the public and that the public has the opportunity to provide input. During the last year I was approached by individuals who were concerned with how decisions were being handled by NRD boards. The perception, right or wrong, was that decisions were being made by subcommittees where the public was not invited to provide input. The subcommittee would then make a recommendation to the full board and the full board would then act on that recommendation without any public input. While I understand that this isn't always the case, I do feel that it's important the public have the opportunity to express their thoughts on issues and decisions facing the NRDs. In 2012, Nebraska experienced a significant drought and it is expected we'll continue to see drought conditions in 2013. Decisions are being made by NRDs across the state regarding water usage. Individuals living in the impacted areas, who have never been involved with the NRDs, or possibly any other regulatory agency, are now finding it in their interest to attend some of these meetings. We need, I think, to be sure that they, the public, know that entities such as the NRDs are open and that they are allowed and, in fact, encouraged to be involved. What I'm asking for is something that this committee did in 2011 when it required subcommittee meetings of the Environmental Trust to be subject to the Open Meetings Act. I've just given you a letter from Stan Staab, the general manager of Lower Elkhorn Natural Resources District, voicing their support. His letter will explain how they currently handle public notice of subcommittee meetings. And that's basically...my opening on this is a very, in my mind anyway, a very simple bill that shouldn't cause a great deal of controversy. [LB601]

SENATOR CARLSON: Okay. [LB601]

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SENATOR BLOOMFIELD: I could, in fact, see it as a....but I can't think of the term. [LB601]

SENATOR CARLSON: I know what you're saying. [LB601]

SENATOR BLOOMFIELD: Yeah, I can't think of the term. [LB601]

SENATOR CARLSON: Okay. All right. Any questions of Senator Bloomfield? Senator Johnson. [LB601]

SENATOR JOHNSON: Thank you, Senator Carlson. And thank you, Senator Bloomfield, for bringing this. Having to work through open meeting laws in my previous position, a subcommittee might be two people, three people? [LB601]

SENATOR BLOOMFIELD: Uh-huh. [LB601]

SENATOR JOHNSON: I mean it's not a quorum. Now, if it's not a quorum, they normally wouldn't have to post and be open meeting. So this would include everybody that's on a subcommittee even though it might be three people, two people, and would have to post it? [LB601]

SENATOR BLOOMFIELD: If they're going to have a committee that discusses and reaches a decision on what's going to be done, I believe, yeah, that would at that point need to be open. [LB601]

SENATOR JOHNSON: Okay. So if they're... [LB601]

SENATOR BLOOMFIELD: If you meet somebody for a cup of coffee... [LB601]

SENATOR JOHNSON: Do these committees have any power at this point or would they have any more power by having the open meeting? [LB601]

SENATOR BLOOMFIELD: I guess, I can't answer that. I'll have to get back to you on that. [LB601]

SENATOR JOHNSON: Okay. I mean, because the ones I'm used to, you know, they can make a recommendation to the senior body, in other words, the full board. But if they go to open meeting they would have to post their meeting time so many hours before the meeting, so it's harder for them to call a quick committee meeting of maybe two or three people. [LB601]

SENATOR BLOOMFIELD: Yeah, I think you're going to hear behind me, Senator

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Johnson, some people that are going to tell you that maybe 14 of 15 members of a board were there, and it wasn't necessarily advertised as it should have been. [LB601]

SENATOR JOHNSON: Okay. [LB601]

SENATOR BLOOMFIELD: And that's what we're looking at. Let's get these things out in the open. And the biggest part of it, in my mind from what we've seen since we introduced the bill, is that the public is not aware of their ability to attend these meetings and whatnot. Let's get that out there to them because we're dealing with people that have never...never had to even think about water before, and now they have this group of people that they've never heard of called the NRD affecting their lives. I think we need to make sure the public knows they're welcome there. And one of the other things that I've heard, too, is...has been brought to me is that during some of these meetings where the public was invited in, the meeting took place, the public was never invited to speak. When somebody questioned it later, they were told, well, you should have just stood up and waved your hands and said you wanted to speak. People who don't deal with this stuff on a regular basis aren't aware of that. They need to be invited to speak, and we just want to keep this open where the public knows what's going on and has a chance to be involved in it. [LB601]

SENATOR JOHNSON: Okay. Thank you. [LB601]

SENATOR CARLSON: Okay. Thank you. Any other questions? Seeing none, are you going to be here to close? [LB601]

SENATOR BLOOMFIELD: Due to what I've got coming this afternoon, probably not... [LB601]

SENATOR CARLSON: Okay. [LB601]

SENATOR BLOOMFIELD: ...so I will probably waive closing. Thank you. [LB601]

SENATOR CARLSON: Okay. All right. Thank you, Senator Bloomfield. Proponents, we're ready for. How many proponents do we have? Okay. Welcome, John. [LB601]

JOHN HANSEN: Almost. Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union and appear before you today as our president and also our lobbyist. When I was made aware of this bill and we took a look at it and we visited with Senator Bloomfield, we did some checking with our members and we have some members who feel like their NRD goes to great lengths to be open and transparent and welcoming and all of those things, others not quite so much. And so we thought maybe this bill, based on our experience, should get our support. I'm a recovering NRD official for 14 years

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myself and it, to my mind, it really...you know, if the committee is a substantial portion of the board and they're making a recommendation, which is very substantive that is in almost all cases going to be accepted by the board, then I think it's a good idea, when in doubt, to give the public additional opportunity to be a part of that process and hear what those deliberations are. And so, our general view is generally, if in doubt, you give the lean toward transparency and disclosure and participation. And my biggest lament as a former chair of the budget and legislative committee was that we did all of this, we advertised and we could not get people to come or participate. And so here you are doing a budget...a substantial budget of several million dollars, and you couldn't get folks to comment or participate. So if we have folks who want to come and participate, I always feel that's a plus. And so with that kind of an explanation of sort of our general view, we would just encourage the committee to give this bill favorable consideration. And with that, I would end my testimony and be glad to answer any questions if I could. [LB601]

SENATOR CARLSON: All right. Thank you for your testimony. Questions? Senator Haar. [LB601]

SENATOR HAAR: Yes. The devil being in the detail with this one, would you, having been a board member and so on, do you think...does this prohibit two board members from sitting down and having coffee together or, where's the line? Where's the bright line? [LB601]

JOHN HANSEN: I think that there's...I think it's a good and important thing for board members to discuss things with each other. But when you're in official session, whether you're on a board, or certainly one of the major subcommittees of the district, that's a different matter. There's...from my point of view, I think it's a good thing when board members, you know, go over the information and, you know, do we really think we're getting the best bid here? Do you think this bidder is a confident bidder? And trying to do their homework, and so communication, I think, is always a good thing. But when you're in an official capacity, in an official function of the board, then I always felt that was...as a board member in a subcommittee, I certainly didn't have a problem with people. If they wanted to show up, I would not have been offended or threatened by that. I would have thought that was a good thing. And the only thing is that in subcommittee if you're talking about people's representations or proprietorial information or contract information that's not appropriate for the public, you have to go into Executive Session. But the rest of the time as long as you're not...if you're not hurting folks, I mean, if you're just discussing policy or particulars or which watershed ought to be prioritized or those kinds of things, that's...and the public has an opinion on that, that seems like a reasonable thing if they want to share that. [LB601]

SENATOR CARLSON: Okay. Any other questions? I think you've brought up a couple, and I look at the bill itself, and I don't think it's very specific, but you served...you called

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the committee you served a major committee and it was budget? [LB601]

JOHN HANSEN: It was a combination of budget and legislative. [LB601]

SENATOR CARLSON: How many members were on the board when you were serving? [LB601]

JOHN HANSEN: The structure that we had when I was on the board, and we were a new entities so we created a whole new...we had no system to go by, so we created a system. And so we had roughly 19 directors, and so we had four primary committees, and everybody got to be on at least one committee that they wanted to be on, but everybody was on two committees. And so you would end up with about half the board on four different committees. [LB601]

SENATOR CARLSON: All right. [LB601]

JOHN HANSEN: So that's a pretty substantial number. [LB601]

SENATOR CARLSON: Well, that is. I wouldn't argue that. Now, as you were talking about it, you kind of said, well, at least the major subcommittee should give notice. So what is a magic number in terms of people if there...if there's three on a subcommittee, you and I and Senator Haar, and I'm the chair and I get ahold of you two, and let's meet at McDonald's for coffee and we need to talk about this. Is that okay? Or do we need an open, notice of an open meeting? [LB601]

JOHN HANSEN: I think if you're not taking action, if you're...and I'm not a lawyer, but it seems to me that if you're discussing things that need to be acted on, you know, you should be able to discuss them in open session and you should be able to act on them in open session. But conversations back and forth, but if it's...if you've convened the whole subcommittee together to kind of talk about it so you don't have to talk about it in open session, that's probably where the line would be. [LB601]

SENATOR CARLSON: Regardless of the number of people on the committee. [LB601]

JOHN HANSEN: Yeah, that would be kind of my sense. [LB601]

SENATOR CARLSON: Well, the bill says, any meeting. [LB601]

JOHN HANSEN: Any subcommittee? [LB601]

SENATOR CARLSON: It just says any meeting...yes, any meeting of a subcommittee, so you and I and Senator Haar are a subcommittee, we're not going to make any decisions today but we've got to talk about this. That says...this says, any meeting of a

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subcommittee. [LB601]

JOHN HANSEN: That's pretty broad. [LB601]

SENATOR CARLSON: I think it probably is, yeah. [LB601]

JOHN HANSEN: And I, you know, so you've got...I understand that concern and there's also, you know, when we called around a little bit, there was...if folks wanted to be...they didn't want to feel like that the process had already been decided, and then they just come into session and boom, it's done, there's no discussion. And so I always felt like that it was, you ought to be able to talk about most things openly because you're in open session. It's...so if you're doing the public's business, you know, so...as we've shrunk the size of boards, it's a little bit different, I imagine, if you only have three people on a board. But... [LB601]

SENATOR CARLSON: Or on a subcommittee. [LB601]

JOHN HANSEN: On a subcommittee who is a part of a much smaller board. And I haven't really thought through that so much but the general idea, if you're doing the public's business, you probably ought to be in general session, open session. [LB601]

SENATOR CARLSON: Okay. Good. Good. Thank you. Any other questions? Thank you for your testimony. [LB601]

JOHN HANSEN: Thank you very much and good luck. [LB601]

SENATOR CARLSON: Thank you. Next proponent. And whoever is next, come on up in the on-deck chair and we can move right along. Welcome. [LB601]

MYRON FRANZEN: Thank you, Senator Carlson. My name is Myron Franzen, M-y-r-o-n F-r-a-n-z-e-n. I'm from Columbus, Nebraska, and I have property in the Lower Elkhorn Natural Resource District area. About ten years ago, there was information in our area that the NRD was going to build a dam at Leigh, Nebraska, which affected my property, so I started going to the NRD board meetings. As I was attending board meetings it came to my surprise that there was very little discussion on the issues that were on the agenda. This kind of surprised me because I was on the county board of supervisors for 20 years and was familiar with open meeting laws, etcetera. And I was surprised at the minimal discussion. So I did that for a few months and then I decided I would go to a subcommittee meeting. Imagine my surprise when I go to the subcommittee meeting and here in attendance are all 15 board members. There were seven for...two, seven each, for two major committees, and the chairman. And I was told that they were having a joint subcommittee meeting which involved all 15 directors. Now, in my estimation, that violates the open meeting law because it says you have

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more than a quorum in attendance. When I questioned this, I was told that subcommittees are not part of the open meeting laws. Well, there's two sides to it. The one side says, you can't have a quorum in attendance without it being called a regular meeting, and the other side, subcommittees are not subject to open meeting laws. This is confusing to me and I think it opens up the possibility of a lot of questions of where decisions are made and how things are done. Just one of the things that happened. In November of 2007, the LENRD approved a contract to build the dam at Leigh, Nebraska, and in that contract they stated that they had all their permits, but in essence, they did not. They did not have their 404 permit. The contract stated the contractor should have the construction complete by November of 2008. Well, the NRD spent all of 2008 in getting their 404 permit, so that contract had to be renegotiated. At no time was there ever an agenda item that I could find where that contract renegotiation ever showed up on a board meeting or a subcommittee meeting. And to this day, I cannot find out what the renegotiated contract turned out to be. This is the type of information that I would hope approving this bill would eliminate this kind of problem that you can't find out anything when, in essence, it should be public business. I would hope that you would support LB601. This is just one of the things that I think the Unicameral has to do because the NRDs were created by the Unicameral. There are some other things that I think need to be done. I think there should be an appeal process somewhere along the way that a person, if they don't agree with the board, can go on an appeal rather than having to go to the courts because at the present time the only appeal you have is through the court system. And there's no individual or even a small group of individuals can compete with the NRD when it comes to finances to fight a court case. So to me, I think this is a good step in the right direction, and I hope you would support it. Thank you very much. [LB601]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. Any questions of the committee? Senator Haar. [LB601]

SENATOR HAAR: Yes, thank you. Well, the companion, of course, to the open meetings is the open records law. Did you find the same kind of barriers when you tried to get those? [LB601]

MYRON FRANZEN: Yes. They...well, the LENRD at Norfolk has an executive committee. That notice is never given of when they meet and you cannot...we've asked for those minutes and we are not privileged to them. So I don't know what's happened. There's a number of issues that I'd like to know the answers to but I cannot find out. [LB601]

SENATOR HAAR: Thank you. [LB601]

SENATOR CARLSON: Okay. Other questions? Now, you heard the questions I asked of John Hansen. Have you looked at the bill and how it's written? [LB601]

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MYRON FRANZEN: I've...yes, I've read it. [LB601]

SENATOR CARLSON: Do you think it needs to be narrowed down a little bit? [LB601]

MYRON FRANZEN: Well, to me, I guess, I don't have a problem of two or three people getting together to talk about an issue if they're not a quorum of the board. [LB601]

SENATOR CARLSON: Of the board or of the committee? [LB601]

MYRON FRANZEN: Of the committee or the board. The committee is not a quorum of the board... [LB601]

SENATOR CARLSON: Okay. [LB601]

MYRON FRANZEN: ...and so I don't have a problem with two or three people getting together and talking about an issue as long as they're not a quorum of the board or of the committee that they go back, because too many times committee minutes just come up before the board meeting and they say, committee minutes, and this is their recommendation. There's no discussion. It goes on. You don't have any idea of the background of what was discussed or what happened. [LB601]

SENATOR CARLSON: Okay. Let me go back so... [LB601]

MYRON FRANZEN: Okay. [LB601]

SENATOR CARLSON: ...I can make sure I'm clear on what you said. You said a quorum of the board. [LB601]

MYRON FRANZEN: A quorum of the board. If the committee contains more than a quorum of the board, I don't think they should be able to meet without it being called a full board meeting because they can make decisions that will carry over. [LB601]

SENATOR CARLSON: Okay. So that...that would be the key part as far as you're concerned. [LB601]

MYRON FRANZEN: As far as I'm concerned, yes. [LB601]

SENATOR CARLSON: Senator Smith. Okay. [LB601]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Franzen, just kind of following up on what Senator Carlson was asking, but you also said a quorum of the committee. [LB601]

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MYRON FRANZEN: Well, if the committee is going to be the one that makes the recommendation that goes to the full board, and the rest of the board don't question or challenge it, then you've got a little problem of a quorum of a subcommittee getting together, and the other members of the committee don't know what's going on and they just go in and pass it, and go on to the board members. That would be my concern of...more than a quorum of a subcommittee getting together to make...or structure a resolution to the full board and it just goes on. To me, open means that the people and stuff, all members of the board should be able to hear and understand the issues of what's going on. [LB601]

SENATOR SMITH: So in many cases it would, you know, it would rule out more than two or three getting together. [LB601]

MYRON FRANZEN: Well, in...if you have like a seven-member board, you couldn't have four. [LB601]

SENATOR SMITH: But if you had a four-member subcommittee... [LB601]

MYRON FRANZEN: Four-member subcommittee, I mean, you're talking... [LB601]

SENATOR SMITH: And if you have, if you have...let's say you have a dozen on the board and you have a four-member subcommittee. [LB601]

MYRON FRANZEN: And it makes a difference to me what they're going to do with the information they put together. Are they going to put together the resolution and just present it to the board for their rubber stamp of approval? Or are they going to put it before the board and let them discuss and then they make...? [LB601]

SENATOR SMITH: So it's kind of the purpose of the meeting as well as the number of people meeting. So let's say, if they're not making policy, they're just trying to discuss a complex issue they're trying to understand, and there's 12 people on the board and there's four people on the subcommittee, would you allow there to be...are you thinking it would be okay for four people to get together? [LB601]

MYRON FRANZEN: I wouldn't have any problem with four people getting together. [LB601]

SENATOR SMITH: Okay. [LB601]

MYRON FRANZEN: Again, then on the purpose and how the board functions when it meets as a board as a whole, if they just rubber stamp the subcommittee stuff, then that's not a good situation. That would be my concern. I wouldn't want to see that

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happen because then the rest of the board members and the public still don't know what's going on. If it's an open discussion of the issues, many times your subcommittees have to bring information to the whole board for the board to decide, and I think that's the proper way it should be done. If they just bring a resolution and say, okay, this is what we recommend, and it goes right on through with a rubber stamp of the rest of the board members, I don't think that's a good proposition. [LB601]

SENATOR SMITH: All right. Thank you. [LB601]

MYRON FRANZEN: Thank you. [LB601]

SENATOR CARLSON: Any other questions? Okay. Thank you for your testimony. [LB601]

MYRON FRANZEN: Thank you. [LB601]

SENATOR CARLSON: Next proponent. Welcome. [LB601]

SCOTT JAPP: Good afternoon, Senators. My name is Scott Japp, S-c-o-t-t J-a-p-p. I am a member of the Papio NRD, but I'm not here representing the NRD. I support Senator Bloomfield's bill because I think all open...all meetings that we're dealing with the public's expenditures and things need to be open to the public. The Papio NRD does have their subcommittees open to the public and I think that's the proper way to do it. At the subcommittees is when most of the pertinent information is provided. At the general meetings most of that is just to endorse, to oppose, or support whatever the subcommittee. If you go to most regular board meetings without going to the subcommittees, you would probably not be known what most of the information that was provided or what the whole agenda is about. I attend other NRD board meetings where their subcommittees are not public. And therefore, if I go to the regular board meeting where I am public, most often there isn't very little information provided. Again, it just...a bill...a motion is introduced, and then the board votes up and down on that particular motion. They will allow public comments. But if, again, if you're not informed, you don't really know what the bill is about, so. Thank you. [LB601]

SENATOR CARLSON: Okay. All right. Thank you. Any questions of Mr. Japp? Yes, Senator Kolowski. [LB601]

SENATOR KOLOWSKI: Mr. Japp, are you relating any of your concerns to the Papio NRD operations? [LB601]

SCOTT JAPP: No, I stated that we use open meeting rules and we have subcommittees and they're open to the public. [LB601]

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SENATOR KOLOWSKI: Uh-huh. So you're addressing it to other NRDs that are doing this that you know of? [LB601]

SCOTT JAPP: Yes, there's other NRDs that aren't...subcommittee meetings aren't open to the public, and I think they all should follow the same rules that the Papio NRD has. [LB601]

SENATOR KOLOWSKI: Thank you. [LB601]

SENATOR CARLSON: Okay, Senator Haar. Oh, Scott, don't get anxious here. (Laughter) Senator Haar. [LB601]

SENATOR HAAR: Now in the board that you're on, is that in your bylaws to have open meetings or is this just a...kind of the culture of your board that those are all open meetings? [LB601]

SCOTT JAPP: I don't know the answer to that one. They've always been open meetings since the get-go and I've been on there four years. [LB601]

SENATOR HAAR: Okay. Okay. Thank you. [LB601]

SENATOR CARLSON: Okay. Any other questions? Senator Smith. [LB601]

SENATOR SMITH: Thank you, Senator Carlson. Mr. Japp, the two folks that were just ahead of you in testifying, seemed to indicate that it really wasn't their intent, and I don't want to put words in their mouth but it came across to me it wasn't really their intent to limit very small groups to discuss nonpolicy-related issues. What say you about some of those discussions? [LB601]

SCOTT JAPP: I have a little different aspect. I know you...Senator Carlson made a scenario here. If you have a subcommittee of three people and these three people get together to discuss a particular item, I do, personally, feel that's in violation. If two people want to get together, I can understand. Then you just need to make your subcommittee larger so that a group of three could get together then. [LB601]

SENATOR SMITH: What is the smallest size subcommittee you've encountered? It sounds like you attend or attempt to attend some of the other NRD subcommittee meetings. What is the smallest subcommittee you've encountered? [LB601]

SCOTT JAPP: Actually, probably the Papio-Missouri NRD. We have 11 board members. We're on the small side. There are a few others who (inaudible) numbers that, and we have a subcommittee of five. [LB601]

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SENATOR SMITH: Subcommittee of five. [LB601]

SCOTT JAPP: Some NRDs don't even have subcommittees. They just...they have...do everything in the general session and not have subcommittees. [LB601]

SENATOR SMITH: So you haven't seen in your experience anything smaller than five? [LB601]

SCOTT JAPP: That's correct. [LB601]

SENATOR SMITH: Okay. Thank you. [LB601]

SENATOR CARLSON: Any other questions? Okay. Thank you for your testimony. Next proponent. [LB601]

KENT FRANZEN: (Exhibit 4) Thank you, Senator Carlson and members of the committee. My name is Kent Franzen, K-e-n-t F-r-a-n-z-e-n. You heard from my father earlier. I, too...my experience is with the Lower Elkhorn Natural Resources District, and that's why I came today. State statute 84-1408 has this sentence in it: It is hereby declared to be the policy of the state that the formation of public policy is public business and may not be conducted in secret. I wish that were the case. With the LENRD, I've watched them very carefully over the years. They use their subcommittees to make decisions. They go as far as formulating resolutions. Then when the full board meeting comes up, the minutes of those subcommittee minutes are read, the resolution is read as previously formed, the vote is taken, the issue is dealt with. If you are there at the full board meeting to try to give input, you are way past late to affect the issue. In the ten years...more than ten years I've been watching the LENRD, I have never seen the full board override a subcommittee decision. Rarely, have I seen the full board question a subcommittee's recommendation. As far as why should this be restricted just to the NRDs? Well, in my opinion, the LENRD is the bad actor here. Why should you spread the solution out to other entities that do not need it? The Legislature routinely affects businesses and others specifically in their legislation. Why should the NRD be any different? As far as the public meetings laws are concerned regarding the LENRD, I believe the public meetings laws were written mostly for the county on down when you read them. They did not contemplate an organization that covers all or parts of 13 counties and 89,000 people. What paper do you print your notice in to cover the LENRD? Even two or three, and be sure that you have coverage of those 89,000 people. You know, these open meetings requirements are the same as...I was on the village board of Unadilla for a lot of years, a sprawling metropolis of 300. (Laughter) Same requirements. Is that hardly fair to an organization that affects 89,000 people, to those 89,000 folks that those requirements be the same? I beg to differ. As far as the actual subcommittees go, they have subcommittees formed according to their bylaws, one of them is the finance committee. And if there's anything I've learned from reading

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the Attorney General's Web site on the Open Meetings Act and the Open Records Act is the finances of public should be the most open thing we can do. The finance committee, subcommittee of the LENRD meets in a room barely big enough to hold the members, let alone any guests should any want attend. But again, it's the subcommittee, so if you make a complaint to the county attorney or the Attorney General, you're not going to get anything back, and I have. A lot of times the information and the programs committee meet at the same time, so if you're interested in issues in either one of those committees at the same time, I can't be in two places at once. The most dangerous, in my opinion, though, is the Exec. And the Executive Committee is an official committee under their bylaws and what comes out of there is, comes out with very little notice. Most of the time the agenda is modified 24 hours ahead of time, and this recommendation comes out to the full board, it affects budgets. I've seen their recommendations affect budgets, affect hiring, affect land acquisition, and that's documented in the copies of the minutes that I gave you. Those are just examples, but that's a lot of what happens. And so I think this is an important meeting for that aspect. I did hear Senator Carlson's questions on the number. I believe if you read the rest of the Open Meetings Act, those chance meetings, those educational meetings are exempted under the rest of the act, and I don't believe that there's an issue there. If they are getting together to actually form policy, then I believe that should be covered and well should be covered. That formation of policy is what 84-1408, I think, was speaking to. That type of issue is supposed to be conducted in public, not to be formulated and then ramrodded through. Thank you, committee, for your time. [LB601]

SENATOR BRASCH: Thank you, Mr. Franzen. Chairman Carlson had another commitment and so I am acting Chair. Are there any questions from the committee? Yes, Senator Smith. [LB601]

SENATOR SMITH: Thank you, Senator Brasch. Thank you, Mr. Franzen, for coming in and testifying. You said you thought that under the Chapter 84, I think it is... [LB601]

KENT FRANZEN: 84-1408. [LB601]

SENATOR SMITH: Yeah, yeah, that you felt like there were accommodations for educational meetings and such, yet in the bill it does specify any meeting of a subcommittee. [LB601]

KENT FRANZEN: Right. [LB601]

SENATOR SMITH: So, where do you see the exceptions being? [LB601]

KENT FRANZEN: With all due respect, Senator Smith, if it is an active sanctioned subcommittee, I really don't see an exception. [LB601]

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SENATOR SMITH: Okay. So... [LB601]

KENT FRANZEN: I think if you get in the exception business, you're going to open a can of worms you can't close. [LB601]

SENATOR SMITH: All right. I'm just referring to what you had said. You said you thought there were some accommodations for certain types of committees. [LB601]

KENT FRANZEN: If you read the rest of the Attorney General's Web site, chance meetings, attendance at similar education events by committee members, from what I've read of the Attorney General's Web site, those meetings cannot be called subcommittee meetings. [LB601]

SENATOR SMITH: Even though they're...even though they're attended by the entire subcommittee. [LB601]

KENT FRANZEN: If I'm on a board and I attend a educational meeting on an event, at an event, and other members of my board are there, from what I read of the Attorney General's Opinion, that is not a covered meeting under the Open Meetings Act by any stretch of the imagination. [LB601]

SENATOR SMITH: Okay. Thank you. [LB601]

KENT FRANZEN: If we are getting together to effect policy, I believe it is and should be. [LB601]

SENATOR BRASCH: Are there any other questions from the committee? Seeing none, thank you, Mr. Franzen. [LB601]

KENT FRANZEN: Thank you. [LB601]

SENATOR BRASCH: (Exhibit 5) Are there any other proponents today? Are there any opponents? And before you start, I did want to read one letter of support into record from Shawn Renner from Media of Nebraska. [LB601]

GLENN JOHNSON: (Exhibit 6) Senator and members of the Natural Resources Committee, my name is Glenn Johnson, G-l-e-n-n J-o-h-n-s-o-n. I'm submitting testimony on behalf of the Lower Platte South Natural Resources District of whom I'm their general manager, and also on behalf of the Nebraska Water Coalition, which is made up of the Nebraska Water Resources Association and the Nebraska State Irrigation Association. We're appearing here in opposition to LB601. Obviously, LB601 singles out natural resources districts from among all of the governing bodies that are applicable under the public agencies and the open meetings law in placing a

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requirement that a meeting of any subcommittee, and all subcommittees, be considered as a public meeting, subject to the public meetings law and be required to give notice pursuant to Section 84-1411. The previous speaker cited Section 84-1409, or 08. If you read the next section, 09, very clearly and specifically provides that that act shall not apply to subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting, or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body. Lower Platte South Natural Resources District here in Lincoln, we have a 21-member board. We operate with nine subcommittees. The subcommittees are made up of anywhere from six to nine members, nine directors on a subcommittee. Each subcommittee during the year will meet as few as two or as many as a dozen times. Each subcommittee, you know, meets on an as-needed basis and as many times as needed. And the meetings are scheduled when my 21-member, volunteer board members can actually make meetings. And so, some of them are in the morning, some of them are in the evening, some of them are at noon, some are daytime, you know, when we can...when that works best for that subcommittee to get together. The meetings in 2012, we had over 80 subcommittee meetings during the year, just to give you a sense of the number. And in addition to these subcommittee meetings, we will from time to time have a short-term ad hoc subcommittee that may be three members, that may be two members, it may be four, but they're there for a specific purpose, and then they disband. The subcommittees are not empowered by the board except on a very specific case-by-case basis to take action on behalf of the board. Their role is to discuss issues and bring recommendations to the board of directors where the board has the authority and the responsibility for taking action as an entity. All of our subcommittee meetings are open to the public, even though they're not advertised under the public meetings law as truly open meetings. That's part of our policy. It is only in those cases where a subcommittee is where we know there's going to be a quorum present, or where we're holding a hearing, or where the subcommittee has been empowered, then certainly we do follow the public meetings law. We advertise the meeting as required by law. Simply requiring all subcommittee meetings for our particular district, really would create some scheduling problems, some difficulties for us. It's not the cost. The cost is not that significant in terms of publication. I'm not sure that the districts really do anything different than any other public bodies. They take care of business, they take an issue, they discuss it, they bring...they look at policy, they bring recommendations to their boards. The body...the parent body is the one that actually makes the decisions. So I'm not sure what differentiates districts, natural resources districts. Our opinion, LB601 would be an unnecessary and unfair application of the public meetings law, and we'd request the committee to indefinitely postpone the bill. Thank you for the opportunity to present testimony. [LB601]

SENATOR BRASCH: Thank you, Mr. Johnson. Are there any questions from the committee? Yes, Senator Haar. [LB601]

SENATOR HAAR: Thank you. I'm not sympathetic to the argument that we're only

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talking about, you know, NRDs. But I am...you know the part that you quoted, there are two "unless" in there and that's what makes it...so do you, just on a kind of a personal basis, make the decisions then of...because the second "unless" such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body. [LB601]

GLENN JOHNSON: The only time they get those authorities is either one, by action of the board of directors. In full session the board says, this subcommittee is directed to do this and take this action on behalf of the board. That's the only time a subcommittee is empowered is by action by the board in full session. The only time they hold hearings is simply as under the district's rules and regulations for groundwater management, or irrigation runoff, any of those, the board has directed that the subcommittee is the representative of the board body that actually holds and conducts these hearings. And again, those are, you know, advertised just like any other public meeting is. [LB601]

SENATOR HAAR: Okay. [LB601]

GLENN JOHNSON: So, no, I don't have any discretion as to whether or not the board, the subcommittee, it's really what the subcommittee has been empowered by the board to do. [LB601]

SENATOR HAAR: Wouldn't you agree that...and don't think a lot about this, but wouldn't you agree that the courts would generally interpret open meetings law on the side of you err on the side of being open? [LB601]

GLENN JOHNSON: The provision is there for essentially all public bodies, and the law passed by this Legislature to exempt subcommittees. I assume the law would look at that exemption in making their decision, but I understand what you're...I understand what you're saying is, that's why the board works very hard to make sure that even nonpublished subcommittee meetings are open and available to the public. [LB601]

SENATOR HAAR: Do you...again the partner of open meetings is open records, so if a subcommittee gets together and they don't fall under this definition, are minutes still taken of those subcommittees? [LB601]

GLENN JOHNSON: Every subcommittee has minutes taken of them. Those minutes are available. It's public records. [LB601]

SENATOR HAAR: Okay. So really any subcommittee meeting, then, even if it's not an open meeting announced, and so on, would have minutes available. [LB601]

GLENN JOHNSON: Certainly. Every subcommittee meeting, yes. [LB601]

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SENATOR HAAR: Okay. [LB601]

GLENN JOHNSON: Just an example of your last question, we've had a circumstance where the meeting is a subcommittee meeting, they've not published it as a public meeting. I have a couple of other directors that show up and the number of directors hits the quorum, and that chair stops the meeting and says, either somebody has to leave or we adjourn the meeting, and that's the way they conduct that. So we have had cases where directors have been asked to leave a subcommittee meeting who were not on the subcommittee because, frankly, it wasn't published and they would create a quorum situation. [LB601]

SENATOR HAAR: Okay. Thank you. [LB601]

SENATOR BRASCH: Senator Smith. [LB601]

SENATOR SMITH: Thank you, Senator Brasch. Mr. Johnson, thank you for your testimony. Several questions. First one, let me...going back to that same section that Senator Haar was discussing, in the second "unless," unless subcommittees are holding hearings, making policy, or taking formal action, you explained some of that. Is making policy and taking formal action on behalf of the parent body, are they one and the same? Is that the same thing, making policy? [LB601]

GLENN JOHNSON: They both require...I mean, we interpret that to mean that that is a final decision of the board. Making policy, it would be something that is a potentially continuing taking action on the board, maybe approving a one-time contract, or a one-time payment. Policy would be, this is the way we're going to operate in these circumstances. [LB601]

SENATOR SMITH: All right. And then there's an example given earlier where there's a joint subcommittee that took place. Would that have violated this quorum rule in your case? [LB601]

GLENN JOHNSON: If...if we, and we have had joint subcommittee meetings and those are always published. If there's going to be more, in my case with 21 members, if there's going to be more than nine board members there, it's going to have to be published. [LB601]

SENATOR SMITH: So in the case of your NRD, a joint subcommittee would have triggered this public notice policy? [LB601]

GLENN JOHNSON: Yes, right. If it meets the quorum number. [LB601]

SENATOR SMITH: Right. And so the point you're making here is that you feel that there

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is currently considerations given in the statutes now that sufficiently trigger the public notice requirements. That's what you're saying. [LB601]

GLENN JOHNSON: Yes. And that's the way we operate, yes. [LB601]

SENATOR SMITH: And then you also mentioned hardship on scheduling subcommittee meetings. Explain that a bit. [LB601]

GLENN JOHNSON: With nine subcommittee meetings, nine different subcommittees, and we do not have and we function, you know, like every entity can set up their own operating procedures. And so we don't have a standing date, day of the month, time of the month when subcommittees meet. We do for the board. [LB601]

SENATOR SMITH: Okay. [LB601]

GLENN JOHNSON: So the board meets on the third Wednesday. If the subcommittees are going to make recommendations and discuss issues and bring them to the board, they will meet sometime in advance of that board meeting. And they will, you know, that meeting may be, you know, whenever I can get, frankly, a quorum of the subcommittee together. [LB601]

SENATOR SMITH: All right. Thank you. [LB601]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, are there other opponents? [LB601]

DEAN EDSON: Senator Brasch, members of the committee, my name is Dean Edson, D-e-a-n E-d-s-o-n, and I'm executive director for the Nebraska Association of Resources Districts presenting testimony today in opposition to LB601. I want to make it perfectly clear that all of our districts for just about every one of our subcommittee meetings, they're public noticed, open to the public. There are a few exceptions that occur out in districts that where sometimes that's not appropriate. I want to point out a couple of those that aren't. Here's a...I've been involved in situations where subcommittees have needed to meet with legal counsel to discuss some personnel issues, and it's a question of whether that type of subcommittee meeting where you've got two or three board members that go in and talk to legal counsel about personnel matters, whether that should be public noticed and open to the public. The decision on those has always been not to public notice those, but rather to protect the employee or the privacy, and not public notice that. We've also had situations that where individuals have had compliance problems with rules and regulations. And we've asked those individuals to meet with the subcommittee to discuss their compliance issues whether they be on a water quality or a water quantity, and we, out of respect to them, since they are innocent, we've asked that those meetings not be public noticed and open to the public. If we can work with a

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couple of board members and the individual that's in question and keep all of this out of the...keep the innocent protected and resolve the issue, everybody wins. We've also had situations where we've developed groundwater management plans. Either integrated management plans or groundwater management plans and we have stakeholder meetings and a couple of individuals have concerns over those and would like to meet with board members alone to talk about that, or meet with a subcommittee and have a personal issue involved in it, we respectively do not public notice those type of meetings. Under what's required in LB601 the way it's drafted, every example I just provided to you would have to be public noticed and open to the public. Our preference is not to have to do that. The other subcommittee meetings that we have that don't deal with those matters, I'm not aware of any district that didn't public notice it, and make it open to the public. I've provided to you a letter from the Lower Elkhorn NRD. Stan Staab wished he could be here today, but he was not able to attend because he's meeting with some water users up in his district today on some rules and regulations. I want to point out in this letter, every public, every subcommittee that they have is public noticed and open to the public. The district also, like a lot of other districts, post their meetings on the Web site, upcoming meetings and subcommittees. You can see from the attachments that he's provided, the proof of public notice, including subcommittee meetings, and board meetings, and public policy meetings, all of those are public noticed. That...the Lower Elkhorn NRD has been investigated by the Attorney General's Office at the request of some individuals that they were not public noticing meetings and were violating Open Meetings Act. And I want to report to you that there's been no violations ever found or ever discovered. As a matter of fact, the Attorney General's Office has given them a passing grade, flying colors, and we have talked...we've share that information with all the other districts of how to do their operations to make sure that they go beyond what's required in public notices and involving the public. In closing, I'd just like to mention that we need discretion at times to determine when these subcommittee meetings should be public and when they should be in private. And, therefore, we'd request that you respectfully, indefinitely postpone LB601. Be glad to answer any questions you may have. [LB601]

SENATOR BRASCH: Are there any questions from the committee? Senator Smith. [LB601]

SENATOR SMITH: Thank you, Senator Brasch. Mr. Edson, I'm a bit confused, because leading up to your testimony I'm hearing that the issue is about a lack of open meeting, that the subcommittee meetings are not open to the public or not provided notice. And in your testimony just now, you said with the exception of compliance in personnel issues, they are. And there's no evidence otherwise from investigations that have been made under the Attorney General's Office? [LB601]

DEAN EDSON: Uh-huh. [LB601]

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SENATOR SMITH: Am I hearing that correctly? [LB601]

DEAN EDSON: Yes. [LB601]

SENATOR SMITH: So all these issues that we heard preceding you in testimony in which they're...they gave some examples which there were not notices provided for open. Is it, is it because they dealt with complying some personnel issues? [LB601]

DEAN EDSON: I'm not aware of what this specific meeting was, I guess. And I think, Senator, at all due respect, at times I get a little frustrated because I'm not sure what the issues are until I come to a hearing. I've...we've tried to work with Senator Bloomfield's staff to discover...you know what's the issue? What problems do we need to resolve? And couldn't really get specific examples, so it makes it tough for us to try to resolve the problem. I'd be more than happy to work with whoever if we can find a specific date when some meeting occurred, so we can maybe investigate that further to find out if there was a violation. [LB601]

SENATOR SMITH: And a lot of the focus here is on the Lower Elkhorn. Is this the extent of your understanding, what you're dealing with here is just the Lower Elkhorn, or is this across all NRDs? Are they operated the same way? [LB601]

DEAN EDSON: The Lower Elkhorn probably notices everything and makes them open. That...all the other NRDs have had situations where they don't public notice some subcommittee meetings when they deal with those personal issues or staffing issues or compliance issues, because they need to be maintained private. Those discussions need to be confidential until the matter is resolved. Those that do, subcommittees meetings with a group of stakeholders to discuss the development of an integrated management plan, those are public noticed and made open to the public. [LB601]

SENATOR SMITH: In your understanding then, if it were a compliance or personnel related issue, would it violate this portion of Section 84-1409 that talks about a quorum of the public body? Would they ever exceed the quorum of the public body for a meeting like that? [LB601]

DEAN EDSON: No. No, they would not. Not in those situations where they're on a compliance issue. That would more likely be maybe the chairman of the Exec...or chairman of the board or a few members of the Exec Committee, or it may be a few members of the programs committee. [LB601]

SENATOR SMITH: Would they be taking formal action on behalf of the parent body or making policy? [LB601]

DEAN EDSON: No. [LB601]

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SENATOR SMITH: Okay. All right. Thank you. [LB601]

SENATOR BRASCH: Are there any other questions from the committee? Senator Kolowski. [LB601]

SENATOR KOLOWSKI: Mr. Edson, thank you very much for coming today and your testimony. The...you mentioned the Attorney General's Office had been summoned as far as some possible violations or whatever else. Every time those came forward, everything was found to be within order and clean? [LB601]

DEAN EDSON: That's correct. [LB601]

SENATOR KOLOWSKI: Were the actions brought by residents of that NRD district? [LB601]

DEAN EDSON: Yes. [LB601]

SENATOR KOLOWSKI: Okay. Thank you very much. [LB601]

SENATOR BRASCH: Are there any other questions? Seeing there are none, thank you, Mr. Edson. [LB601]

DEAN EDSON: Thank you. [LB601]

SENATOR BRASCH: And are there any other opponents? [LB601]

DEAN EDSON: I would like to just close, I have requested that legal counsel for Papio NRD come in and testify but in a neutral capacity, so. [LB601]

SENATOR BRASCH: Are there any to come forward in the neutral? That surprised me to hear him ask for neutral, so it's not on script here. [LB601]

STEVE GRASZ: Thank you, Senator Brasch and members of the committee. My name is Steve Grasz, S-t-e-v-e G-r-a-s-z. I'm appearing on behalf of the Papio-Missouri River Natural Resources District. The Papio-Missouri River Natural Resources District strives to keep the public informed of its activities. In fact, the district already voluntarily advertises all of its subcommittee meetings to encourage public awareness and attendance. These efforts do come with a price tag. Advertising of NRD meeting notices costs the district and, therefore, the taxpayers, thousands of dollars each year. Although the district is already providing public notice of its subcommittee meetings, we do have concerns about LB601. The public meeting statutes are not infrequently, as the committee is aware, the source of contention. Consequently, it's very important that they

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be precisely drafted. Portions of LB601 are potentially overbroad and inconsistent with the current Open Meetings Act. And I'd like to maybe just give some testimony on that in that regard. The operative provision of LB601 states that any meeting of a subcommittee created by a board shall be open to the public and notice shall be given pursuant to Section 84-1411.24. The problem is that LB601 does not define what constitutes, a quote, meeting of a subcommittee created by a board. And I think that may have been what Chairman Carlson was referring to earlier in the hearing. Nebraska's Open Meetings Act also fails to define what a meeting of a subcommittee created by a board is. The omission of this definition of this very key language makes LB601 potentially overbroad. Because of this, it could arguably apply to unintended situations. In addition, LB601's failure to define exactly when it applies, puts the bill in potential conflict with the Open Meetings Act. Nebraska Revised Statute 84-1409(2) limits application of the Open Meetings Act to meetings of a public body. Subsection (1) of that same statute provides that a public body does not include subcommittees of such bodies unless a quorum of the body attends a subcommittee meeting, or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body. And that was what Senator Smith was referring to. Because LB601 does not similarly restrict its application, it may unintentionally apply to situations where a quorum of the subcommittee is not present and the subcommittee is not holding hearings, making policy, or taking formal action on behalf of the parent body. This may promote unnecessary confusion in the law with no identifiable benefit to the public. And some of the concerns that we have with LB601 are that it, as currently drafted, fails to define what constitutes a meeting of a subcommittee created by a board. I'd be happy to answer any questions. [LB601]

SENATOR BRASCH: Thank you. Are there any questions from the committee? Senator Smith. [LB601]

SENATOR SMITH: Thank you, Senator Brasch. Thank you for your testimony, sir. I appreciate it. And I know you're representing Papio-Missouri, and previous testimony seemed to indicate that, you know, there's not a problem there, that the problem is with another NRD. So you're saying that this would affect the way the district you represent would operate? [LB601]

STEVE GRASZ: The addition of subcommittees to the requiring of public notice would not affect the Papio because we already do that. The problem is that because there is no definition of what subcommittee means in the act or in the amendment, the proposed amendment, it would potentially lead to confusion about when we're required to give notice and when we're not. Under the current law, unless a quorum attends a subcommittee meeting, it's not a problem. But without a definition in the amendment, it could be argued that that would apply to two people having coffee. [LB601]

SENATOR SMITH: All right. And in listening to Mr. Edson's testimony, is...did you see

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that was an accurate representation of...I know, certainly your NRD, but other NRDs?
[LB601]

STEVE GRASZ: Yeah, I'm not familiar with how the other natural resources districts conduct their business. We do give public notice of our subcommittee meetings and encourage the public to attend those. [LB601]

SENATOR SMITH: Would you...at the Papio-NRD compliance-related issues and personnel-related issues, how are they handled currently? [LB601]

STEVE GRASZ: Well, they are able to go into Executive Session for matters that need to be confidential. I'm not sure how the subcommittees handle that at that level. [LB601]

SENATOR SMITH: All right. Thank you. [LB601]

SENATOR BRASCH: Are there any other questions from the committee? Seeing there are none, thank you, Mr. Grasz. Are there any others here to testify in the neutral? Seeing there are none, that concludes the hearing on LB601, and we will start the hearing on LB522. [LB601]

SENATOR CHRISTENSEN: (Exhibit 7) Thank you, Madam Chairman and members of the Natural Resources Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District, and here to introduce LB522. LB522 would require that surface water appropriators be compensated by the Department of Natural Resources of the state when the department applies a rule or regulation prohibiting surface water appropriators from storing or diverting instream flows to comply with interstate compact decrees causing appropriators to forgo the use of water. I see what has occurred...is occurring is this rule that got implemented January 1 forcing the water to pass through the dam projects, irrigation districts for compliance with the state has pitted surface water against groundwater. And to give you an illustration of how this is occurring, I sat down with Senator Carlson and Brian Dunnigan and the Governor and I had a very nice discussion on this. It come up, you know, this is a rule that is written into the IMPs with the NRDs. But I quickly brought up the point, I said, okay, who manages surface water? It's DNR. Even though it's written in the IMP, the NRDs cannot do anything. Cannot force the rule to be put in...implemented or used, it is the state that does it. And I'll give you an illustration of how this is affecting. And I'll just use my own personal example. I've signed a conflict of interest, it's filed with Accountability and Disclosure, it was announced on the floor yesterday. But like in the Frenchman-Cambridge Irrigation District, they use Medicine Creek Dam for stormwater for usage. If the dam is full, it has approximately 8 inches for every irrigated acre under the system. So typically we'll get 8 to 10 inches of water because you can store some during the year, have some streamflow. And so what has happened now, the state put in the order because of being a water-short year, it appears that it will be, and unless

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there is huge rains it will be, that determination is not until June 30. But what happens now, they can't store that water for irrigation. Let's say below my dam project we would have a big rain come in, fill up Harlan County. Well, this dam wouldn't fill; rain event was below it, Harlan would be full, it would allow every groundwater irrigator to pump the 9 inches that we have as an allocation in the Lower Republican. Yet everybody in that dam project will only get 2.5 inches. The meeting here last week they determined they're going to deliver water over a 60-day period this summer and the only water we get is what was stored previous to January 1 of this year which will give us approximately 2.5 inches. So you could get in the situation where the groundwater people can have their full allocation. Surface water people, because it's being passed through, only gets what was previously stored. And with the plans...even without a rain event this year, we could be in a water-short year, groundwater will get their 9 inches unless the NRD changes their rules between now and then. They have a hearing this next week. And I believe they're still going to stay with the 9 inches and put a cap of maximum carrying use, or out of the five-year allocation the maximum that you can pull out of the next year, which I believe is going to be 10.5 inches. So you've got a situation now...I'm a surface irrigator, I'm getting 2.5 inches and over here I've got a farm where I'm wells, I'm getting 9, if I don't use any carry forward or borrow from next year's allocation, or I can get up to 10.5. So you have disparity of 8 inches if you use some of the extra, all created by DNR's rule, because DNR implemented it. So that's what is driving...is part of the reason, I think there will be people testifying behind me that I see here that can maybe better answer the question, but I believe that's part of the reason we had the lawsuit filed, January 1 too. Because now that water is being taken away from them. We have to pay our contract back to the federal government whether we get water or not. And it's not that our water's disappeared, it's the water's being passed through. And I think there is a history, and if I can get a page over here to hand this out, there's a history that has been already accomplished in 2008 where this Legislature purchased the water out of Bostwick Irrigation and that...the sum there that you'll see on the sheet, I believe, and in regular session we approved \$2.7 million, and that specifically went from the state to the Bostwick to purchase water for state compliance with Kansas. And then we had a deficit appropriation, or out of LB701, the \$3 million also. There also that year, for 2008, this Legislature appropriated \$8.7 million as a loan to the Republican NRDs to purchase water out of Medicine Creek; and the state also, I thought, spent some that year...yes, used the \$2.7 million that they had in that fund that you see listed here to buy water out of Bostwick again. I think there were two out of that, and I'm sure somebody can correct me if I'm wrong. I believe it's twice we've purchased out of there. And now we are passing it through free of charge. Doesn't matter about our obligations, irrigation districts' obligations, the farmers' obligations, because farmers have to pay the irrigation districts; irrigation districts have to pay the federal government, and this is just being sent through to cover the state's obligation on this compact. And so I think there's a history already that we don't just take water from people that have the rights to that use. And so I thought this would be an appropriate bill to have some discussion on about the policy that we're going to have this state doing. And so that's

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why I brought this bill forward was that I think it is something that I believe is...needs to be discussed by the Legislature and determine the route we're going to go. If we're going to just start a trend, we're taking things away from irrigators. I think you'll hear from individuals here today also that put up some new pivots in 2012, now have no water. I know this happened to another guy a few years ago under another dam project, put up a new pivot, the next year was no water there. And you can all imagine what it's like to go pay for a new pivot and now lose your water source and have another obligation. You're going to pay for water, not get it, or only get 2.5 inches and have a pivot payment. And so I wanted to bring this bill to get some discussion going. I'll give you a little more explanation on the leases in 2008. It was approximately about \$300 an acre, I believe, farmers were compensated. I was one of those; I don't remember exact number, but \$300 and some. If you look at the Lower Republican NRD this year done a voluntary, bid-in process, that they're using occupation tax for, for people that would agree not to pump in a rapid response area. Which again, my family done some of that also. And that averaged, I believe, \$415 an acre this year, for the acres they put into the program. I'm just giving you an idea of how the compensation has been in the past and what farmers have been willing to bid in voluntarily to not irrigate some acres this year to help with the compact compliance which in the IMPs all three Republican NRDs have signed that they'll take the responsibility to do. But with the lawsuit that was filed, the augmentation system is off the table. That's one of the projects that would be helping this right now if we could be building that and putting...adding streamflow. But bonding is out right now, unless LB185 would go forward with the loan I've asked for from the state again, then we would not be able to get that accomplished. So I guess that's kind of the end of what I have. I just wanted to, again, bring the...what I believe is the history of how we've handled shutting off surface irrigation to people. And ask this committee if they agree that's the way we want to do it now is uncompensate it when in the past we've compensated. Thank you. [LB522]

SENATOR BRASCH: Very good. Thank you, Senator Christensen. Do you plan on staying to close? [LB522]

SENATOR CHRISTENSEN: Yes. [LB522]

SENATOR BRASCH: You will. Very good. Any questions from the committee? Seeing there are none, will the first proponent please come forward. And if you were not here for the opening, the microphone is for transcription, it's not for amplification, so it's there to transcribe. Thank you. [LB522]

BRAD EDGERTON: (Exhibit 8) Good afternoon, Senators. My name is Brad Edgerton, B-r-a-d E-d-g-e-r-t-o-n. I'm the manager of Frenchman-Cambridge Irrigation District. I'm also on the board of the Nebraska State Irrigation Association and the Nebraska State Irrigation Association does support LB522. I'd like to thank Senator Christensen for bringing this bill forward to get the discussion started. Frenchman-Cambridge Irrigation

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District does support LB522. I think everyone in this room would agree that if someone takes your property, you are entitled to compensation for that loss. And if you use that property to generate income for your business, then that lost income should also be replaced. LB522 consists of two sentences, and both need a little work. The first sentence states that if DNR adopts rules, then financial assistance would be...then they shall provide financial assistance. It should probably actually say "if the department issues closing notices in a fully appropriated basin to comply with the compact, then financial assistance shall be provided." And not necessarily financial assistance, but compensation. The term "financial assistance," we believe, is different than "compensation." And then also there is a question on who would actually calculate compensation and what documentation would be required. Sentence two states the irrigation districts shall use the financial assistance to compensate surface water appropriators who have to forgo the use of water. The district's customers are not surface water appropriations. The irrigation district holds the permits, therefore they're the surface water appropriators. Irrigation district customers are being harmed and should receive fair and just compensation for their loss. There are many individuals that are not part of an irrigation district and they do hold the natural flow in storage permits. It's unclear if the owner of these surface water appropriations should also be compensated. Another approach to helping the districts with compensation, I handed out some pages I copied out of the three NRD integrated management plans and I highlighted the sentence...or the paragraph there, basically says: to the extent possible, it is the intent of the Upper Republican NRD to provide compensation to water users that are required to forego water use to allow the Upper Republican and the state to comply with the compact. This may be in addition to, or part of any other NRD incentive or retirement program developed to facilitate compact compliance. This paragraph is in each of the three NRDs' integrated management plans. However, none of the NRDs have placed compensation in their budget to accommodate this paragraph in their IMPs. So we think the Legislature could mandate that the NRDs place a certain percentage of the occupation tax in their integrated management plans and set it aside so when compensation is required, they would have the funds available. It could be matched with state funds too, to improve that compensation so that everybody gets a fair and just amount. I hope the committee takes this legislation serious. LB522 does need some work and I would ask that you work with the Nebraska State Irrigation Association on amending this legislation and advance it out of committee. Thank you for the opportunity and I can answer any questions you may have. [LB522]

SENATOR BRASCH: Thank you, Mr. Edgerton? [LB522]

BRAD EDGERTON: Edgerton, yes. [LB522]

SENATOR BRASCH: Thank you. Are there any questions from the committee? Seeing there are none, thank you. [LB522]

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BRIAN EDGERTON: Thank you. [LB522]

SENATOR BRASCH: Any other proponents this afternoon? [LB522]

MIKE DELKA: (Exhibit 9) Honorable Chairman and members of the Natural Resources Committee, my name is Mike Delka, M-i-k-e D-e-l-k-a and I'm the manager of the Bostwick Irrigation District in Nebraska. The board of directors of the district desire to go on record in support of LB522. We are currently in the dilemma that this legislation was meant to address. We do not deny that 2012 was a dry year. Because of these conditions, the need and the use of water was fairly extreme to meet the needs created by the conditions. As a result, water tables dropped, streams went dry, reservoirs lost storage. Due to the low levels at the Harlan County Reservoir, the Department of Natural Resources announced in November that 2013 would be a "compact call" year. This would mean there may be the potential of no surface diversions or inflow storage in reservoirs in the basin. These actions are not required by the integrated management plans which say the state will regulate surface water in the basin as necessary to ensure compact compliance. If the NRDs have sufficient management of wells to be in compliance, these actions should not be necessary. As part of the final settlement stipulation, Kansas was given a 1948 call on the river to administrate surface water rights. This was senior to most of the rights on the river. This sacrifice is not enough to offset the depletions of over 80 percent to the Harlan County Reservoir caused by both wells and conservation. It is estimated our district saves over 10,000 acre-feet a year as a result of converting open ditches to buried pipe, strong management, automation, and accurate measurement. This was evident in 2012 while others were using record amounts, the Bostwick diversions ranked 23rd from the least during the last 56 years of record. This was not done through retiming projects or gauge manipulations. Now we are the targets of a penalty of not diverting natural flows, low lake levels, and not storing reservoir inflows. We believe the knowledge and the water models exist to have sustainable supplies and equal sharing of the resource if it were the desire of the state. If the state chooses to decimate and sacrifice a select group, they should compensate that group. We thank you for the opportunity to comment and thank Senator Christensen for this responsible legislation. [LB522]

SENATOR BRASCH: Thank you, Mr. Delka. Are there questions from the committee? [LB522]

MIKE DELKA: Thank you. [LB522]

SENATOR BRASCH: Seeing there are none, thank you. Any other proponents? [LB522]

MIKE DRAIN: Thank you, Senator Brasch, members of the committee. My name is Mike Drain, M-i-k-e D-r-a-i-n. I'm here testifying on behalf of the Central Nebraska Public

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Power and Irrigation District in support of LB522. To be clear, Central is testifying more on the premise, the concept, the intent behind the statute rather than the specific wording. It is important for the legislators to understand that this is not intended to solve a problem created by the folks who are without water. Nor is it intended to solve a problem created simply by the vagaries of variable water supplies and drought. What is occurring in the Republic Basin is that there is a limited supply of water split between the states of Nebraska and Kansas. And in Nebraska, it has been the policy of the state and the local governments that control water policy to decide that it is more efficient and serves the greater good and a greater number of users to let groundwater development occur, notwithstanding the fact that it depletes the streamflow and will leave at times insufficient supply to meet Kansas' needs and the Nebraska surface water needs as well and therefore the Nebraska surface water users go without. Where the government reallocates resources and takes people's resources, compensation is justified and should be expected. We all know that if the state were to decide that it wanted to put in a road through someone's property, because the road would benefit a great number to the detriment to the single property owner whose land the road would cross, the road will be built. We don't question the ability of the government to decide that that is in the public good. But it is also true that that landowner will be compensated when that land is taken for the purpose of building the road. When it comes to water, we do have already in surface water law that if a city needs water that is used by other users of water such as irrigators, that clearly the domestic use will prevail. The water will be provided from the irrigators to the city notwithstanding that the irrigator would probably prefer to continue to irrigate. But in that case under Nebraska law, the city would compensate the irrigator. Unfortunately, we have technicalities, we don't have a very well integrated...integrated management law in Nebraska. And as a consequence, the groundwater development can be allowed to occur because it's deemed to be in the public interest. And yet the consequence that falls on the minority, surface water user, is uncompensated. This should be corrected. Central believes this should be corrected not only in the case where the remaining water might have to go to another state like Kansas, but perhaps it has to go to a senior appropriator elsewhere on the...inside Nebraska, but there are other junior appropriators who are going without water because the water has been determined to be of greater use by groundwater users. Central believes that this legislation concept should be expanded to require that when the state and the NRDs conclude that it is in the best interest of the state that there is a greater majority served by letting groundwater development occur at the expense of surface water appropriators that that ought to be compensated. There are a number of water conflicts in this state. And I do believe, and Central does believe, that those conflicts will not be resolved until it is recognized that people's rights are being taken even if it is, arguably, for the greater public good. If we were in Venezuela, if we were in China, if we were in Russia, I think we would all expect that your land would go to the road or your water will go to the well if the government deems it appropriate and there's nothing you can do with it. But in America, in Nebraska, it may not be the law yet, but it certainly, I think, is the expectation that when you take people's rights and you interfere with them,

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they should be compensated. It's fair and it's what is right. And if you don't do what is fair and right, you must be doing what is unfair and what is wrong. And I thank you for your time. [LB522]

SENATOR BRASCH: Very good. Thank you, Mr. Drain. Any questions from the committee? Seeing there are none, thank you. Are there any other proponents? [LB522]

DALE HELMS: (Exhibit 10) My name is Dale Helms, D-a-l-e H-e-l-m-s. I would like to enter my written testimony and rather than reading verbatim my testimony, I'll kind of paraphrase parts of it. First part just indicates where I irrigate on the Frenchman-Cambridge...out of Frenchman-Cambridge District on the Cambridge canal out of the Medicine Creek Dam, and that we do rotations, you know, to try and utilize our water to the best. We do not have supplemental wells on any of the acres I operate. As a surface water irrigator, I'm solely dependent on the water in the dam. In other words, if we have a wet year and we don't use our full allocation, the dam fills up, it goes over the spillway down to Harlan, on to Kansas, next year we can't use that water that we didn't use this year. In the past, while I've been an irrigator on the canal system, we've always gotten our water except 2007 or maybe it was 2008. We sent our water to Kansas to try and help meet compact compliance. We received approximately \$300 per acre as compensation; corn prices at that time were somewhere around \$3, \$3.50 per bushel. We've received our estimated projection for this year, approximately 2.5 inches over an eight-week period for the 2000 (sic-2013) irrigation season. For myself personally, this closing notice makes a drastic change in my irrigated acreage. I operate approximately 300 acres that I own and rent on a 2.5-inch allocation which will give me 950-acre inches. On average for my gravity-irrigated ground it takes 12 to 16 inches to irrigate those acres which, basically, then reduces my 380 acres of irrigated base down to 60 to 80 acres for 2013. You know, how am I to survive with that kind of reduction? We installed new pivots last year, a couple of those pivots I won't even be able to use...or one of them I won't even be able to use for this year. Also with reduced allocations, if we don't apply the same amount of water that we've used in the past to establish our APH, or average production history, we don't qualify for an irrigated crop insurance practice. To give you an idea, an irrigated crop practice gives us approximately \$790-some worth of coverage, given the levels that I've stated. If we use a nonirrigated practice because we don't have water, then we're only going to have about \$265 worth of coverage; over \$500 less coverage per acre. It also affects us as far as our taxes. I asked the county assessor if in...for our 2013 whether we would be able to, you know, get our taxes adjusted. And she said, taxes are all based on valuations, land sales, not on what water is delivered. And I don't know if we can list that land, then, as nonirrigated instead of irrigated. This closing notice and 2.5 allocation also creates many problems with contracts we already have in place. We're leasing land at irrigated rates and we're only going to be able to farm it as dryland. We have contracts for seed, fertilizer, etcetera, chemicals. We don't know whether the suppliers are going to take those back because dryland takes reduced rates, doesn't use as

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much. We have contracts with REA for horsepower charges that we're going to have to pay regardless of whether we pump an inch of water or even turn the pump on. This closing notice, basically, just has a domino effect on practically everything that we deal with. You know, I won't go into the details, but, basically, the states and the United States signed the compact. Then all these other entities that I've listed, they formed multiple other types of contracts so that the appropriated water rights could be given to the landowners. The landowners signed those rights. The Frenchman-Cambridge Irrigation District filed for and received these appropriated water rights in 1946 for the landowners. These rights were granted and attached to the individuals' land. This property right is held by the landowner and became vested at the time of appropriation. In looking through or scrolling down through the Nebraska Constitution, I found a place in there where it says that...in regards to appropriation, states that water rights are vested at the date of appropriation. In regard to contract rights, it states that statute may not operate retrospectively where it would impair obligation of contracts or interfere with vested right. It also states that, generally, the law enforced at the time a contract is entered into form a part of it and enter into its obligation. But the law then enforce affording a remedy for a breach of the contract may be modified or changed without impairing the obligation of the contract provided that an adequate remedy is left. It also states that obligation is impaired whenever remedy is taken away or abolished or legal obligation suspended or destroyed by abolishing remedy or when enforcement is burdened by new or unreasonable conditions or restrictions. The Nebraska Constitution in dealing what constitute property states that the right to use water for a beneficial purpose is a property right subject to the constitutional provision regulating the taking of private property for public use. The Nebraska Constitution also states that curative acts which attempt to take away property rights already vested violate the constitution. Is the closing notice by the Nebraska Department of Natural Resources a curative act to cure a problem of the Upper Republican NRD overpumping? In a five-year time frame they have surpassed their long-term average by 19,203 acre-feet. Ten years puts them at 25,648 feet over on average, or 256,480 acre feet over on their total. They have not followed their integrated management plan. In closing, I want to remind you that my surface water appropriation delivered by Frenchman-Cambridge Irrigation District is limited or controlled by the weather and the amount of water in Medicine Creek Dam. I receive an 8- to 10-inch allocation on most years; then any excess flows into the Republic River and then to the Harlan County Dam and on to Kansas. How can a surface water irrigator overuse our allocation when it's limited by these factors? Surface water irrigators have relied on these contracts, invested property rights for our appropriated surface water rights to be protected. The closing notice by DNR is a curative act to cure the problem of the Upper Republican NRD overpumping and Nebraska being out of compliance with the compact. This curative act violates the Nebraska Constitution as it takes our vested surface water property right. The surface water irrigators need to be compensated for water they will not receive in 2013. The next page just deals with this Rock Creek augmentation project and it's just to stimulate some thoughts...give you some...my opinion, I guess, on a few things or ask questions.

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[LB522]

SENATOR BRASCH: Mr. Helms, we've exceeded the... [LB522]

DALE HELMS: Okay. [LB522]

SENATOR BRASCH: ...time here. Thank you. But you have it written there very thoroughly. [LB522]

DALE HELMS: And the last page is just showing the groundwater level changes since predevelopment. That's it. [LB522]

SENATOR BRASCH: Wonderful. [LB522]

DALE HELMS: Thank you. [LB522]

SENATOR BRASCH: Thank you. Are there any questions from the committee? Seeing there are none, thank you very much for coming forward today. [LB522]

DALE HELMS: Thank you. [LB522]

SENATOR BRASCH: Next proponent. [LB522]

SCOTT JAPP: (Exhibit 11) Good afternoon, Senators. My name is Scott Japp, S-c-o-t-t J-a-p-p. I have no vested interest in irrigation since I don't do any irrigation. However, I am invested...we should have an invested interest in the entire state...should in this situation. I'm not going to reiterate what other people have previously said. But I truly believe that the constitution is in behalf of these people, that if we're going to take water from them, that is their livelihood, in the order of priority between domestic irrigation and then commercial use, these people have a high priority. And the state should compensate the people, not just the local area down there through occupation taxes. I'm really concerned about the lawsuit that the Cambridge Irrigation people...I know the...what those people are feeling because I have friends in that area that I went to college with. They're both on both sides of the...some of the...they're irrigators in Chase County, and they're surface irrigators down in Arapahoe. I mean, these are fraternity brothers that we no longer can probably speak together anymore. This is how serious this...it is. But what the unintended consequences of the lawsuit, and I can understand why the surface irrigators are in this situation, but what I'm afraid of is in their lawsuit the hydrological water is connected to the streams. We all know that the Army Corps of Engineers controls the streams...because they're waters of the U.S. Who knows if we don't give these people some compensation, 20 years down the road the U.S. government will...you know, that underground water is part of that stream so therefore we control it. Thank you. [LB522]

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SENATOR BRASCH: Very good. Are there any questions from the committee? Seeing there are none, thank you, Mr. Japp. Are there any other proponents? Is there anyone who would like to come as an opponent, testify as an opponent? Is there anyone who would like to testify in the neutral? Senator Christensen, please close. [LB522]

SENATOR CHRISTENSEN: Thank you for the opportunity to bring forth this bill that I believe is very important policy that we need to discuss. I'd be more than glad to have my office work with...to work personally in my office with Brad Edgerton, Nebraska Water Users, and committee counsel to clean up any things that we believe need to be done in this language. I understand what Brad said and would agree with him. I also might ask this committee if maybe we need to put in some type of reasonable compensation, to have it listed in here or would 10 cents, if it didn't say some type of reasonable, would 10 cents an acre-foot be compensation and get the state off the hook? That would be compensation, it wouldn't be reasonable. That's why I say we maybe need a little bit of work on this and be able to make sure that we don't leave a loophole in there for trying to satisfy the law, but yet not meet the intent of the law. I'll reiterate a little bit that if we leave the current rule in place of passing all the water from the streams through the irrigation projects, it doesn't only affect 2013. Any water that is forced through, basically after August when irrigation season ends, passed through the rest of the year is the beginning of what we store for the 2014 year. So with the rule that's been implemented, passing this water through the irrigation project, until they remove the closing, it will affect more than one year. And see we're...that's why we got a little bit of water, 2.5 inches for 2013, is the fact that we stored up until January 1. But the fact that we won't get to store towards the end of this year will cut into what should be my allocation for 2014. I believe farmers need an understanding of what they can expect. Is it...if we do nothing, do farmers need to expect? I'm a real estate agent. Just because of what has happened here in reduced allocation, I'll show you the impact on our communities. There's a chunk of ground sold, gravity irrigated, the well was bad, so whoever bought it had to put in a new well, had to put in a pivot, it was pivot capable, brought \$8,400 an acre, south of Cambridge. Just directly north of there, some surface water ground sold; same situation, gravity, but it could be pivot developed; it bring \$5,400 an acre. It's dropped the value \$3,000 an acre. There's another chunk of ground sold just east of Arapahoe that I used to farm. It brings just under, I believe it was just under \$5,000 an acre. It sold...the other one sold before Christmas just in anticipation of this happening. And this last one sold knowing, here just two weeks ago, that we were going to get four inches or less. So we have seen about a \$3,400 or \$3,500 an acre drop in land values if it sits under this irrigation district. Basically, almost bringing...this one that just sold had a two-year-old Zimmatic pivot on it; beautiful Holdrege silt loam farm; just a small draw on one side that goes through, otherwise it's a table. But yet, on public auction...they tried to sell it private and they couldn't get bids where they thought was reasonable, they had it bring \$5,000 an acre, a little bit under; kind of a scary deal. That's why I believe it's very important that we get this policy set straight. Besides

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farmers need to know, bankers need to know whether their farmers are going to be able to meet their obligations. Because if you was one of the unfortunate ones that bought a pivot-irrigated farm with a ditch a year ago when it was wet, and now you're not going to get any irrigation water, them payments are going to be tough to make. I believe the state needs to inform everyone and treat everyone fairly and not be the cause of having one farmer benefit and another one be harmed by the execution of this rule. Thank you. [LB522]

SENATOR BRASCH: Thank you, Senator Christensen. Are there any questions from the committee? Seeing there are no additional testifiers, you have closed, that closes the hearing today. Thank you, everyone, for coming here today. [LB522]