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Natural Resources Committee
February 04, 2016

[LB736 LB863]

The Committee on Natural Resources met at 1:30 p.m. on Thursday, February 4, 2016, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB736 and LB863. Senators present: Ken Schilz, Chairperson; Curt Friesen, Vice Chairperson; Dan Hughes; Jerry Johnson; Rick Kolowski; Brett Lindstrom; John McCollister; and David Schnoor. Senators absent: None.

SENATOR SCHILZ: Good afternoon, everyone, and welcome to the Natural Resources Committee hearing today. My name is Ken Schilz. I represent District 48 and I'm the Chair of the committee...District 47. Did I just say 48? I think I did. I got it wrong.

SENATOR McCOLLISTER: Is that a campaign announcement?

SENATOR SCHILZ: No. Stinner wouldn't be happy if I did. (Laughter) So, now that I know who I am, let's let you get to know who everybody else is. I'll start here to my left. Senator Kolowski.

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Rick Kolowski, District 31, southwest Omaha. Thank you.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR SCHNOOR: Dave Schnoor, District 15, Dodge County.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR FRIESEN: Curt Friesen, District 34, Hamilton, Merrick, Nance, and part of Hall County.

SENATOR JOHNSON: Jerry Johnson, District 23, Saunders, Butler, and most of Colfax.

SENATOR SCHILZ: And Senator Hughes will be late today. He serves a lot of counties in southwest Nebraska. We'll let him see if he wants to name them when he gets here. Also here with us today, we have Barb Koehlmoos, who is the committee clerk, and Laurie Lage who is the legal counsel for the Natural Resources Committee. Also we have Kellie Wasikowski, she's a sophomore at UNL, from Omaha. She's our page today. I don't know, Jake...is he still alive? (Laughter) Okay.

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KELLIE WASIKOWSKI: He works on Thursdays.

SENATOR SCHILZ: He works in the morning on Thursdays, so. We also have Jake Kawamoto here sometimes as a page as well to do that. Today, we have two bills on the agenda, LB736 from Senator Friesen, and LB863 from myself. So, if you are planning on testifying, please pick up a green sheet that's in the back at the tables. And if you do not wish to testify, but would like your name entered into the official record as being present at the hearing, there's a form on the table that you can sign. And this would then become a part of the record. Please fill out the sign-in sheet before you testify. Please print, and it's important to complete the form in its entirety. And when it's your turn to testify, give the sign-in sheet to the committee clerk. That helps make a better and more accurate public record. If you're not...do not choose to testify, you may submit comments in writing and have them read into the official record. If you have handouts, please make sure you have 12 copies for the pages to hand out to the committee. When you come up to testify, please speak clearly into the microphone, tell us your name, spell your first and last name, and that also helps us get it into the record correctly. Please turn off your cell phones or anything else that makes any noise, and if you have to take conversation to the hall, that would be greatly appreciated. We don't allow any displays of support or opposition to a bill, vocal or otherwise. It allows us to give the respect to the testifiers and the bill sponsors as they give their testimony. We will and do use the light system in the Natural Resources Committee. Five minutes, four on green, one on yellow, and once the red light turns on, then we will ask you to stop. Please wrap up your comments and we will move on. So with that, I will turn it over to Senator Friesen to open up on LB736. Senator Friesen, welcome.

SENATOR FRIESEN: Thank you, Chairman Schilz and members of the Natural Resources Committee. I'm Curt Friesen, C-u-r-t F-r-i-e-s-e-n, here to introduce LB736. LB736, amends the Community-Based Energy Development, which I'll refer to as C-BED, Act to allow all Nebraska electric utilities the option of negotiating a contract for energy from a C-BED project. LB736 would remove the limited definition of electric utility and use the term electric supplier as defined in Section 70-1014.02. And electric supplier means a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative. The current definition of electric utility would not allow a small municipal system or a rural electric provider the opportunity to purchase energy from a C-BED project if they thought it was in the best interest for their customers. As written, the bill only applies to NPPD, OPPD, LES, and Tri-State. The bill essentially clarifies that all Nebraska utilities may purchase output of the C-BED. And in the interest of keeping it short, thank you, and I'll answer any questions you may have. [LB736]

SENATOR SCHILZ: Thank you, Senator Friesen. Any questions? Seeing none, thank you for your opening. Oh, Senator McCollister. Sorry. [LB736]

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SENATOR McCOLLISTER: Thank you, Mr. Chairman. Senator Friesen is this...your bill compatible with what we saw from LB824 the other day? [LB736]

SENATOR FRIESEN: In LB824? [LB736]

SENATOR McCOLLISTER: Yeah. [LB736]

SENATOR FRIESEN: It would probably conflict with language of that of some sort, but I don't know in the end if both of them passed whether or not we work something out, but it accomplishes the same thing, I guess. Mine just deals with C-BED projects, yours talks about a broader scope, if I remember correctly. [LB736]

SENATOR McCOLLISTER: Well, I'm not sure it's contradictory, but maybe the witnesses that are coming after you can discuss that point. Thank you, sir. Thank you, Mr. Chairman. [LB736]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your opening. We'll have proponents of LB736. [LB736]

KRISTEN GOTTSCHALK: Senator Schilz and members of Natural Resources Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k, and I am the government relations director and registered lobbyist for the Nebraska Rural Electric Association, and I'm here to testify in support of LB736 on behalf of NREA's 34 rural electric providers across Nebraska, as well as the Nebraska Power Association, which is a volunteer organization of all of the electric utilities in the state of Nebraska. They're all in agreement with the changes that were proposed in the bill today. We want to thank Senator Friesen for addressing this issue. When LB629 was introduced in 2007, during the negotiation process there was language put in there that specifically identified...put a definition of electric utility and then stated that only these electric utilities may negotiate a contract for the output of a C-BED. Now some may disagree that that is the limitation, but in the eyes of our membership, that is a limitation and they don't want to be limited. They would like to have the opportunity to purchase the energy from small renewable projects. And there will be someone coming up after me to testify that might outline what some of those projects could be. By opening up that definition to all electric utilities, it puts us on an equal playing field. And the other component is, there's nothing in statute that would limit us from purchasing energy from a small renewable project from any other developer, private or public, yet the language in C-BED does provide that limitation. So it would just open it up. And Senator McCollister, you asked about the correlation, I think, this is...allows a free choice for an electric utility to purchase energy if it's within the means of their wholesale requirements, contracts, or in the best interest of their consumers. They're not just going to do this unless they feel it benefits their consumers. Now, there may be a conflict with your bill, LB824 because

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LB824 removes Section 70-1014.02, which is where we're pulling the definition of electric supplier from. Now, if were to be the case, I think we just place that language in this section so that it's clear that that's the intent. That would be the only little conflict that would be in that. We do feel like this is simple. All the utilities agree on this consent calendar type material, just to make sure that the market is open to C-BEDs to any electric utilities in the state. With that, I'll close my testimony and let the next testifier address the big issues. [LB736]

SENATOR SCHILZ: Thank you, Ms. Gottschalk. Any questions? Senator Schnoor. [LB736]

SENATOR SCHNOOR: Can you give me some examples of C-BED projects? [LB736]

KRISTEN GOTTSCHALK: Yes. The Elkhorn Ridge project, wind turbines, 80 megawatt wind project is a C-BED project. Now, I believe the output of that is shared between NPPD and perhaps OPPD and LES. I need to clarify that, but I believe that is the case. There also are three single turbine...or two single turbine projects in the state. One is at Valentine, that Blue Stem Energy negotiated a contract with the city of Valentine on. Those are just very small output based contracts with the small renewable projects. Those are the only ones that I'm aware of, so I think there are only four in the state right now. [LB736]

SENATOR SCHNOOR: The first one you said was the Elkhorn. [LB736]

KRISTEN GOTTSCHALK: The Elkhorn Ridge. [LB736]

SENATOR SCHNOOR: The Elkhorn Bridge? [LB736]

KRISTEN GOTTSCHALK: Ridge. [LB736]

SENATOR SCHNOOR: Ridge? [LB736]

KRISTEN GOTTSCHALK: R-i-d-g-e. [LB736]

SENATOR SCHNOOR: Where is that at? [LB736]

KRISTEN GOTTSCHALK: It's up by Bloomfield, I believe. [LB736]

SENATOR SCHNOOR: Okay. It's a wind turbine? [LB736]

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KRISTEN GOTTSCHALK: It's a wind project and I, I mean, I have the location exact. It's in northeast Nebraska. [LB736]

SENATOR SCHNOOR: Okay. I thought you said Elkhorn Bridge. [LB736]

KRISTEN GOTTSCHALK: No. [LB736]

SENATOR SCHNOOR: Like what? So I decided to get clarification. [LB736]

KRISTEN GOTTSCHALK: Slurring my words afterwards. [LB736]

SENATOR SCHNOOR: That's okay. Thank you. [LB736]

SENATOR SCHILZ: Thank you, Senator Schnoor. Any other further questions? Seeing none, thank you for your testimony. [LB736]

KRISTEN GOTTSCHALK: Thank you. [LB736]

SENATOR SCHILZ: Good afternoon. Welcome. [LB736]

RICHARD NELSON: Good afternoon, Chairman Schilz and committee members of the Natural Resources Committee. My name is Richard Nelson, R-i-c-h-a-r-d N-e-l-s-o-n. I'm the general manager at Custer Public Power and I'm here to testify in support of LB736. Basically, it just boils down to needing some clarification of who can enter into a C-BED contract. I would like Custer Public Power to be able to do that and so with this clarity, I think it's...it provides that opportunity. One of the reasons I'm here is I potentially have several solar projects that are smaller, but I guess larger compared to other solar projects. One of them is a 600 kW unit and I've got another 650 kW facility possibly later this spring. I'd like the opportunity for them to be able to form as a C-BED and then have me contract to buy that power. And basically, that's kind of what it boils down to, so I'll end the testimony there and answer any questions you might have. [LB736]

SENATOR SCHILZ: Thank you, Mr. Nelson. Any questions for Mr. Nelson? Seeing none, thank you for your testimony. Appreciate it. [LB736]

RICHARD NELSON: That was way too easy. Thank you. [LB736]

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SENATOR SCHILZ: Further proponents. Any opponents? Any neutral testimony? [LB736]

DAVID LEVY: Good afternoon, Chairman Schilz and members of the committee. David Levy, D-a-v-i-d L-e-v-y, Baird Holm law firm. We represent many renewable energy developers in the state, both wind and solar, including many who have developed C-BED projects. I'm testifying neutral today because we certainly have no objection to LB736 and to the extent it clarifies something in the statute that others see as an issue, it's a good bill. However, for the record, we have researched this and concluded that any utility may enter into a power purchase agreement with a C-BED project under existing law. That said, again, we support LB736 because to the extent there's a perceived issue, and that perception inhibits renewable energy development or inhibits the benefits of the C-BED statute from incentivizing that development, and to the extent LB736 remedies that, it's a good and important piece of legislation. Thank you. [LB736]

SENATOR SCHILZ: Thank you, Mr. Levy. Any questions? Senator McCollister. [LB736]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Levy, and thank you for appearing. Thank you, Mr. Chairman. Do you see any conflict between what we propose in LB824 versus this piece of legislation? [LB736]

DAVID LEVY: I don't think there's a substantive conflict in any way. In fact, I think they work together from a substantive standpoint. There is a provision in LB736 that makes reference, as Ms. Gottschalk said, to Section 70-1014.02, which LB824 would repeal. So if LB736 advances, which I hope it will, I think you could easily remedy that by just taking that language from 1014.02, plunking it into this piece of legislation verbatim rather than that cross reference, because that cross reference may go away if LB824 passes. [LB736]

SENATOR McCOLLISTER: Thank you, Mr. Levy. Thank you, Mr. Chairman. [LB736]

SENATOR SCHILZ: Thank you, Senator McCollister. Any other questions? Seeing none, thank you for your testimony. Appreciate it. [LB736]

DAVID LEVY: Thank you all. [LB736]

SENATOR SCHILZ: Any further neutral testimony? Seeing none, Senator Friesen...you're waiving. Okay. That will close our hearing on LB736 and I will turn it over to Senator Friesen, Vice Chair of the committee. [LB736]

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SENATOR FRIESEN: Good afternoon and now we will open the hearing on LB863 presented by Senator Schilz. [LB863]

SENATOR SCHILZ: Thank you, Senator Friesen and members of Natural Resources Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z. I represent the 47th District. LB863 was brought to the committee to start... to present a concept to you that I think will help wind energy developers more easily identify counties that want wind energy or for that matter, we could probably do renewable energy development in their areas. In 2003, the Legislature passed LB754 which created the Nebraska Livestock Friendly county program to assist counties and agricultural producers to promote the livestock industry. This program is voluntary and it allows counties to apply to the Nebraska Department of Agriculture for designation as livestock friendly. LB863 is the same concept. It would allow a county to apply to the Nebraska Energy Office, get an evaluation of their regulations, zoning, and other economic development type activities that are deemed to be supportive of the wind energy development industry and receive the designation of--for lack of a better term--wind friendly. There is no cost associated with the application for this designation. It simply gives counties an opportunity to receive recognition for their steps they have taken to welcome new development into their areas. I believe this program would be helpful to both counties and wind energy producers and the benefit of receiving state Energy Office approval would be to send a message of commitment to wind energy developers that local regulations and other activities have been evaluated and that the county is doing what it can to foster a positive environment for further development. As I mentioned that the committee is interested in moving forward with the bill, we are working on an amendment that will ensure that provisions are specific to wind energy and/or renewable development. I think...and there would have to be some changes in the bill as it is. I put it in basically mirroring the Livestock Friendly county language and so, if there is an interest to move forward, we will have to change some of that. I did find it interesting that last year during the LB407 committee hearing, that everyone...that there were quite a few folks that were dissatisfied with the way their counties had zoned. And then on the other side, we had developers, too, that were also unhappy after they found out that they had tried to go in and once they got there, then they found out that there was push back. And so, in looking at how best to move forward, I think that we can take a page out of the book of the Livestock Friendly statutes and say, this makes sense. Not necessarily to force people to do anything a certain way, but to give everybody an opportunity to state where they are, to do what they need to do, and to show where that development would be most welcomed, so. And with that, I'd try to answer any questions. [LB863]

SENATOR FRIESEN: Thank you, Senator Schilz. Are there any questions from the committee? Senator Johnson. [LB863]

SENATOR JOHNSON: I guess my only concern would be, a point in time how many of these signs do we have hanging out on the main...main sign out there. [LB863]

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SENATOR SCHILZ: Right, and I'm not... [LB863]

SENATOR JOHNSON: And we change this to renewable energy and cover more, but. [LB863]

SENATOR SCHILZ: Yeah, I'm not sure. I'm not sure that you would need to actually go out and put up signs for this. I think that this would be more of an internal thing... [LB863]

SENATOR JOHNSON: Internal. [LB863]

SENATOR SCHILZ: ...that the developers would go to the Energy Office and say, okay, what...where can we look at to see where this is in place. [LB863]

SENATOR JOHNSON: But the county would or could, or would have to go ask for a designation... [LB863]

SENATOR SCHILZ: It would be very... [LB863]

SENATOR JOHNSON: ...and the Energy Office would be required then to study. [LB863]

SENATOR SCHILZ: Well, that would...how it works with Livestock Friendly is that those counties go through their zoning... [LB863]

SENATOR JOHNSON: Right. [LB863]

SENATOR SCHILZ: ...and everything else, and then they apply... [LB863]

SENATOR JOHNSON: Right. [LB863]

SENATOR SCHILZ: ...to the Department of Ag for that designation and they go through a check list to see if it's all...if everything they need is there. That would be just similar... [LB863]

SENATOR JOHNSON: Same thing. [LB863]

SENATOR SCHILZ: ...and we'll...I'm sure we'll hear from some folks that can clarify how they see that working a little better. [LB863]

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SENATOR JOHNSON: Okay. Thank you. [LB863]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator McCollister. [LB863]

SENATOR McCOLLISTER: Thank you, Senator Friesen. So, if counties don't have any zoning authority, they couldn't participate in the program, correct? [LB863]

SENATOR SCHILZ: That's correct, yes. [LB863]

SENATOR McCOLLISTER: Okay. Thank you very much, Senator. [LB863]

SENATOR SCHILZ: Yeah, I mean...yeah, the only way they would be able to participate is to make sure that they do have zoning that shows the setbacks, that shows what it should be so that there's no...there's no guessing when you come to the table to see what's going to happen as far as whether or not anybody is going to fight it on environmental factors or whatever, yeah. [LB863]

SENATOR McCOLLISTER: How many counties in Nebraska...what percentage, do you suppose, have zoning authority? They all have zoning authority... [LB863]

SENATOR SCHILZ: Right. [LB863]

SENATOR McCOLLISTER: ...but whether or not they choose to exercise it. [LB863]

SENATOR SCHILZ: Right. And I think there's...and I don't know the exact number but it's not an insignificant amount that don't have zoning. There are... [LB863]

SENATOR McCOLLISTER: Maybe a third? [LB863]

SENATOR SCHILZ: It could be. It's...I don't know if it's quite that high, but it can be close to that, yeah. [LB863]

SENATOR McCOLLISTER: Okay. Thank you, Senator. [LB863]

SENATOR SCHILZ: Sure. [LB863]

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SENATOR FRIESEN: Thank you, Senator McCollister. Any other questions from the committee? Seeing none, thank you, Senator Schilz. Are there any proponents who wish to testify? [LB863]

DAVID LEVY: Good afternoon, again. [LB863]

SENATOR FRIESEN: Welcome. [LB863]

DAVID LEVY: Vice Chairman Friesen, members of the committee, David Levy, D-a-v-i-d L-e-v-y. I appear here today in support of LB863 on behalf of BHE Renewables. BHE Renewables is a subsidiary of Berkshire Hathaway Energy and a sister company to MidAmerican Energy. BHE Renewables is currently investing approximately \$700 million building the 400 megawatt Grande Prairie wind farm in Holt County, Nebraska. LB863 is a good bill in that it allows counties to make it known they're interested in hosting renewable energy projects. A number of counties we work in are clearly friendly to renewable energy projects, but frankly, absent of a developer approaching them, they may not have had any way to make that known. LB863 also provides an avenue for counties to seek technical assistance from the Nebraska Energy Office, which is a good thing. Particularly smaller counties often lack resources to respond to energies like renewable energy, so providing them a way to connect with the Energy Office is beneficial. I do have three comments on the bill for the committee's consideration. And Senator Schilz touched on a couple of these. The first is to consider broadening this to include solar energy. In the last two years, we have seen significant interest from clients wanting to develop solar energy projects in Nebraska. Second, the bill requires the Energy Office to develop criteria a county must meet to become a wind friendly county. It seems that if a county wants to designate itself a wind friendly county, and avail itself of the benefits of that designation, that really should be what matters. Thus, I suggest doing away with the criteria and instead requiring only a resolution of the county board or county commission duly adopted after a noticed public hearing and appropriately communicated to the Energy Office with a request for designation. There doesn't seem to be a reason to exclude a county that wants to avail itself of this designation and goes through that process. Lastly, please consider the following as a way to really give a wind friendly county something to tell when seeking to attract investment in renewable energy. Currently, counties with zoning, and I think Senator Schilz was correct, it's about two-thirds, a little more than that, that do have zoning, typically require a conditional use permit for a renewable energy project. The counties have adopted carefully considered standards, but a developer can still be denied a conditional use permit for any reason, even if the proposed project meets all of the adopted zoning standards. Accordingly, please consider adding into LB863 an option for a wind friendly county to also provide that if a project meets all of the adopted zoning standards, after a public hearing on the project, the project automatically receives its conditional use approval. This would require meeting the adopted standards and having the public hearing, but it would remove a great deal of uncertainty for developers, an uncertainty which typically

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lasts very late into the development process because that's when developers go to the county for that conditional use permit. This would not be a requirement for any county, but rather an option for a county that really wants to elevate itself as an attractive place for investment in renewable energy. Tying this to the technical assistance and database benefits of connecting with the Energy Office through the Wind Friendly county designation would be an added benefit. Thank you for your time and consideration of these suggestions and I'm happy to answer any questions. [LB863]

SENATOR FRIESEN: Thank you, Mr. Levy. Any questions from the committee? Senator Kolowski. [LB863]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Levy, the...would you suggest...what do we have 93 counties, would you suggest that all 93 counties move to become called like officially recognized as a wind friendly or alternative energy friendly county? Would that be beneficial to have common language that all 93 would agree to or be able to use? [LB863]

DAVID LEVY: Yes, I mean, I think it would be great if they all availed themselves of that. This...I think that's one of the benefits, though, of LB863 as it does provide that common language and that benchmark. I know we are always careful in land use statutes at the state level not to mandate substantive zoning, but rather to provide enabling language across the board and I think that's what LB863 does. And that's not something that we have today. As I mentioned, you know, our clients don't really have a way to know if a county is wind friendly until they show up and talk to the county board chair or whoever it might be. So this would be very beneficial in that way. [LB863]

SENATOR KOLOWSKI: Thank you. [LB863]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions? Senator Johnson. [LB863]

SENATOR JOHNSON: Thank you, Dave, for coming in. You know what I'm going to be talking about I'm sure. (Laughter) When you get...when a company that you represent goes into a community without this designation, what data do you have that says, this is a good place, or do you reach out to other people in the Energy Office to look at anything...in this case, the county that doesn't have zoning. [LB863]

DAVID LEVY: Right. You know, typically to date, it is by and large at the local level so, you know, you look at the wind resource, you look at the availability of transmission or the cost of

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the transmission upgrades that might be necessary. There's almost always something, but it's the magnitude of that. And then really, the third leg of that stool is landowners who want to have the project there and want to work with the project. I mean, if you don't have one of those three things, any one of those three things, you really don't have a viable wind project. But I think something like LB863, it just provides another little tool for a developer to look and say, well, wind resources are pretty good over here, wind resources are about the same over here. Other factors are similar, but this county has already said, hey, this is something we want and there's that resolution already adopted that says, we want wind energy and solar energy, renewable energy in the community. So this would be a little bit of an added benefit or a help in that standpoint. And really, as I sort of alluded to at the state level, this would be the first item in that vein. Everything else that we have to date really is at the local level. [LB863]

SENATOR JOHNSON: OKay. Thank you. [LB863]

SENATOR FRIESEN: Thank you, Senator Johnson. Senator Kolowski. [LB863]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. David, would these two bills today cut down on the number of steps or hoops that people have to jump to become involved in some of these steps to become involved in the energy fields? [LB863]

DAVID LEVY: Potentially. You know, LB736 clarifies the statute. So to the extent there's a perception or a lack of clarity and LB736 remedies that which it would, absolutely, it's beneficial. Anytime there's that kind of uncertainty and your talking about millions, tens of millions of dollars, hundreds of millions of dollars in investment, it's another hurdle. So, yes, LB736 would help in that regard, and as would LB863. And particularly, if the committee is interested in incorporating that ministerial approval option. And, you know, and I acknowledge that's something that you may sort of be sitting there going, wow, so the county...the county approval is going to be automatic. But again, that's only if the project meets all of the standards and after a hearing. There's already a provision similar to that in the Power Review Board statutes where if there's been a hearing and the project comes to the Power Review Board, the statute says the Power Review Board shall approve it. So not totally unprecedented, and as I said, it would be a big deal for developers. I mean, that would really make developers look at those counties and, therefore, add our state as a really attractive and less risky place to invest their money. [LB863]

SENATOR KOLOWSKI: So from the economic development side, it's extremely positive across the board. [LB863]

DAVID LEVY: Absolutely, both bills, especially with that addition. [LB863]

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SENATOR KOLOWSKI: Thank you so much. [LB863]

DAVID LEVY: Thank you. [LB863]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions? I just have a couple maybe I'm...like if you were going to do a wind energy development in a county who does not have zoning, obviously, they, I don't know wouldn't be partaking of the wind friendly county or the renewable energy friendly, so how would...what would be the process there of developing a wind farm whether it's a C-BED project or any other you're familiar with? [LB863]

DAVID LEVY: Right. It's a great question because it may be counterintuitive, but counties that have reasonable zoning regulations, it's actually in some ways it's easier to develop in those counties. If a county did not have zoning, what a developer would typically do, most of the developers, especially the bigger ones, have internal company standards, particularly with respect to noise at occupied residences, and setbacks from occupied residences and roads and things like that. Turbine manufacturers also publish those recommendations or they have those recommendations. And so a developer would work with those two constraints or guidelines and then also the affected landowners. Typically, in a wind project the developer will lease the landowner's property, but there's a provision in the lease where the developer will go in and work with the landowner to sight the turbine so that it's as unintrusive as possible to the landowner's operations, but still works for the developer. So in a county without zoning, those are the...I would think the three things that would kind of guide the sighting and the layout of the project. [LB863]

SENATOR FRIESEN: So the county board has very little say in it. It's more by your internal regulations how you would sight it. And so then anytime you get to a county with zoning, obviously you work within their zoning to meet those requirements. [LB863]

DAVID LEVY: That's right. That's right. There is a requirement currently in the C-BED statute to notify the county board of the proposed project so that if landowners want to participate in the project, they'll see something posted at the courthouse. But, yeah, in a county without zoning, it's fairly up to the developer and their internal standards and the turbine manufacturer standards. [LB863]

SENATOR FRIESEN: So counties with zoning, do they have to have specific zoning for windmills or if it just meets their criteria how...I mean, they could have zoning criteria, but they probably haven't thought of wind turbines yet. [LB863]

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DAVID LEVY: Right. [LB863]

SENATOR FRIESEN: Do they need to add that to their zoning then or can you work without that? [LB863]

DAVID LEVY: Ideally they have specific zoning for wind farms and typically you'll see that they'll have kind of two pieces of it, one for smaller projects, almost like backyard turbine kind of projects, and then one for commercial or utility scale projects. You will, occasionally, run across a county where, you know, one of the conditional uses that's allowed in an ag district is a utility use. And so that's something you can pursue, but typically that won't have the setbacks and the noise requirements and decommissioning requirements and things like that that come with county zoning. [LB863]

SENATOR FRIESEN: Thank you. [LB863]

DAVID LEVY: Sure. [LB863]

SENATOR FRIESEN: Any other questions from the committee? Thank you, Mr. Levy. [LB863]

DAVID LEVY: Thank you. [LB863]

SENATOR FRIESEN: (Exhibit 1) Are there any other proponents who wish to testify? We have one letter here from Rich Lombardi from the Wind Coalition in support. Seeing no others wishing to testify as a proponent, are there any who wish to testify in opponent? Welcome. [LB863]

DAN SCHMID: (Exhibit 2) Good afternoon, all. Dan Schmid, D-a-n S-c-h-m-i-d. I'm just testifying on behalf of a private citizen trying to keep up with just a few things here in the Legislature. So I'm from Dwight, Nebraska, Butler County, Nebraska, one of those counties without zoning. So I am never...even without the zoning, I'll go ahead and testify in opposition of LB863. First, I'd like to say one thing I like. That's Section 3(1)(b) inclusion of a public hearing prior to a local board formal expression of a desire to become friendly to wind energy. And the reason I say that is my wife and I did not hear of wind turbine activity in our area. For two years they were signing leases before we even heard of it. So a public hearings, or getting information out to the public, to me is critical. The reason I oppose it, I don't think the state needs a wind energy expansion act. And I'll tell you just a little bit what happens...what I perceive is what happens at the local level. Boards hear what they hear mostly is pro wind energy to start with. The first thing that happens is usually a lawyer or a lobbyist shows up in the county attorney's

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office or the board meetings. And in the case of Butler County, we went to the township level and before we even met, we get threatened lawsuits, a letter like this to every member of six townships, every officer got a letter like this threatening the lawsuit. So there's plenty of pro wind energy out there already. Part of the...I'd like to direct your attention to Section 6. It's Nebraska statute 81-1602. And already Sections 2, 5 and 11--I'll quote some of them--it says this directs the state energy board to undertake a continuing assessment of the trends and the availability, consumption and development of all forms of energy. So that includes wind already. Why put wind up-front instead of everything else? Number five it says to provide for public dissemination of appropriate information on energy, energy sources, energy conservation. That also includes wind. Number eleven, to provide technical assistance to local subdivisions of government, and I would say that includes wind. So why put wind at the forefront and promote it more? I would say if we do, and the handout I gave, I would say if we do want to do something like this, have part of the information available, something like this handout, the Lincoln-Lancaster County health study on wind conversion systems. They did a comprehensive study of it and it would help balance some of these other things that I just talked about. That's all I have to say, I guess. Questions? [LB863]

SENATOR FRIESEN: Thank you, Mr. Schmid. Any questions? Senator Schnoor. [LB863]

SENATOR SCHNOOR: You said that...you referred to a loss...the threats of a lawsuit. [LB863]

DAN SCHMID: I did. [LB863]

SENATOR SCHNOOR: So you said in Butler County, and I'm assuming this was some developer came in and threatened citizens with a lawsuit or...I need to clarify that a little bit. [LB863]

DAN SCHMID: It's from a law firm and there were...there's six different townships passing safety regulations. [LB863]

SENATOR SCHNOOR: Okay. [LB863]

DAN SCHMID: And before the meeting, every officer received a letter in the mail. This letter right here. I did not submit that to you. [LB863]

SENATOR SCHNOOR: Okay. That law firm threatened a lawsuit against you for, I guess, for standing out against the wind energy as a whole, or what... [LB863]

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DAN SCHMID: It, basically, and I'm not a legalist or anything or a lawyer, basically from what I read in it, it threatens...it was trying to shut down the meeting to enact these safety regulations before it ever got started because it said it could be very costly due to later litigation. And that's a summation, not a quote. [LB863]

SENATOR SCHNOOR: Okay. So explain these safety meetings then, if you would. [LB863]

DAN SCHMID: We do not have zoning in Butler County. [LB863]

SENATOR SCHNOOR: Right. [LB863]

DAN SCHMID: So there's no regulations at the county level. And I forget the statute, but Nebraska statutes allow townships overall safety of the citizens within the...they're to look after the safety of the citizens within the township. So we looked at setbacks, noise levels, under road power lines for that and we developed the safety regulations. For instance, a little bit greater setback so that ice would not be thrown out onto the road by these turbine things. There's noise statutes in there. [LB863]

SENATOR SCHNOOR: Okay. So is that... [LB863]

DAN SCHMID: And those are in effect right now. [LB863]

SENATOR SCHNOOR: So, I guess that you're saying that the statute allows you to, I guess, in essence establish your own zoning requirements, or am I understanding or misunderstanding? [LB863]

DAN SCHMID: Not zoning safety, for the safety of the constituents within that township. It's not saying what you can do with your land, but it's saying when the turbines come in, when or if, when they come in, we want this distance from the road because we don't want ice flying out onto the road, for example, so. [LB863]

SENATOR SCHNOOR: Okay. All right. Thank you. [LB863]

SENATOR FRIESEN: Thank you, Senator Schnoor. Senator McCollister. [LB863]

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SENATOR McCOLLISTER: Thank you, Senator Friesen. Could it be that the letter expressed the issue that perhaps townships don't have legal standing? Could that be the issue that you're raising? [LB863]

DAN SCHMID: It could be. The tone of the letter to me wanted to shut it down before it even started. [LB863]

SENATOR McCOLLISTER: So, as you mentioned, your county doesn't have any zoning regulations. [LB863]

DAN SCHMID: Correct. [LB863]

SENATOR McCOLLISTER: Okay. So what...how far out, or what's the geographic footprint of your township? [LB863]

DAN SCHMID: The township is...I'd have to go look. How big is it basically? [LB863]

SENATOR McCOLLISTER: Yeah, what kind of...is it three or four miles, or...? Is a township a fairly large piece of ground? [LB863]

DAN SCHMID: I'm thinking roughly six miles by six miles, roughly, but I don't know for certain. [LB863]

SENATOR McCOLLISTER: So what you're saying, I think, is that if a wind developer came in and wanted to develop a wind farm six miles away or seven miles away from that township, you wouldn't have any objection. [LB863]

DAN SCHMID: I'm not saying that. I'm saying our township only had safety over our township. We can't tell whether another township if they wanted to develop over there, if they wanted in. [LB863]

SENATOR McCOLLISTER: When you talk about safety, what kinds of aspects of safety are you talking about? Is it water, drinking water? Is it air quality? Is it jaywalking inside the township? Tell me...give me some idea of what those safety regulations would be. [LB863]

DAN SCHMID: As far as what Nebraska... [LB863]

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SENATOR McCOLLISTER: No, not Nebraska, your township. And you're raising safety issues with wind development, correct? [LB863]

DAN SCHMID: Yeah. [LB863]

SENATOR McCOLLISTER: And tell me about those safety regulations that you cited. [LB863]

DAN SCHMID: What we passed was a little bit further setback. I believe...I don't have them with me. I believe it was 1,640 feet setback from residences. That could have been from a property line. I don't remember which way we went. There's noise levels. The noise levels were based exactly on the Lincoln-Lancaster study that I handed out to you. That's the noise levels we adopted. And also for high-power lines going underneath township roads so that maintainers aren't...this last spring with all the rain, there was everything exposed, even on my farm. The creek probably went down two or three feet. If that happens in a bad spring and our maintainer hits these lines, so. [LB863]

SENATOR McCOLLISTER: I understand. The document that I'm seeing here is from Lincoln-Lancaster County. [LB863]

DAN SCHMID: Yes. [LB863]

SENATOR McCOLLISTER: Do you have a document from your township that...? [LB863]

DAN SCHMID: I do of the regulations. [LB863]

SENATOR McCOLLISTER: Uh-huh. [LB863]

DAN SCHMID: And I can send it to you. I didn't bring it with me. [LB863]

SENATOR McCOLLISTER: When you had developed these safety regulations, was it a vote of the people? [LB863]

DAN SCHMID: We had a vote of the people. We had over a third of the people in every township except one, and over 90 percent of the people voted for the regulations of safety. [LB863]

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SENATOR McCOLLISTER: The Secretary of State authorized the election and what...tell me about the election process. [LB863]

DAN SCHMID: The election is...the election process is at the annual meeting. You can only introduce it at an annual meeting once a year at the township level, and I'm not an expert on this. [LB863]

SENATOR McCOLLISTER: Sure. [LB863]

DAN SCHMID: I'm just a citizen. I'm the one that introduced it to our township. You can introduce it at the annual meeting and it's a...I'm about 98 percent, it's just the simple majority of those present who vote on it. [LB863]

SENATOR McCOLLISTER: Okay. Great. Have you suggested to your county they develop zoning regulations? [LB863]

DAN SCHMID: I have not. I have not. [LB863]

SENATOR McCOLLISTER: Okay. Well, thank you for your testimony. [LB863]

SENATOR FRIESEN: Thank you, Senator McCollister. Senator Kolowski. [LB863]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. Mr. Schmid, I saw this one article here. On page 2 it talks about other factors that influence the recommendations including wind turbine noise... [LB863]

DAN SCHMID: Uh-huh. [LB863]

SENATOR KOLOWSKI: ...is more annoying to people than other comparable noise such as the noise of traffic or airports. How far away would you have to be from a wind turbine to alleviate that, or be away from whatever zone you want to be in? [LB863]

DAN SCHMID: I left this up to the experts who studied this, Lincoln-Lancaster. [LB863]

SENATOR KOLOWSKI: Okay. So it would be in the reading here? [LB863]

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DAN SCHMID: I've read it and I went to the Lancaster County meeting. I don't know how far. I understand because of different turbines, the different effects, affect people differently. And it will affect probably only 20 percent of the population out there, but if you're part of that 20 percent, it can drive you nuts if you're within, say, these recommendations of 40 and 37, if you're inside of that. [LB863]

SENATOR KOLOWSKI: They're just real nervous because of that noise or it sets them off or...? [LB863]

DAN SCHMID: It...it's, I don't know exactly what it...how to describe it because I don't even know if I have it if one was setting out here, but people move, people sell their land they've been on for years and they usually sell at devaluated after the turbines...the threat of a turbine that's come in. And people physically have to sell and move to get their sanity back. And the other day I was here listening for LB824 and I did not hear any testimony about the cost of maybe exporting renewable energy outside of the state. Well, this is some of the cost and it's borne at the local level out there in the country away from the city, so. [LB863]

SENATOR KOLOWSKI: I wonder how many people have lived in close proximity to traffic or airports. That's... [LB863]

DAN SCHMID: It's a different kind of noise. It's very different as this study presents very well. And part of it, you can't even hear. The infrasound which goes right through walls, walls will not slow it down. It...a European study said it can go ten kilometers and it will affect your sleep and yet you don't even hear it. It's a different type of noise as far as... [LB863]

SENATOR KOLOWSKI: And I certainly understand the dimensions and size of wind turbines compared to, let's go back 130 years. [LB863]

DAN SCHMID: Okay. [LB863]

SENATOR KOLOWSKI: Pioneers that settled the land here in this state or other states, you know, we were dotted with windmills, everywhere. You couldn't have water on your property unless you were pumping a windmill. And that wasn't bothersome, seemingly to people, but these large wind turbines are. [LB863]

DAN SCHMID: No. These blades, however long they are, they stick up past the top of this Capitol. [LB863]

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SENATOR KOLOWSKI: Sure, I've seen them. [LB863]

DAN SCHMID: It's a little different animal. [LB863]

SENATOR KOLOWSKI: No, I understand that, but I'm thinking of wind noise.... [LB863]

DAN SCHMID: I'd love having a windmill, but not a wind turbine. (Laugh) And maybe, you know, out in certain places, maybe hits a spot, it's viable. I'm just afraid this bill would turn into more push at the county level where they already have that much push unless we give them a document like this to counterbalance it, and let them think about it before they...before they ask for help, so. [LB863]

SENATOR KOLOWSKI: Is this a popular document within Lincoln-Lancaster County? [LB863]

DAN SCHMID: I don't know. I don't know. [LB863]

SENATOR KOLOWSKI: Thank you. [LB863]

SENATOR FRIESEN: Thank you, Senator Kolowski. Any other questions? Seeing none, thank you for your testimony. [LB863]

DAN SCHMID: Thank you. [LB863]

SENATOR FRIESEN: Any others wishing to testify in opposition? Seeing none, anybody wish to testify in a neutral capacity? Welcome. [LB863]

DAVID BRACHT: (Exhibit 3) Welcome, Senators. So, good afternoon Chairman Friesen and members of the Natural Resources Committee. My name is David Bracht, that's spelled D-a-v-i-d B-r-a-c-h-t. I'm the director of the Nebraska Energy Office. I appear before you today to testify in a neutral position on LB863 and to address some concerns...make some clarifications regarding the fiscal note on this bill. As the fiscal analyst correctly recognizes, Section 11 of this bill does add the Wind Energy Expansion Act as one of the authorized uses of the State Energy Office Cash Fund. However, that does not address the availability of those funds. By statute, state funding for the Energy Office is limited to \$300,000 from oil and gas severance taxes. These funds are used for administrative costs of existing statutory duties, as well as required state fund matches of federal grant programs, which support the vast majority of Energy Office activities, both formula and competitive grants. Because of this, the agency is not able to absorb

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more duties and administrative costs that would otherwise utilize the Cash Fund. LB863 is largely based on the Livestock Friendly County Designation program operated by the Nebraska Department of Agriculture. For development of the fiscal note of that bill, my staff looked at the fiscal note from 2003 for the Livestock Friendly County program. I have copies if you'd be interested in seeing that. What some of you may not know is that I was the attorney hired in 2003 and 2004 by the Nebraska Department of Agriculture to help develop the guidelines and resources for that program. In fact, I was also a legislative aide for Senator Erdman during the 2003 legislative session and supported him on LB754 of that year that help pass the Livestock Friendly County Act. Based on my experience developing that program, we identified possible steps to be taken to develop a similar program focused on wind development. Among those steps, the Nebraska Energy Office expected to develop and make a resource database that county supervisors and other interested parties could use to evaluate and craft wind energy production conditional use permits that meet the objectives of the county and the wind energy producer applicant. If the intent of the bill is to set up a database of sources only, that is publicly available sources that are already out there, the Energy Office could simply create a separate page on our agency's website listing the links that are currently available. Many of those we already have listed in a variety of different places. We would still need some additional funding to accomplish that, but obviously it would be less. The reason we would need it, some additional funding, is that our current staff time as we have our staff is currently allocated to our existing duties with the federal grants that we receive. Because of that, my staff has to track the time they spend on different grants. And if we reduce the amount of time they spend on a grant, then we reduce the amount of administrative funding that we can be reimbursed for under that federal grant. And so simply shifting...reallocating the time also moves away from it the funds available to pay that administrative duty from that grant. The Energy Office can also...cannot switch the uses of Cash Funds for administrative costs other than the funds of the Energy Office can utilize to replace it. Over the years, additional duties and an increase in administrative costs has tightened the use of State Energy Office Cash Funds. As I stated, the agency office can't absorb these duties without taking funding from an existing program, such as our federal grants and that causes the problems I noted earlier. If the agency has to do that, not all of the agency's duties and the requirements of the federal program and statutory duties would be accomplished. That concludes my testimony and I would be happy to answer any questions regarding the fiscal note or what our thoughts were on the steps that might be taken if we took a LB863, developed a database. [LB863]

SENATOR FRIESEN: Thank you, Director Bracht. Are there any questions from the committee? Seeing none, thank you for your testimony. [LB863]

DAVID BRACHT: Thank you. [LB863]

SENATOR FRIESEN: Are there any others that wish to testify in a neutral capacity? [LB863]

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TOM RICHARDS: Good afternoon, Senator Friesen and members of the Natural Resources Committee. I'm Tom Richards. I'm the manager of governmental community affairs for the Omaha Public Power District. I'm not here to comment on the Wind Expansion Act. The last couple of hearings there's been a couple of things pointed out about the Berkshire Hathaway wind farm and I wanted to add the second half to what's going on with the Berkshire Hathaway wind farm. The Omaha Public Power District owns the output of the Berkshire Hathaway wind turbines that are being built. And that approximately 400 megawatts will be half of what our total output of wind energy is, 800 megawatts once that comes on line. So just to make sure that the record reflects that the owner of the output of the Grande Prairie Breeze wind farm is the Omaha Public Power District and I wanted you all to know that. [LB863]

SENATOR FRIESEN: Thank you, Mr. Richards. Are there any questions from the committee? [LB863]

TOM RICHARDS: Thank you. [LB863]

SENATOR FRIESEN: Seeing none, thank you for your testimony. Any others wishing to testify in a neutral capacity? Senator Schilz, do you wish to close? [LB863]

SENATOR SCHILZ: Thank you, Senator Friesen and members of the committee. I don't want to take a whole lot of time here, but I think that...I think that exactly what you heard here from the gentleman from Butler County is one of the reasons why this kind of a bill and this kind of law would make sense. This bill is not forcing any county to do anything that would say that they are more or less interested in wind. They can if they want. It doesn't force anybody to do anything that they don't already have a processing in going through to doing the zoning process in most counties. Other counties that don't have zoning, because the state of Nebraska allows counties to zone but not townships, therein is where you come into the problems. And I think that it's important that we understand that as distinctly as possible, whenever we can outline what it takes to do something in a county, that makes it easier and better for everyone involved. The county zoning authority, the county commissioners, the folks that want to develop, it all makes their jobs and lives much simpler if they know what they're getting into up-front. And so, that's the reason for this bill. That's the reason why Livestock Friendly was introduced in 2003 and passed and continues to gain more and more support as we move along. I think that...and it is in every county's purview of to whether or not they want to enact zoning regulations. So, I don't see this as any sort of new regulation or anything like that. It's just another tool for development and for counties to use so that there's no misunderstandings as we move forward. And with that, I'll close. Thank you. [LB863]

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SENATOR FRIESEN: Thank you, Chairman Schilz. Any questions from the committee? Seeing none, close the hearing on LB863. [LB863]

SENATOR SCHILZ: Thank you, everyone. We'll close our hearing.