

Transcript Prepared by Clerk of the Legislature Transcribers Office
Government, Military and Veterans Affairs Committee February 10, 2023

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BREWER: Good morning. Welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer from the 43rd Legislative District, and I serve as the Chair of this committee. The committee will take up bills in the order that they are posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us. Committee members might come and go during the hearing. Obviously, with what we're doing now with double-day hearings, everybody got a hearing somewhere at some point here. This is just part of the process. I ask that you abide by the following procedures to better facilitate today's meeting. Please silence or turn off your cell phones or electronic devices. I'm still looking for someone who can show me how to work with this iWatch so I can silence it. Please move to the reserved chairs when your bill and if you're an opponent, proponent or neutral, that's what the front chairs are reserved for, to move those folks forward so that we kind of know who's next in the pecking order to, to come speak. All right. We'll have a senator that will be introducing and make an initial statement, followed by proponents, opponents, and those in the neutral. Closing remarks are reserved for the introducing senator. If you're planning to testify, please pick up one of the green sheets. Have it filled out legibly and be ready to turn it in when you come forward. If you're here and you do not wish to testify, but you want to record that your name was here and present for the hearing, and also indicating whether you're a proponent, opponent or neutral, there's a white sheet. Please sign that and fill it out. If you have hand-outs, we ask that you bring ten copies. You don't have ten, we can have our pages help you make copies. Bring those forward when you bring your green sheet and just hand that off and the pages will make distribution for us. Let's see, if you come here to testify today, we've got some requests. Speak into the microphone. It is what gives us our official record. When you come up, say your name, then spell your name. We are going to use the light system today. Obviously, with the number of folks we have, we're going with a three-minute system. So you'll have two minutes of green, one minute of yellow, and then you'll get a red light and an audible alarm if you go too long. No displays or support or opposition to the bill, vocal or otherwise, are allowed in public hearings. Committee members that are with us here today will introduce themselves, starting on my right with Senator Raybould.

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RAYBOULD: Good morning, everyone. I'm Jane Raybould, Legislative District 28, which is the, the heart of the city of Lincoln. Don't worry, I tested negative this morning, but I'm going to continue to wear a mask, just keep everybody safe.

SANDERS: Good morning. Rita Sanders representing District 45, which is the. Bellevue/Offutt community.

AGUILAR: Hi. Ray Aguilar, District 35, Grand Island.

LOWE: John Lowe, District 37, Shelton, Gibbon and Kearney.

HALLORAN: Good morning. Steve Halloran, District 33, Adams, Kearney and Phelps County.

HUNT: I'm Megan Hunt and I represent District 8 in the northern part of midtown Omaha.

BREWER: My vice chair is Senator Sanders, legal counsel is Dick Clark, and the committee clerk is Julie Condon, and our pages today are Quinn and Ryan. With that, we will welcome up Senator Cavanaugh. Welcome to the Government Committee.

M. CAVANAUGH: Good morning. Thank you. It's my first time here this year, I think. It's my second bill. I should note that. I'm sorry, kind of running around. We didn't have a quorum across the hall, so I had to make sure I wasn't wrong.

BREWER: Right. It's a Friday morning, understand.

M. CAVANAUGH: It's a Friday morning after a long week. Good morning, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. I'm Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, representing District 6, west central Omaha, Douglas County and I'm here today to introduce LB360. And the first, in my first four years in my time in the Legislature, I've seen numerous flawed request for proposals from the state of Nebraska and the process of review and reward to actual contract oversight. Since at least 1980s, there have been computer systems that have never come to fruition in HHS and in the Department of Labor, poor decisions and privatized child welfare contracts and oversight of those contracts and the avoidance of bid letting for multiple bids. We've been chasing

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our tails on contracts because poorly managed processes and poor decisions by those in charge. Former Senator Kathy Campbell's very thorough investigation that resulted in LR37 report that is still available on the HHS Committee web pages, made recommendations for improvements. Yet here we are again headed into court in a June hearing over the current Medicaid-managed care organizations contracts better known as our MCOs, leaving us once again mired in accusations of poor process and legal limbo with restraint orders and lawsuits. The Legislature has made recommendations, hired consultants, put out reports and passed legislation. This year, we have a significant number of legislative bills intended to make changes to the procurement process, and I believe it is time we have an Inspector General to provide further oversight of the process that lead to poor compliance, expensive fixes and poor services for the adults and children of Nebraska we are here to serve. It's time for more transparency in that process, or at least more accountability. The game of dual responsibility so no agency is truly held, held accountable needs to end. I believe that an Inspector General for procurement is warranted. A trained Inspector General would have the time to focus on processes and implementations, and could, could provide the Legislature with a wealth of information from which to make decisions. An Inspector General can do their work in a way that is least intrusive to agencies. The information they gather would come to the Legislature and to the agencies being overseen. The goal is a collaborative effort to improve the process and root out waste, fraud and abuse. The Legislature has the duty to provide oversight of state agencies. We must be fiscally responsible for the taxpayer dollars and without oversight by the Legislature who will hold the executive branch accountable to assure the public. We pass the budget and have the responsibility of oversight on the use of that appropriation. We have a whole division called Fiscal to try and keep tabs on budget issues. It is our job. I have a handout. Sorry, I have two handouts, I'll give one to you now. It's an expert, an excerpt from a document provided produced at Wayne State University in Detroit at the Levin Center. The Carl Levin Center for Oversight and Democracy was established in 2015 to carry on the legislative oversight legacy and vision of U.S. Senator Carl Levin from Michigan. The Center provides research and information about and to all levels of government to advance effective governance and helps shine light on public and private sector abuses. The report they compiled on all 50 states ranks

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the eight categories of oversight. One is contract oversight. As you can tell by the lack of information from-- for state contracting oversight in the Nebraska report, their estimation is that the Nebraska legis-- the Legislature has basically no oversight of contract procurement or contracts. An Inspector General would give a way to monitor the process of the contracting before we are millions of dollars into a contract and are in crisis. Our special committees only try to clean up the mess once we are in crisis. The Nebraska Legislature needs more tools for oversight and ones that are less mired in politics. I believe an Inspector General for procurement is an appropriate tool to assist the Legislature in our oversight role and will allow us to be more fair and transparent in our own efforts to ensure appropriate government oversight. I also included in the distribution the, I will call it a bill that I received from DHHS for \$64,000 for a records request that I made, and this was in regards to the RFP process around those managed care organizations that I was speaking of. I spoke about this on the floor when I received this bill. So what happened is that our managed care organization contracts were up and they needed to go out for bid again. One of, there were four bids. We have three contracts. One of our three contracts was not renewed and I requested information around that because I had some concerns over some of the things that I came to find out about the contracting process, including that the CEO of DHHS was named as a reference for the new contract that was made. And the former chief of staff of Governor Ricketts, Matt Miltenberger, was also named as a reference which I find to be, well, not illegal, not using good judgment and not appropriate. And so I wanted to see why we would go with a new contract. And I would like to say I do not have a horse in this race. I don't care which contracts are kept or not kept as long as we're doing the appropriate contracts. And I just wanted to dive in on the contracting process itself a little bit more to find out what was going on with this particular contract. There were other things about it that I found out that they had withheld information that would have impacted their scoring and the department decided not to rescore, and so that led me to make the records request that they then charge me \$64,000 with. So obviously, I have not received the records because I have not asked the state Legislature to pay \$64,000 for us to receive these records. I have made numerous records requests over my four years, and as most of you are probably well aware, some of that has led to a special investigative committee. I, while I think

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that is our job and I think it is appropriate, I also think that that, as I said, that is mired in politics. I recognize that I am a Democrat in a conservative Legislature, and when I make requests like this, it is going to be viewed a certain way. I am on the Health and Human Services Committee. We have an Inspector General of child welfare. They do all types of investigations and I don't get access to that information. The chair of the committee and the CEO of DHHS get access to that information, but it is only when there is agreement between the chair of HHS and the CEO about what reports will come out that I have access to any of that information, as does the rest of the Legislature. And I think that's a much more appropriate process because it doesn't have underpinnings of political agenda. Not to say that I have a political agenda, but I do recognize that it can be viewed that way and I don't, I don't think that our oversight should be tied to political agendas. I think that the role of oversight is to do good governance and so that is what brought me here today and why I thought that the Inspector General would be an appropriate mechanism. Of course, if we don't move forward with this legislation, I will continue to do my due diligence on oversight of our state agencies and continue to make requests regardless of the costs that they try to charge me. So with that, I will take any questions.

BREWER: All right. Thank you, Senator Cavanaugh. Let's go ahead and go into the questions Questions? Senator Raybould.

RAYBOULD: Thank you, Senator Cavanaugh. You had mentioned in, like some historical reference to Senator Cathy Campbell introducing legislation. And since I'm one of the new kids here, could you give me more information on what happened to Senator Campbell's legislation? Did it get passed or.--

M. CAVANAUGH: So we created the Office of the Inspector General as a result of Cathy Campbell's LR37. And so we have an Inspector General for corrections and we have an Inspector General for child welfare. And in my four years here, it has been very apparent that our procurement process is flawed and we will see several bills, I think. You have them all scheduled today perhaps, around procurement. And so that's when the Inspector General's Office was created. And I'm just seeking to add to the Inspector General's authority.

RAYBOULD: OK. Thank you very much.

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BREWER: OK. Additional questions? I just have one here. The fiscal note which most of our bills have huge fiscal notes, yours is relatively small. It simply establishes a Inspector General and an assistant Inspector General. That's kind of the way you see it and you want it?

M. CAVANAUGH: Yes, I believe so. I did speak with our inspector, our Ombudsman's Office, and I believe they will be here testifying in the neutral capacity. But that is how their offices are set up, so that would be.

BREWER: OK. Nope. All right. Any other questions? All right. We'll, you'll stick around for close?

M. CAVANAUGH: I might jump across the hall to make sure they have enough people, but I will close, yes.

BREWER: All right. We'll, we'll, if you're not here, we'll double check before we close out, just in case.

M. CAVANAUGH: Thank you.

BREWER: OK, so if we could get proponents to move to the first row, I'll have some idea of who's next up here. All right. Proponents?

LACY SMITH: Good morning, I'm in support of LB360. Regulating contracts and relationships is a very standard business conduct. For this reason and many others LB360 is important to properly regulate. Thank you.

BREWER: OK. We will switch to opponents. If you can move up to the front row, that tells me we've got a whole ton of neutrals. All right. We've got, first opponent. Actually. I hate to make you move again, you just as well take the chair.

AMARA BLOCK: Shall I go.

BREWER: Yeah, go ahead. Welcome to the Government Committee.

AMARA BLOCK: Thank you. Good morning, Chairman Brewer, and members of the committee. My name is Amara Block, A-m-a-r-a B-l-o-c-k. I'm the Materiel Administrator for the state of Nebraska, which is housed in the Department of Administrative Services. Prior to my role, prior to

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my current role, I was general counsel for the department and prior to that I worked in the Legislature as committee counsel. I'm here today to testify in opposition to LB360. LB360 is concerning because it threatens our access to contractors. The bill gives a new and all, nonlaw enforcement public official a warrantless, limitless power to investigate businesses and vendors merely because there is a financial connection to the state. To further elaborate a little, the scope of the Inspector General's power isn't limited, meaning that the new Inspector General can review anything the business is doing related to the contract with the state or otherwise. The person or business doesn't even have to have a contract with the state. They can just be contemplating entering into a contractual arrangement. On that point, it doesn't even have to be a contract. The bill specifies it just has to be a financial arrangement. Reading this bill broadly, anybody who has ever received financial assistance from the state or has paid a fee for an official record or for a license, could be subject to the powers of the Inspector General. The trigger for an investigation is much less than law being broken. It can be something as simple as improper performance. Who decides what proper and improper performance is? I think we have all in our personal lives seen instances where somebody or something could have done a better job. All the Inspector General would need to do is determine that a lawful action could have been executed better. There's also constitutional concerns here. The constitutional concerns relate to the separation of powers. Nebraska has one of the most strict, has one of the strictest separation of powers, provisions and interpretations in the country. The bill most certainly crosses the line between branches. Section 6, Article 4, of the Nebraska Constitution states that the supreme executive power shall be vested in the Governor who shall take care that the law, the laws be faithfully executed, and the affairs of the state efficiently and economically administer, administered. The new Inspector General is charged with the ongoing review of the efficient and economical administration of not just laws, but any action or activity, including lawful actions and activities so as long as they can be considered waste or improper performance. Considering the reach of this bill, if companies, small businesses or drivers license holders would now be subject to a special police power that could investigate their business or interrogate their operations and employees for virtually any reason or no reason, why would anyone want to do business with the state? If the availability of contractors disappears, it is

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foreseeable that this bill would chill participation in our state contracts, which would be detrimental to state operations, either resulting in the total absent, absence of goods and services or astronomical prices from the providers that remained. We appreciate and share the belief in transparency, which is why our operations are already transparent through public postings and through responses to public records request. Should there be additional inquiries needed, the Legislature already has reasonable and constitutionally sound mechanisms.

BREWER: All right. Thank you, Amara. Thanks for adjusting your speech for the time.

AMARA BLOCK: I sped it up.

BREWER: OK. Questions for Amara? Senator Raybould.

RAYBOULD: Thank you very much for coming down to testify. And so I think from my perspective, maybe the public doesn't know, what are your current policies and practices on procurement? As a business owner, we customarily go out for at least three bids, two bids, certainly at a minimum, and, and having served on the county and city council, you know, they, they have a great procurement process and they compare many elements to make sure everyone is talking and comparing apples to apples. So could you just do a simple, quick, like summary on how does the procurement process work? That's one question. And then I guess, is it customary when legislators like Senator Machaela made requests for additional information, that they consider it, you know, that they would send a bill? Those two questions.

AMARA BLOCK: Sure. Thank you for the question. So to try and unpack that a little bit, the, it is in the state's best interest to try and get as many bidders as possible. Right. The more bidders, in theory, means lower prices. What our laws currently state and you will hear more about this in the afternoon with some of those bills, but what our laws currently state is anything above \$50,000 has to be competitively bid by a formal process. I have a very dedicated, passionate team related that does procurement for the state of Nebraska. And they do a great job ensuring that the laws are followed. In following those laws, we have a website with bidding opportunities where all of our bid documents that vendors can bid on are uploaded

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for everything to see. In regards to public records and transparency in addition to what's posted on the website eventually, which we do get a lot of requests for materials related to competitive bids and most often it's just a, hey, these are available on our website response. I can't speak for any other agency about public records, but I used to oversee our public records process as general counsel, and during my time as general counsel, it was practice not to charge anybody. It would just take more time if it was a large request. So rather than, than charging somebody, we would just say it's going to take, it's going to take a while, but we're working on it. Does that answer your question?

RAYBOULD: A little bit. So does the state of Nebraska have no bid contracts?

AMARA BLOCK: There are provisions in law that allow us to not competitively bid. Yes.

RAYBOULD: OK. Thank you.

AMARA BLOCK: You're welcome.

BREWER: All right. Additional questions? Senator Hunt.

HUNT: Thank you, Chairman Brewer. Have, have, has your office contacted Senator Cavanaugh's office yet about these concerns or trying to come to any kind of compromise with what she's trying to accomplish here?

AMARA BLOCK: Thank you, Senator. No, not that I'm aware of. I don't know if there is a compromise provision here that could cure the constitutional concerns.

HUNT: OK. Would you be willing to work with Senator Cavanaugh and other citizen stakeholders who care about what's in these contracts to provide information about the contracts for free? Because that's not happening and what we see with these recent abuses of what are supposed to be really strong public records, access and laws, and especially to those of us who are making laws and policy, you know, we should be able to have this information. And so what are your thoughts on that?

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AMARA BLOCK: I can't speak for other agencies. I can reiterate that DAS does have a commitment to transparency. And we, in my time overseeing public records, we only charged one person once, and I think it was \$100. And that was because we had to essentially make a computer program to produce the type of, it was a weird area of law and a weird circumstance where we actually had to compile a record which is not normally required. And so I cannot speak for other agencies, but DAS's policy is, you know, don't charge, but just be honest with the amount of time it will take to produce the records.

HUNT: OK. I've had trouble getting records, too, from DAS and DHHS and lots of other agencies who I've had to file Freedom of Information Acts and even, you know, see what we're funding, basically. So I do think it seems like a systemic problem that, can you, can you confirm that you'd be willing to work with her office on that?

AMARA BLOCK: On public records or this bill?

HUNT: On this bill, on public records, on increasing transparency to a degree that's satisfactory to the Legislature.

AMARA BLOCK: I cannot commit to any of those things. I can't speak on behalf of DAS or the administration as to curing the defects with this bill. I, I certainly think that we'd be willing to talk about transparency concerns, but I can't commit to any, you know, action or inaction.

HUNT: OK. Thanks.

BREWER: All right. Any additional questions? Senator Lowe.

LOWE: Thank you. You went through very quickly some of the problems that this would cause. Can you go back through those maybe a little slower this time?

AMARA BLOCK: Sure. Sorry. I was trying.

LOWE: The time was, you were, you were being right on.

AMARA BLOCK: Yes. So essentially, the, if, if you read through this bill, the, this new Inspector General would have the power to investigate. Anybody who has a contract with is thinking about, have a

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contract with, or have even just have a financial arrangement with. Right. So financial arrangement isn't defined. If you think about what that could be, I mean, it could be you paying for a hunting license or a driver's license or an official record that you need from the government. I don't know that the intent is that broad, but I think it certainly could be read that way. With respect to contracting, I don't believe that any business would want to do business with the state if for any reason or no reason, the Inspector General could come in without a warrant and look at any operations of the, the business related to the contract or otherwise and interrogate their employees. I just don't see businesses signing up for that. It wouldn't be worth their money unless maybe their only customer is the state of Nebraska, and they have to agree to that. Does that answer your question?

LOWE: Yeah. Thank you.

BREWER: All right. Any other questions? Yes, Senator Raybould.

RAYBOULD: So how does the state currently handle any challenges from a bidder who felt that they were the low bidder and that the contract went to another company? How, how do you currently handle these type of challenges?

AMARA BLOCK: Sure. So we do have a protest process which actually I will be testifying for later this afternoon. But we do have a process in place for aggrieved bidders to protest a determination.

RAYBOULD: And then is there, is there a group of individuals or what part of your agency or body who has that authority to review and make a determination?

AMARA BLOCK: Sure. So if the competitive bid was bid by the state purchasing bureau, which is just a division of the material division under DAS, that protest would go to me. And then if they didn't like my decision, then it would go to the director of the Department of Administrative Services.

RAYBOULD: OK. Thank you.

AMARA BLOCK: Yeah.

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BREWER: All right. One last run around the table. Any additional questions? Yes, Senator Hunt.

HUNT: Is there anyone else from the department coming up behind you?

AMARA BLOCK: From the Department of Administrative Services? Not that I'm aware of.

HUNT: OK. You know, we have these systems of checks and balances, but don't you agree that legislative oversight is important to that?

AMARA BLOCK: I, I think that everyone in this room can agree that transparency is necessary and essential. The Legislature has oversight ability, just like the LR29 Committee, right, that got together and DAS testified under oath in that committee and we produced all records that were not privileged, that were asked of us.

HUNT: OK. But when we're trying to do oversight and it comes with a \$64,000-plus bill, you know, I don't. OK. Thank you very much.

BREWER: All right. Any more questions? All right. Thank you, Amara.

AMARA BLOCK: Thank you.

BREWER: All right. Let's see. We are in opposition. Any additional testifiers? All right. Then we'll go to neutral testifiers. Please come on up. Welcome to the Government Committee.

JULIE ROGERS: Thank you. Good morning, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s, and I serve as your Public Counsel, also known as the Ombudsman within the Nebraska Office of Public Counsel, a division of the Legislature. Within the Office of Public Counsel are currently two offices of Inspectors General or OIGs, one for child welfare, one for the correctional system. Provisions of LB360 creating the Office of Inspector General for Nebraska procurement is similar to both OIG acts. I first came to work in the Office of Public Counsel as the Inspector General of Nebraska Child Welfare before becoming Public Counsel. I became certified as an Inspector General in 2012 and I remain certified. As you consider enacting the Office of Inspector General of Nebraska Procurement Act, I hope it's helpful to know how our offices function. The offices are

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to strengthen legislative oversight when it comes to the government systems. To my knowledge, the Office of Inspectors General for Child Welfare and the Correctional System are the only offices with the name Inspector General in them to be housed in the legislative branch of government. We take care to ensure our role in government accountability is clear, not to take the place of other investigations done for other purposes, such as law enforcement, human resource issue investigations and the like. There's clearly no supervision of any public or private entity investigated by our offices, but instead we provide oversight, accountability by and through the Legislature. The core values of any government accountability office, including the OIGs, are honesty, integrity and trustworthiness. This is accomplished through government accountability, standards of independence and confidentiality. The fundamental objective of Inspectors General Offices is to promote accountability, transparency, good government and high performance. The offices of Inspectors General are physically located and in the Ombudsman's Office. We have meetings, staff casings regularly. The Public Counsel also has more formal, formal statutory requirements with regard to each Office of Inspector General. The Ombudsman's Office does receive individual complaints about various issues related to state government, but most are related to a specific issue or problem with services by or through a state agency. A contract issue or question that arises usually becomes secondary to solving the problem with that state program or issue. Our capacity ordinarily does not allow our office to take a detailed look at problems with procurement for state contracts, and OIG for procurement would not only ensure that those problems are looked into in a more detailed way than what is possible at the current time, but an OIG would do so in a particular, very particular and structured way. And I see my time is up.

BREWER: Please finish up.

JULIE ROGERS: OK. Accountability is key to maintaining public trust. Government accountability offices such as the Office of Public Counsel, including the OIGs, are entrusted with fostering and promoting integrity in government. Crucial standards of our offices include independence, impartiality and confidentiality. The offices take those standards very seriously, and objectivity is of utmost importance to us. I'm, and again, I'm happy to answer any questions.

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BREWER: All right. Thank you for your testimony. Let's see if we have questions. Senator Raybould.

RAYBOULD: Thank you, Ms. Rogers, for being here. Did, did your office ever receive complaints from some of the contract issues with St Francis?

JULIE ROGERS: At that time, I was acting as Inspector General when that procurement process was underway. We certainly stayed abreast of the issues, but the priorities of the office were to investigate child and deaths and serious injuries. And so in terms of prioritization, the procurement and contracting, we've certainly stayed abreast of the issues and would talk to stakeholders about those issues. But in terms of investigating the procurement process, there were other priorities of the office.

RAYBOULD: OK. Thank you.

BREWER: All right. Any additional questions? All right. Well, thank you for your testimony.

JULIE ROGERS: Thank you.

BREWER: Thanks for giving us the printed copy so we can go back and look. All right. We are still on neutral testifiers. Come on up. Welcome to the Government Committee.

RYAN STANTON: Good morning, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Ryan Stanton, spelled R-y-a-n S-t-a-n-t-o-n, and I'm the CEO of Compass, which is a foster care and family service provider in Kearney, Nebraska. And I'm also the president of the Nebraska Alliance of Family and Child Service Providers. So we're an association of child welfare providers who individually contract with DHHS to provide child welfare services to thousands of families in over 60 Nebraska counties. I'm testifying neutral today just because I'm not sure exactly the issue that I bring up is being addressed by the bill that Senator Cavanaugh brought up, but still wanted to make you aware of the child welfare contracting process related to procurement. The state child welfare services contracts run on a fiscal year from July 1 through June 30 and are reviewed annually. Every year the department

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changes, edits and tweaks the language as they should. Providers want and expect to be held to high standards, and families deserve the system to be based on the high standards. Often provide, often providers receive these contracts with very little time to review the changes to get a full understanding of their impact before the contract expires. For example, in 2020 we received the final contracts, the final draft on June 23. In 2021, we received the final contracts on June 27. On June, or in 2022, we received the final contracts on July 5. Yes, you heard that correctly. We didn't receive those contracts until five days after the contract expired. At 9 p.m., we did get an email from the CFS director saying that contracts would be delayed a few days, but that was only after I sent a text to her at 8:30 saying we haven't received any information about the contract. So each provider had an individual choice to make. We could either refuse to provide services until we received a new contract or, which would cause disruption of services to families that we serve and that would be incredibly harmful to their progress. In addition, we only get reimbursed from the state when we provide services. Therefore, we would have to tell our staff that they wouldn't be needed until a new contract is in place and therefore wouldn't get paid. And in this job market, the majority probably would have found other jobs. The other option was to continue to provide services without a contract and hope for the best. And as far as I know, this is the option that every provider chose. And it worked out this time. You know, providers transported children thousands of miles across the state for five days. And as far as I know, nobody got in an accident or worse. We did have employees in people's homes and nothing bad happened that I'm aware of. Keep in mind, this is all over a weekend that involves explosives. In the end, we were reimbursed for those five days, so the state and providers got lucky this time. I imagine it's unsettling for you to hear this story both from the state's perspective and providers perspective, but it's not a good way to do business. I just want to convey to you that it's very difficult to run a business under these conditions. And when we ask our contacts at DHHS what the issues were, they routinely blame procurement. Thank you. If you have any questions, I'll be happy to answer.

BREWER: I've got a hunch we will. OK. Questions? Well, I've got one.

RYAN STANTON: OK.

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BREWER: Let's back up just a little bit. So in a perfect world, these five days that, that ended up being kind of lost in the works here because of the timing on the contract, if it was done right in a, in a reasonable way, what would that have looked like? How much time would you have had to execute it?

RYAN STANTON: Well, because there's, there's changes every year to the contracts, ideally, we would receive the contracts 45 days in advance of the contract expiration to give us time to not only review what kind of impact that they would have operationally, but also budgetwise, what kind of impact that would have. Because over the years, HHS has added, has added language that would either decrease our revenue coming in from the state or it would increase our expenses.

BREWER: And equally the taskers equate to the increase or decrease in the requirements for you then?

RYAN STANTON: Yes.

BREWER: All right. Any other questions? Senator Raybould.

RAYBOULD: Thank you very much for coming today. Did HHS follow up with a lot of the providers and give them additional information on what happened with procurement or did HHS hold procurement responsible for the delays or was there any exchange on, hey, how could we approve or kind of a discussion like, hey, procurement, we tried our hardest, but we were waiting for this or that? I mean, was there any follow up? Not necessarily on your part, but on HHS part? And did they convey that?

RYAN STANTON: Well, I mean, every year because it was a routine issue, we would ask our contacts at DHHS, which would typically be the director or some of their designee. You know what the issue was related to the contracts and why the timeliness and sometimes errors in the contracts were issues. And they would routinely say, well, we were, we got our contracts by this date to procurement, and then we didn't receive them until basically we send them to you. So that would be the general statement. It never got specific. And so I'm unclear exactly what the issues might or might not have been.

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RAYBOULD: So I appreciate that answer, but I'm trying to figure out who then has to come back on the procurement side, maybe, I guess, were you aware or did HHS tell you about any changes, well, procurement is going to change your policy, knowing full well that they're not giving sufficient time for the contracts to be received for them to process? Are they going to back up their date so that, that, you know, providers like yourself aren't left in this limbo? Did they say, hey, we're going to make some changes because we realized this wasn't very good business practices?

RYAN STANTON: Are you talking about DHHS or procurement?

RAYBOULD: Well, I'm talking about DHHS working with procurement and saying, you know, I think we probably need to backup our contract date with you for procurement to receive the contracts from the individuals or companies that are bidding--

RYAN STANTON: Yeah.

RAYBOULD: --to help make sure that you don't get back in the same place, you know, come June 30th. Are you going to be in the same place again this year? You know, I guess in, in business, we like to hear like, OK, we didn't handle this well in 2022, but we want to assure you, as a wonderful provider who's been working with us for years, these are the improvements that we've made.

RYAN STANTON: Yeah. So we would routinely, routinely have statewide provider meetings and starting in about a six-month period before the contract expiration, we would ask where the contracts at. And so we were told by DHHS that they felt they got the contract from their perspective to procurement in enough time to receive it. That's, that's as far as we got in the process.

RAYBOULD: OK. Thank you.

RYAN STANTON: Yeah.

BREWER: All right. Any other questions? All right. Thank you for your testimony.

RYAN STANTON: Thank you.

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BREWER: All right. We are still in the neutral on LB360. Anyone else neutral on LB360? All right, well, with that we'll ask Senator Cavanaugh come back up and give us a close.

M. CAVANAUGH: Thank you, Chairman Brewer and members of the Government Committee. So I, Senator Hunt, thank you for your questions. No, the department did not come and talk to me at all. They didn't express any of their concerns. They didn't ask if there were any changes that could be made. This is, of course, the pattern of behavior that we are experiencing across all agencies is that they come in opposition to senators' bills without discussion. From my perspective, it is inappropriate for any state agency to come in opposition to a bill. They should be coming in neutral and they should be working with senators to address their concerns in advance so that we can bring amendments that are made public in advance. So, unfortunately, this is a pattern of inappropriate behavior. Yes, they did come under oath for LR29 after I sought numerous records requests from numerous agencies. Well, I will continue to do this as part of my job. I do believe there are others that are better suited for this work, and I believe that is an Inspector General. As long as we do not have an Inspector General, I will continue to do my due diligence to provide government oversight and transparency for the people of Nebraska and taxpayer dollars. I think that if this is written too broadly, that there is certainly room for conversation about how that can be addressed. It is not my intention to make it impossible for the state of Nebraska to do business. It is my intention for the state of Nebraska to be the gold standard of how states do business. Frankly, the disappoint, I'm disappointed by the hyperbolic testimony of the Department of Administrative Services. I think it is outlandish to say that you can't get a driver's license. Extrapolating this to the "bazillionth" degree is unprofessional and inappropriate. And I, for one, am very tired of having this go around with state agencies. I don't think that this should be the role that I have to play every single day. I would like the role that I am playing is to enact strong public policy for the people of Nebraska and to ensure that we are spending tax dollars judiciously. I guess that's it.

BREWER: All right. Thank you for your close. Questions for Senator Cavanaugh? Senator Raybould.

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RAYBOULD: Thank you, Senator Cavanaugh. I know this is tough, but are you going to continue to, your efforts to work with the department to get them to help fine tune and make improvements if it's too broad?

M. CAVANAUGH: Of course.

RAYBOULD: And so I hope that's a mutual.

M. CAVANAUGH: I don't think that it was, I think it was very clearly stated that they are not interested in working or committing to work with me on this. But if they change their minds and want to provide some language that would help tailor this to make it more suitable, I would absolutely entertain that and I would bring it to the committee. That's not the message I heard, but I always stand for corrections. Thank you for your question.

RAYBOULD: All right. Thank you.

BREWER: Any additional questions? All right. We need to read it into the record. There is a, 1 proponent letter. There are no opponent letters and 0 in the neutral on LB360. And that will close our hearing on LB360.

M. CAVANAUGH: See you this afternoon.

BREWER: And we will reset for our next bill. All right. We're now going to transition to LB205. Senator von Gillern, welcome to the Government Committee.

von GILLERN: Good morning. Good morning, Chairman Brewer and committee members. For the record, my name is Senator Brad von Gillern, B-r-a-d v-o-n G-i-l-l-e-r-n. I represent District 4, which is parts of west Omaha and Elkhorn. LB205 is the Government Neutrality in Contracting Act. The purpose of the act is to increase efficiency and reduce construction costs for government units, thus honoring our commitment to Nebraskans to steward their tax dollars responsibly. Under LB805, preferential treatment language for collective bargaining units will be prohibited and request for proposals from government contracts in the state of Nebraska. Currently, the state gives preference to project labor agreements known as PLAs. These mandated PLAs are anti-competitive and drive up the cost of construction by reducing competition and effectively excluding merit shop contractors and their

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skilled employees from building projects paid for by their own tax dollars. It's estimated such agreements increase construction costs by 12 to 18 percent, a cost borne solely by the taxpayers. Often these agreements draw temporary workers from out of state called travelers that come to work on a particular project and then move on to the next, typically not becoming a part of, nor contributing to our communities. The U.S. Bureau of Labor Statistics estimated Nebraska's unionized contractors represent just 13.4 percent of the construction workforce. This means that when an PLA is in place, we are discriminating against eight out of ten workers. The shortage of skilled workers today only exacerbates the problem. The few of the online letter supporting the bill make note of this issue, including from the Nebraska Chapter of the American Institute of Architects, the Nebraska Chapter of the American Council of Engineering Companies and the National Utilities Contractors of Nebraska. Recently, President Biden issued Order, Executive Order 14063 requiring federal contracts over \$35 million to be subjected to project labor agreements. So we're now squeezing Nebraska contractors from two directions. Eighteen state Governors and the Associated Builders and Contractors represent 19 different organizations have responded to President Biden trying to address the federal side of this issue. At the state level, 24 other states have legislation or orders in place restricting PLAs, and Nebraska needs to do the same. I have tremendous respect for, respect for tradespeople who do the hard work in our state, regardless of their union affiliation or lack thereof. In my 40-year construction career, career, I worked for both union shops and merit shops and have had wonderful experiences with both. I want to make clear that passing LB205 does not ban preference to union contractors nor prevent contracting with them. It simply says that the original bid process for governmental units shall be open for any and all contractors to bid, regardless of their labor affiliation. Also of note, the bill applies to all political subdivisions, state, cities, counties, schools, university, state and community colleges who are carving out utilities such as NPPD, OPPD and M.U.D, with an amendment which you've now received, AM, which is AM231. The reason for this is that their work is highly specialized and they would like to see their workforce kept local. As stewards of public funds, we should not rig the game so that one group works, or one group wins over another with no tangible benefit to and at the expense of the taxpayers. With that, I'm happy to answer any questions.

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BREWER: All right. Thank you for that opening. Let's see if we have questions. Any questions? Senator Hunt.

HUNT: Thank you, Chairman Brewer. Senator von Gillern, do you still have any personal financial interest in a construction company?

von GILLERN: No. No, no financial interests, no longer employed there either.

HUNT: OK. Thank you.

von GILLERN: Thank you.

BREWER: Any other questions? All right. You're going to stick around to close?

von GILLERN: Yes, sir.

BREWER: Good to hear. All right. Thank you. Now, if you are a proponent, come on up to the front row and the first one up, gets to take the chair. Welcome to the Government Committee.

KATIE WILSON: Good morning, everybody.

BREWER: Good morning.

KATIE WILSON: So my name is Katie Wilson, K-a-t-i-e W-i-l-s-o-n, and I'm the executive director of the Associated General Contractors Nebraska Chapter, also known as the Highway Chapter, testifying in support of LB205. I want to thank Senator von Gillern for introducing this important legislation that will ensure Nebraska contractors can compete on an even playing field for public infrastructure contracts. AGC is the trade association of highway contractors, who perform highway, bridge and municipal utility infrastructure work across the state of Nebraska. My members don't bill Nebraska alone, but depend on the 25,000-plus construction workers who are out daily improving Nebraska's roads and bridges. And it is those workers that bring me to this chair before you today. You might be surprised, I spend more time worrying about our workforce shortage in the highway construction industry than I do about whether Nebraska is spending enough money on the roads. In fact, AGC has been doing a lot of work in developing the workforce in the construction industry over the past 8 to 10 years.

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For examples, AGC Nebraska has contributed over \$400,000 today to the Central Community, Community College, Hastings Heavy Equipment Operator Technician Program. And we also award \$3,000 or \$4,000 scholarships annually to students in the program. We lead a school, an after-school construction club at a, at a elementary school here in town, which shows third, fourth and fifth graders hands on basic construction concepts and skills in the construction industry. Our Road Rebellion Social media campaign informs teenagers and parents about career opportunities. It offers 13 percent higher wages in the construction industry than other Nebraska jobs. And we hold an equipment days event during the Nebraska High School State Trap Shoot Competition in Doniphan in the spring, where we promote career opportunities to students and their families. The last two years, we have worked to help our members improve their HR services, which will help them recruit, retain and train their people. Unfortunately, certain contracting practices by public bodies are only going to exasperate the workforce shortage for the construction industry. Governments are starting to offer preferences to contractors who have a certain type of workforce. This just distorts the competitive bidding marketplace and results in fewer bidders and a 12 to 18 percent increase cost to the taxpayer. That means we will get 12 to 18 percent less projects for our buck. One of the largest myths about project labor agreements is they guarantee qualified workers. This is wrong. Workforce restrictions in the agreement prohibit the contractors from utilizing their full complement of qualified employees on the project. Also, local projects that are competitively bid attract significant local bidder participation, and the bidding process is very competitive, including project labor agreements, requirements will limit local participation. I don't think that's what we want to see in our right to work state. The POA is a working document between a public owner, county boards, city council, school district, for example, and the building trade unions that dictate the terms under which the firm will run their business. It imposes provisions on management, working conditions, compensation and unionized hiring requirements. There's tons of negative consequences, which Senator told you. I will move on. So on behalf of my members, I would urge the committee to advance LB205 to the floor, and I'll be happy to answer any questions.

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BREWER: All right. We'll see if we have some questions for you. Questions? Senator Raybould.

RAYBOULD: Thank you, Ms. Wilson, for coming to testify today. So how many contracts do you think your members have lost out on because of competing against PLAs?

KATIE WILSON: Probably in my arena, probably not a whole lot. This probably, you would see this more probably in the vertical commercial world. But with the new infrastructure bill coming down, it does have language in there that promotes this type of thing. So, you know, we're just kind of in the protection mode, so.

RAYBOULD: Yeah. And so I'm not you know, I'm more familiar with the county and the city process. So I don't know if in the Nebraska contracting and bidding they have, if you are involved in a PLA or a member of a PLA or organization, that that's a criteria or qualification that get some weighted value too. And so I don't know enough about.

KATIE WILSON: It would mostly be in the contract. So when you go to bid the job, it would say that we're going to have a labor agreement in there and it would have details of what the contractor would have to follow. So in our world, you're going to restrict bidders because they want to be able to hire who they can hire, you know, so. That's, that, and that's the downside of any kind of agreement like that to put in a contract.

RAYBOULD: And so, do your members see this with great frequency in all contracts that they go out to bid for?

KATIE WILSON: We don't. There are in other states. You know, our border states have not done that and they've ban it in Kansas, Iowa, Missouri. So, you know, we just kind of, we should probably do the same thing just to protect. We want competitive bidding. The more bidders we have, the better pricing we're going to get. So that's kind of our position on that.

RAYBOULD: OK. Thank you very much.

KATIE WILSON: You bet.

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BREWER: All right. Additional questions? Senator Hunt.

HUNT: Thank you, Chairman Brewer. This type of stuff is way out of my wheelhouse. So sometimes when we get into these bills, I'm kind of like my eyes glazing over a little bit in trying to wrap my head around this stuff. But I have, I have a question that I'm just curious about and maybe you can help clarify. So if project labor agreements are already in place for federal projects, aren't most roads projects then in Nebraska already a combination of like federal and state and local funds? So how would something like ththisat work?

KATIE WILSON: So they are not in place, necessarily. They are recommending in the, in the, in the federal infrastructure act. Then it goes down to the state. So the states then put their rules and regs together on that. So we have not seen that in state contract in the highway world. But not saying down the road we won't. So this is kind of the protection mode of, let's make sure that we can continue to be competitive. And that's kind of our message here is, we need as many contractors bidding these projects or the prices are just going to keep increasing, so. It helps, you know, keep prices down.

HUNT: All right. Thank you.

BREWER: All right. Any additional questions? All right, then thank you for your testimony.

KATIE WILSON: You bet.

BREWER: Next proponent to LB205. Welcome to the Government Committee.

SHEILA O'CONNOR: Thank you. Good morning. I am Sheila O'Connor. S-h-e-i-l-a O-'-C-o-n-n-o-r, executive director of the Associated General Contractors Nebraska Building Chapter. The Building Chapter is a trade association representing 140 commercial firms that represent thousands of managers, craft employees that build structures, that build structures or buildings locally, regionally and nationally. We support LB205, as outlined in the purpose of the bill to provide for the efficient procurement of goods and services and to promote the economical, nondiscriminatory and efficient administration and completion of construction projects. Building Chapter members believe in and are committed to open and fair competition in the pursuit of

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public projects. The best way, this is the best way to start any project. It will protect and allow for as many qualified bidders and pursuers as possible for governmental entities to select from for their construction projects. What would no longer be allowed under LB205 would be requirements to adopt a collective bargaining agreement. We feel these decisions are best left to the contractor, employer and their employees, and a choice should not be imposed as a condition of competing or performing for a publicly funded project. Government mandate, such as PLAs or project labor agreements would no longer be allowed. These can limit competition, which typically drives up costs, can cause delays and disrupts local collective bargaining agreements. In cases where it would benefit the project, the selected contractor would be the first to recognize the need for a PLA, and it would be the most qualified person to negotiate that PLA. In closing, we support LB205 as it will ensure fair and open competition for everyone looking to do government contracting. We thank Senator von Gillern for introducing the bill and to the committee for listening to its testimony today.

BREWER: All right, Thank you. Let's see if we have questions. Any questions? John Lowe.

LOWE: Thank you, Senator Brewer. And thank you, Ms. O'Connor, for being here. So the question was asked earlier by Senator Hunt, if they have seen PLAs in the line of work of the road contracting and things like that? Have you seen it in building, other buildings?

SHEILA O'CONNOR: I'm not familiar with it. In our industry, those conversations are between generally the contractor and the, and the bidder. I'm not part of those conversations.

LOWE: All right. Thank you.

BREWER: All right. Additional questions? Thank you for your testimony. We are still on proponents to LB205. Welcome to the Government Committee.

TONI WATTS-McDONALD: Thank you. Good morning, Chairman Brewer, members of the Government, Military and Veterans Affairs Committee. My name is Toni Watts-McDonald, T-o-n-i W-a-t-t-s-M-c-D-o-n-a-l-d. I'd like to express my appreciation for allowing me to come and talk to you guys

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today a little bit about LB205. I am co-owner and president of Watts Electric Company and I'm the 2023 chair for the Nebraska South Dakota Associated Builders and Contractors Association. So I'd like to take a few minutes to explain the reasons I support and believe you should also support the Government Neutrality in Contracting Act. Previously, the feedback from Senate Committee on this bill has been that it was unnecessary in Nebraska, as more than 85 percent of the contractors in the state are not signatory with the union. It was believed for that reason that the possibility of tactics to exclude contractors from the bidding process was minimal. However, there's now been a shift from historical practices. Over the last 2 to 3 years, PLAs or project labor agreement language has been increasingly present in some of the bidding and proposal documents for projects, mostly in the Lincoln and Omaha markets. While private owners are free to do as they wish there, with their funds, projects receiving government funding should be prohibited from including such language in their bid documents. These members, these measures prevent 85 percent of contractors in Nebraska from participating in this bid process, permitting signatory contracts to inflate, permitting signatory contractors to inflate margins, putting a strain on project budgets. Ultimately, out-of-state union contractors would move into the area to complete the work, and Nebraska tax dollars would flow back to headquarters in other states rather than being fed back into our own economy. LB205 would help to prevent this by maintaining fair and open competition, providing the contracting agencies with the most responsible use of tax dollars. In addition, ordinances have been proposed and passed in both Lincoln and Omaha to give incentive to contractors using approved Department of Labor apprenticeship programs. I emphasize Department of Labor approved because while ABC and the unions have an approved program, a smaller Nebraska contractor would expend an immense amount of effort and incur cost to obtain this approval for their own training program to become eligible for the incentive. This provision provides, provides an advantage to a hip of organization and adds unnecessary costs to projects. I'm a strong believer in meritocracy and ideology, reinforced by my upbringing. By passing LB205, government projects in Nebraska can maintain an even playing field during bidding processes to obtain the most cost efficient solution for its taxpayers. This allows for competition and opportunity for all contractors, regardless of labor affiliation, to help build our goals as a state. Thank you.

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BREWER: All right. Thank you. Oh, let's see if we have questions. Questions? All right. Thank you for your time.

TONI WATTS-McDONALD: Thanks.

BREWER: OK. Any additional proponents to LB205? Welcome to the Government Committee.

ANNE KLUTE: Thank you. Good morning. My name is Anne Klute. That's A-n-n-e, last name, K-l-u-t-e. I'm the president and CEO of the Associated Builders and Contractors Nebraska/South Dakota Chapter. Thank you for the opportunity to be here today. And thank you, Senator von Gillern, for introducing the bill. We are a trade association that supports the commercial construction industry and I'm here to support LB205. ABC is both a registered and craft training program. Our 2022-23 school year will support over 400 students. Through our NDL registered apprenticeship program, our state apprenticeship program, the Nebraska Department of Correctional Services, Vocational Life Skills Program, and our upskilling grants, not only do we train apprentices in their chosen trades, but we also offer safety training for those apprentices to ensure the safety of all the individuals on all projects. Throughout our history, we have trained apprentices regardless of their labor affiliation and we continue to offer continuing education, training and test prep and safety training to any individuals in our industry. We do not discriminate in our programming and our support of the construction industry. We clearly believe that no preference should be given to any person or company, and we show that daily. We have a, we have a project labor agreement or PLA is placed on a project, it gives preference in bidding to various, a very small portion of the contractors in the state. PLAs force contractors to pay into retirement and other fringe programs in addition to the ones that they are already have in place for their employees. The employee will never see the benefit of these as even if the project last long enough for them to become vested in the program, most of the individual trades do not work on a project long enough for individuals to be vested. It cost the employer more money and hence increases project costs. Adding unnecessary cost to any project, especially in this economy and on projects that are paid for by government dollars, hence, funded by the taxes you are constantly asked to reduce, is simply unacceptable. Let's talk for a moment about the bidding process on projects. By design, the open bidding process

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encourages fair and open competition, which is what every government project should do for the citizens it supports. A PLA on a government project reduces the opportunity for fair and open competition and hence reduces the number of reliable bidders on the project. As others have stated, although we do not believe PLAs are a fair process overall, this bill does not ban PLAs on any projects. It bans government mandated PLAs. Simply stated, if government mandated PLAs on projects that give preference to a small portion of the construction industry, and no preference should be given on any government projects. For those of you who may be questioning if the underlying, if there is underlying intent, this bill is not negative for union or nonunion companies. It is not an anti-union bill. Union or nonunion companies work together on job sites all the time. Nonunion general contractors, hire some, union concept, subcontractors, excuse me, every day. Associations like ABC and AGC work every day to support the education and safety needs of the entire construction industry regardless of labor affiliation. This bill is about fairness and open bidding processes. This is about merit-based contracting. This is about giving fair opportunity to all contractors based upon the merit of their work and the appropriateness of their bid, regardless of their labor affiliation. And I guess, I'm happy to take questions now. How fast can you read, right?

BREWER: Actually, you can read pretty fast. All right. Questions? Questions? Yes, Senator Raybould.

RAYBOULD: Ms. Klute, thank you for coming to testify today. And so my question is, you know, I'm trying to get an idea how serious this problem is. And so I asked Ms. Wilson the same question. How many contracts do your members say that they lose out on in the competitive bid process? So I can kind of get my head around how, how serious an issue this is.

ANNE KLUTE: So as Katie stated, we've not seen a lot of it in Nebraska. We're seeing it seep in, seeing PLA language slip into some of the bid processes right now bidding, bidding contracts. However, other states have seen that they've had, it's been increasing greatly and many, many contractors have been missed out on those. Therefore, they pass these bills. What we are trying to do is be preemptive in this and take care of this before we have an issue. We want it to be fair and continue to be fair to all contractors.

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RAYBOULD: Thank you very much.

ANNE KLUTE: You're welcome.

BREWER: All right. Additional questions? Thank you for your testimony.

ANNE KLUTE: Thank you.

BREWER: All right. We're still on proponents for LB205. Welcome to the Government Committee.

BRANDON RAY: Thank you, Chairman Brewer and members of the committee. Thank you for the opportunity to testify in support of LB205. My name is Brandon Ray, B-r-a-n-d-o-n R-a-y. I work for the Associated Builders and Contractors out of our national office. Obviously, ABC strongly supports LB205 and we encourage members of this committee and the legislative body to do the same. By prohibiting the mandated use of PLAs on public construction projects, this legislation will guarantee a level playing field in the procurement of these taxpayer-funded projects, ensuring Nebraska gets the best product at the best possible price. We've heard about the onerous provisions in project labor agreements, so I will not belabor individual things there in the interest of time. But in short, these mandates would unfairly discourage merit shop contractors and their employees who have chosen not to belong to a union from competing for projects paid for by their own tax dollars. By ending open and fair bidding, PLAs obviously decrease competition. They drive up costs and, as was referenced earlier, increase the cost up to 20 percent compared to similar non-PLA projects. The most important thing I wanted to address, as has been discussed here is, is need. And as was mentioned last year, President Biden did issue an Executive Order mandating project labor agreements on all federal projects over \$35 million in total cost. That bill is on an EEO by President Obama that strongly encouraged federal agencies to require PLAs on a case-by-case basis over \$25 million. Additionally, and much more impactful to this state, the administration has made PLA use on federally assisted projects. These federal grant programs that provide financial opportunities to states, they've targeted certain sectors of the industry, including energy and infrastructure. Various other vehicles they've made PLAs a top priority. The guidance associated with these projects and programs all include strong encouragements to implement PLAs and/or use them in

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the bid and grant opportunities. Some require simply disclosure of the intent to use PLAs and projects or other labor standards. A selection of these do even provide incentives in the way of percentages or points on bids of PLAs are included. As of now, only about 20 percent of the returned applications have subsequently included PLAs. In response to the actions by the Obama and Biden administration currently, as mentioned, 24 states have legislation or Executive Orders in place restricting government mandated PLA requirements and preferences. They've seen the writing on the wall about what these mandates do to project cost timelines and the workers that fill them. In the current environment, protecting state procurement from these mandates is crucial, and we must preserve the ability to bid their public work in a fair way to the full industry and not allow favors or preferences to find their way into the spending of tax dollars. Do not be misled, this law and a commitment to fair and open competition will not preclude Nebraska or its contractors from access to any federal assistance. As mentioned, about 80 percent of the current proposals coming back to some of these programs we've been looking at, have been free of PLAs, many coming from states that have protected their process with similar legislation to LB205. So with that, I will be happy to answer any questions. Thank you.

BREWER: All right. Thank you for that testimony. Questions? Any questions for Brandon? Senator Lowe.

LOWE: Thank you, Chairman Brewer, and thank you, Mr. Ray, for being here. Where do you come from?

BRANDON RAY: I come from the D.C. area. We work with all of our Chapters across the country.

LOWE: Have you seen problems with PLAs in other states?

BRANDON RAY: We've seen countless problems with PLAs stemming back years, you know, from their beginning of their use. They come down to at the root of most of these problems, the fact that folks that have chosen not to belong to a union or they're precluded from bidding on these projects in the first place, or when they do work on these projects, on these projects, the benefits, the pay all of these things that they forfeit, the rules they work under, all of these things are a problem. And then they do become a problem for the public bodies

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that end up mandating them on these projects with cost, availability of contractors, expertise, etcetera.

LOWE: And you said that a cost of a project may include, increase by 20 percent.

BRANDON RAY: Up to 20 percent.

LOWE: Is the project any different than if a normal contractor would have done it than a, a union shop or whatever?

BRANDON RAY: Sure. The cost, and in reference to your question, that the cost increases for two reasons. One, it is because of the decreased competition. That's just how that would work. But as you asked, there are also provisions in a lot of these PLAs that, especially to nonunion contractors, would increase their costs. We're talking about double payment into their own benefit plans as well as benefit plans for the union. We're talking about union work rules where they have their workforce hired and trained the way that they do a project. Then they have to work under these additional rules, either hire additional folks or change their work processes. It just, it takes a well-oiled machine and completely disrupts how they're supposed to do the work, so typically they stay away from it.

LOWE: Thank you.

BREWER: All right. Additional questions? Thank you for your testimony.

BRANDON RAY: Thank you.

BREWER: We're still on proponents for LB205. Seeing none, we will transition to opponents to LB205. And now we're going to go to those in the neutral for LB205. Oh, hold it. OK, you're here as an opponent?

JON NEBEL: Yes.

BREWER: OK. Have a seat. Welcome to the Government Committee.

JON NEBEL: Thank you for having me. My name is Jon Nebel, J-o-n N-e-b-e-l. I am here on behalf of the Nebraska State Council of Electrical Workers representing over 5,000 electrical workers and their families in the state of Nebraska. I have been listening to the

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testimony and trying to figure out what exactly the problem is we're trying to solve. And I believe the intent of the bill is to remove the ability for our community, a government body, to define the terms of to which they would like their publicly-funded project to be built. And the reasons for that, I guess, are because some people don't want to be union. And fact is, this is a right to work state, so nobody has to be union. Even if you're working for a union shop, you don't have to be union. So I don't think that that's a reason to get rid of this mechanism that would allow a community to set standards, maybe some safety standards, maybe hiring local works could be one of these standards. The, I think we got pretty rigid on what a PLA is and it can really be whatever the community wants it to be. And that's what we're trying to defend here, is that any community that wants to use public funds to build something and they want to solve a extended problem with that, maybe it's, there's a workforce shortage or there's a work shortage and they want to hire local people first before outside people are brought in. Maybe they want to hire veterans, things like that. And I guess I would say to the folks that have a, have a problem working under terms defined by a community, it would be similar in my eyes to a Davis-Bacon project. I think we, we get to a point with those that we understand there's a little bit different preference there. There's that priority set, and if we can work under those, we can probably work under a PLA. And it doesn't seem to me that there's a big problem that this bill is going to fix, but it will take control out of the hands of the governmental bodies that I think the people deserve. So I would urge to indefinitely postpone this bill, and I'm available for any questions.

BREWER: Thank you for your testimony. Questions for Jon? Yes, Senator Raybould.

RAYBOULD: Thank you, Mr. Nebel, for coming down and you mentioned the Davis-Bacon Act. And so help me understand. So, and I'm not so familiar with Nebraska contracting processes, learning more, but aren't all public projects that are bid out required to comply with the Davis-Bacon wage act, or no?

JON NEBEL: Not all, no. But, yeah, so some are, yeah.

RAYBOULD: All right. Thank you.

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BREWER: All right. Additional questions for Jon. All right, none. Thank you for coming up and testifying. All right. Additional opponents to LB205. Welcome to the Government Committee.

SUSAN MARTIN: Thank you. Good morning, Chair Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Susan Martin, S-u-s-a-n M-a-r-t-i-n, representing the Nebraska State AFL-CIO, and our members, in opposition to LB205. We do stand in opposition to LB205 specifically because the legislation prohibits government mandated project labor agreements. Project labor agreement is a project management tool designed to ensure on time, on budget, results for a given project through a streamlined labor relations policy. PLAs improve efficiency by coordinating the work of the multitude of subcontractors and craft workers engaged on specific construction projects and have been used for generations on successful public and private construction projects. These PLAs do not restrict competition by shutting out nonunion contractors. On public projects, all contractors, union and nonunion, are invited to submit bids. Nonunion contractors can be found on many PLA projects. PLA simply create a level playing field for all contractors by standardizing labor conditions on a particular project. There's a few points that I think are important to consider as you weigh this legislation. First, there's nothing in state law currently that encourages or discourages the use of project labor agreements. This means there's nothing in state law that currently encourages or discourages the use of collective bargaining labor. Second, project labor agreements may provide benefits that we feel are getting overlooked and this legislation would do away with those benefits. Project labor agreements help to establish clear boundaries and expectations for a project whereby a contractor and workers established expectations lead to higher productivity, better work for better pay, as well as standardizing rules for work hours, safety, drug testing and all others. Third, project labor agreements can be used by public project owners like school boards or city councils to set goals for creating local jobs. They may include provisions for targeted hiring and apprenticeship ratios by including requirements for local workers to enter union apprenticeship programs. The project labor agreements can be used to help local workers gain skills, which is one of Nebraska's workforce development goals. I'm going to skip a little. To close, I just say again that the provisions of LB205 was introduced as a means

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to help increase efficiency and reduce costs, when in fact we'd argue that it's not the case. Construction owners and taxpayers benefit the most because PLAs help to ensure greater efficiency on construction projects that involve many subcontractors and large numbers of craft workers through various trades. They ensure a steady flow of safe, productive and highly-trained construction labor throughout nationwide referral systems, and they establish mechanisms for avoiding and resolving disputes. Thank you for the opportunity to testify.

BREWER: Wow, nicely done.

SUSAN MARTIN: Right on it. Right on it.

BREWER: All right. Questions? Any questions? Senator Raybould.

RAYBOULD: Thank you, Ms. Martin, for coming down to testify. I mean, have you seen this to be a problem in our state of Nebraska in terms of PLAs being just as competitive as other companies and organizations, union or nonunion?

SUSAN MARTIN: Yeah, and typically, well, as far as, to my knowledge, the use of PLAs in the state of Nebraska has been very minimal.

RAYBOULD: Mm-hmm.

SUSAN MARTIN: The only thing that I can remember that can come close was with the West Haymarket, JK, and the building of the Pinnacle Bank Arena. That was an agree, I don't think that was a PLA, but that was that type of an agreement, so.

RAYBOULD: Yeah, and I do remember that. And the, the big emphasis on that was hiring local companies to do all the contract, subcontract work there. And I guess that's considered a PLA then?

SUSAN MARTIN: It's a, it was a, I don't think it was a PLA, but it was a, an, a work agreement, which is where these mostly are.

RAYBOULD: OK. Thank you.

BREWER: All right. Any additional questions? Senator Lowe.

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LOWE: Thank you. And thank you, Ms. Martin, for being here. You were saying that, that without PLAs, that the subcontractors may not be well-organized or, or may not get the work done on time and everything else. Isn't that the job of the general contractor? How are we getting things done now if we weren't using PLAs now at this time?

SUSAN MARTIN: Yeah. And I think this just ensures that that would happen. The use of a PLA would just insure it with the general contractor and the subs and all the way around. And I'm sure there's someone behind me more qualified to answer that question, if you want to bring that back up again.

LOWE: Thank you.

BREWER: All right. Any other questions? Thank you for your testimony. OK. Opponents to LB205. Welcome to the Government Committee.

ED BLACK: Thank you. The name is Ed Black, E-d B-l-a-c-k. I'm here for BAC Local 15. Just wanted to bring up a few points. You know, I've heard, for one, you know, I heard ABC talking about the training that they provide. When I got into the trade, they offered no training in my field. We spend between \$12,000 and \$15,000 to train our, employ our members. And I know they brought up the PLAs. The PLAs just ensure that everyone gets a fair wage. That's pretty much what it boils down to. I've talked to contractors out in western Nebraska who say that they'll be happy to sign a PLA with us to get work out there. You know, they would love to sign with us now, but it's not competitive for them out there. Well, you get PLAs, it might help. And as for, you know, Nebraska is a right to work state. So them saying that the PLA makes it, you know, noncompetitive, that's not true either. It doesn't say that someone has to be a union member. It's just not what it says. Pretty much fair wages is what it all comes down to.

BREWER: OK. Thank you for your testimony. Let's see if we have any questions for you. Any questions for Ed? All right. Thanks for coming in.

ED BLACK: All right. Thank you.

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BREWER: OK. Any additional opponents to LB205? All right. If you are an opponent and you're not in the front row, please move up so we have some head count for time here. Welcome to the Government Committee.

FELICIA HILTON: Thank you, Senator Brewer, and members of the Government Affairs, Veterans Affairs Committee. My name is Felicia Hilton. I am the political director for the North Central States Regional Council of Carpenters.

BREWER: We need you to spell that, if we could.

FELICIA HILTON: F-e-l-i-c-i-a H-i-l-t-o-n.

BREWER: Thank you.

FELICIA HILTON: All right. Let me get my glasses on real quick. I just wanted to read what the fiscal note says from the Department of Administrative Services, State Building Division and the Office of the Capitol Commission. That construction request for proposals and contracts, as well as those of the Office of the Capitol Commission, do not comment on collective bargaining agreements. And no construction contract awards are influenced by collective bargaining agreements. So I think that, you know, starting there, that no awards, at least from those state agencies, are awarded based on collective bargaining agreements is something that I think is really important. I also think that the signatory contractors that are signatory to the union, that this isn't some forced thing. This is their decision as a business model, mainly for hiring journey persons and ma, making sure that they have a constant pool of skilled tradespeople that they can call on, on, to perform specific work. I think that, you know, we are in a worker shortage, but for the signatory contractors, you know, they feel the worker shortage as well, but they also know that the labor pool that they have is a consistent labor pool that they can call on for to fill the jobs. So it isn't something that's coercive in the sense of signatory contractors. It's a, it's a choice of a business model to make sure that they always have a source of employment. And I would just say that the PLA process itself typically isn't used in RFPs and those types of things because most of them are still lowest responsive, responsible bidder and they're just not used very often to qualify for a bid. If you are the contractor that receives the bid, then you kind of get into what that looks like

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afterwards, but your initial qualification for the bid is in, in most cases, especially in Nebraska, I haven't seen it be used in a way that would pre-qualify or automatically be used in the request for proposal. That there's a PLA or a union preference in that sense. I think that this would specifically somewhat chill that impact on signatory contractors that choose to use a business model that doesn't, you know, that pays fairly.

BREWER: All right. Thank you for your testimony. And we'll go to questions. Senator Raybould.

RAYBOULD: Yes, thank you. Thank you, Ms. Hilton. And you read a statement and, about construction requests do not comment on collective bargaining agreement. Where, where is that found or how did?

FELICIA HILTON: That's in the fiscal note.

RAYBOULD: In the fiscal note. OK.

FELICIA HILTON: Yeah, in the fiscal note and it's from, the fiscal note from the Department of Administrative Services, the State Building Division and the Office of Capitol Commission, which would typically do all the public letting for a lot of the, the vertical construction.

RAYBOULD: OK. And so that's a statement that's posted clearly on their website or?

FELICIA HILTON: No, it's on the fiscal note of the bill. Yeah, the bill. And they basically just say, you know, no construction contract awards are influenced by collective bargaining agreements. And I just think that that's the crux of what we're talking about, is that most public contracts or public owners don't use that as to influence whether or not someone gets the bid. It's usually the price and the cost. And I just would like to add that most of the material costs are the same for any construction project. So if it were to be less, it's on the backs of workers. And that's the only real contention that I have with what the proponents were saying about the bill is that somehow it costs more. Well, it doesn't really cost more than any other project unless you're willing to pay workers less to do a very

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dangerous job with the skills that they've been chosen in the unions they've been trained to do. And there's a number of contractors that are nonunion that do great work, pay their workers well. So this isn't, in our opinion, this isn't about you know, this is just about legitimate contractors being public work and whoever gets the bid, they've received the bid. And I don't believe there's any influence on whether or not they're union or not. I don't think most government engineering departments or whoever would let these bids know every contractor that's union or nonunion. I just don't think that they would know that. They just look at the bid.

RAYBOULD: OK. Thank you very much.

BREWER: All right. Any other questions? Thank you for your testimony. All right. Additional opponents. Come on up. Welcome to the Government Committee.

RON KAMINSKI: Good morning, Chairman Brewer and committee members. I am in Nebraska, right?

BREWER: Yes, you are.

RON KAMINSKI: Just wanted to make sure. My name is Ron Kaminski. I am born and raised here in Nebraska. I'm the president of the Nebraska Building and Construction Trades Council. We represent over 2,000 contractors that do work in the state of Nebraska and over 20,000 construction workers and growing by the day. First of all, PLAs, since I've been in the construction industry for 25 years in Nebraska, have never been used in the state of Nebraska. Ms. Martin, who testified previously stated about the Arena down here in Lincoln. The Arena that was built down here in Lincoln was, a out-of-state contractor was chosen. That contractor was trying to bring workers in from Minnesota. We talked with the mayor. Part of their promise to the city of Lincoln was to provide local jobs for local workers, and they struck out right off the bat. Project labor agreements ensure that local workers are used first before out-of-state workers. We've talked about interstate commerce here. We've talked about ways to ensure that local workers are hired for projects, and the best way to ensure that local residents from Nebraska are hired to construct projects is to ensure that they're under a collective bargaining agreement or hopefully, someday maybe, a project labor agreement in the state of Nebraska.

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This is another case of big government coming in trying to pass stuff out of Washington, D.C. that does not affect companies here, has not hurt companies here. We have companies that are part of AGC also that are in favor of project labor agreements. Nebraska is a right to work state, meaning you do not have to be a union member to even work under a PLA. This just seems like politics at its worst again. And the only thing that this is going to do is to ensure that workers aren't protected on the job site. Do we want Nebraska workers to do the best they can do? Absolutely. This is going to ensure that training of workers is less as we spend millions of dollars on Nebraska residents every year ensuring that we have successful apprenticeship programs and we train workers not to make starvation wages, but to make wages so they can be good, taxpaying residents of our state. I, it's very unfortunate that we hear all these positive things that AGC is doing. We do all of those things times 20, OK. We provide scholarships every year. We send thousands of people through apprenticeship programs. We do all that stuff. This is another case, like I said, of bigger, big government coming in, and this is going to cause more issues for contractors in the state of Nebraska than to help them. So I'd be happy to take any questions that anyone has.

BREWER: OK. Thank you. Questions? All right. Thank you for your testimony.

RON KAMINSKI: Thank you.

BREWER: All right. No additional proponents? Is there anybody here in the neutral? Then we will invite Senator von Gillern back up for closure. Just for the record, on LB205 we have 9 proponents, 3 opponents, and none in the neutral position. Senator von Gillern, you may close.

von GILLERN: Thank you, Chairman Brewer. I've been scratching notes fast and furious, and I don't want to keep you. I know you got another bill behind me and then lunch and the afternoon, so I don't want to keep you too late, but I want to do, I do want to address some comments that were made. PLAs have been used in Nebraska. Again, I, I've sponsored some bills here and spoken in hearings for the past two weeks on some things that I was not very, not as well-informed on as, as maybe some other experts that followed me in testimony on certain issues. This is one I know. It's one I've seen. This has been my

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life's work for the past 40 years. PLAs have been used in Nebraska. They've been used at Offutt, primarily on federal funded projects. Metro Community College dipped their toe in this a number of years ago and the city of Omaha has. Now what's, what's unique or what you need to understand is that sometimes the PLA will not be written because obviously the folks that are motivated to, to go in that direction, they'll write the PLA or they'll write the, the bid agreements in such a way where they will, they will pick out specific elements of requirements that are unique only to contractors that are union affiliated. And that might be a certain benefit programmer. Might be a certain training program. It would not necessarily be numbers of hours or certifications or anything else, but there are ways, as we all know, as legislators, there are ways to write certain agreements to get what you want without saying what it is actually that you want. So some of them, frankly, are a little bit sneaky about how they get it done. The question, Senator Raybould, you had some great questions. How many times has this been seen? How many times has it been done. And, and obviously in the fiscal note, can't measure anything because, because it typically has not been done. But this absolutely is the direction that things are moving across the country. And we have lots of laws in place. We have lots of procurement policies in place for things that don't happen every day that we don't want to see happen. And this is one that we certainly don't want to see happen, because, again, we're charged with the fiduciary responsibility of handling the finances of the taxpayers. A couple of specific things I want to address. If you go, if you do look at the fiscal note and I won't drag you there right now. The language that is addressed in the fiscal note basically says you cannot coerce a contractor to become a part of a collective bargaining unit. It does not say that you can't contract with a collective. The state statute says that you can't contract in that direction. So I encourage you to dig into that a little bit more deeply. One of the opponents testified about projects getting done on time. I have yet to see a merit shop contractor go on strike. I've seen substantial project delays on contracts or on projects where union contractors have gone on strike and it's impacted the completion date, so I would contest that claim also. And then lastly, the emphasis on local buying, local keeping, local and so on. And I made a comment in my opening testimony about travelers. When union contractors hit their maximum or hit their capacity for available workers in the local area, they bring in travelers from out of state.

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Typically, those are not folks that are able to, for whatever reason, find work in their own jurisdiction, in their own trade hall. Typically, they're not the cream of the crop, to be quite frank. So we have folks that come in from out of state and they're not the best workers in their trades. They don't stay here. They come and they go. And typically their tenure is not nearly as long as those workers that are working for married shop contractors. They don't invest in the community and they don't become a part of the community. So, again, I want to wrap up, which I know you'll all be thankful for. Again, I started off my testimony on this and I want to end it the same way. This is about fiscal responsibility and it's about stewarding the taxpayers dollars and doing the best things that we can for the taxpayers. With that, I'll wrap up and take any questions.

BREWER: All right. Thank you for your testimo-- on your close. See if we got any questions. Questions? All right. Thank you for your close.

von GILLERN: Thank you.

BREWER: All right. We'll quickly reset for our next bill. All right. If you are a proponent for LB343, you want to move forward so that we know who we got. And then as soon as we get through the proponents, we'd ask everyone who is an opponent to shift forward. That way we speed up the process here because we may be close on time. All right. We will go ahead and get started on LB343. Senator Slama, welcome to the Government Committee.

SLAMA: Thank you. Get set up here. Good not quite afternoon yet, morning still, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Julie Slama, J-u-l-i-e S-l-a-m-a, and I represent District 1 in southeast Nebraska. I'm here today to introduce LB343, which would adopt the Anti-Discrimination Against Israel Act. The Boycott, Divestment and Sanctions movement aims to undermine Israel's political and economic stability. The main objective of the BDS movement is to economically destroy the state of Israel by gradually discrediting the Jewish nation until the international community is persuaded that Israel has no right to exist or defend itself against its adversaries. In recent years, there have been attempts to pass legislation in various states and at the federal level to oppose the BDS movement and support Israel. These efforts have taken on various forms, and to date, 34 states have adopted laws,

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executive orders, or resolutions designed to discourage boycotts against Israel as you can tell from your map that was just handed out. This includes our neighbors of Iowa, South Dakota, Kansas and Colorado, and more recently, Idaho, Utah, and West Virginia. These laws have been put in place across the country to protect state taxpayers from supporting discriminatory boycotts against Israel. The legislation before this committee makes a simple proclamation that if an entity wishes to enter into a contract with the state of Nebraska, it must agree and certify in writing that it will not engage in or is not currently engaged in a commercial boycott of Israel. This law would only apply to contract values higher than \$100,000 or to contractors who have ten or more employees. To be clear, this law would not infringe on anybody's individual rights to boycott or otherwise be anti-Israel. Additionally, this does not obligate institutions to invest in Israel. This law would simply ensure that we as a state government are not complicit in efforts to harm a key partner for both the United States and Nebraska. It is entirely permissible for a state to conclude that a corporation boycotting Israel prioritizes politics above business interests in a way that reduces the effectiveness of the company and impairs contract performance. Such a conclusion is entirely within the lawful purview of Legislatures-- legislative discretion as held by the Eighth Circuit by upholding the same language we're presenting to you today in Arkansas. The government of Nebraska has a strong relationship with the state of Israel, both through person-to-person connections and an economic relationship that saw over \$40 million in exports to Israel in 2021. Furthermore, since 1996, Nebraska's exports to Israel have totaled more than \$603 million, and Israel now ranks as Nebraska's 26th leading trading partner. Israel is certainly a place where potential business and trade partnerships can be found. By enacting this legislation, not only do we ensure Nebraska is on par with the overwhelming majority of other states, but we would be protecting our growing economic ties with Israel, shining a light on those who seek to do it harm and ensuring our taxpayer dollars are spent in a manner that reflects Nebraskan values. With this said, companies who may seek to do business with the state of Nebraska should be on notice that we and at least 34 other states will not help fill your coffers if you attack and seek to delegitimize our friend in Israel. Let us strengthen in relationship-- let us strengthen the relationship between Nebraska and Israel and advance the Anti-Discrimination

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Against Israel Act today. People and businesses are free to do business as they see fit, but it's up to the Nebraska Legislature to respond as they see fit as well. I'd encourage you to stand with me and support LB343. I'd be happy to answer any questions you may have though are-- there are experts behind me who could probably testify in greater detail.

BREWER: All right. Thanks for that opening. Questions for Senator Slama? Senator Lowe.

LOWE: Thank you. It appears that there are 35 states that have already passed this legislation and 15 who have not or are on the way to passing it.

SLAMA: Actually, if you reference the map, I don't know if it's clearly marked or not, but the states that are solid on your maps are those 34 states have passed similar legislation, if not the same language. The ones that are striped have had it be proposed. So that's an additional 13 states for a total of 47. Yeah.

LOWE: Thank you.

SLAMA: Thank you.

BREWER: OK. Additional questions? Senator Hunt.

HUNT: Thanks. Thanks, Chairman Brewer. You said that it's 34 states that have passed the legislation--

SLAMA: Yes, ma'am.

HUNT: --or executive order or resolution?

SLAMA: Yes, ma'am.

HUNT: So not necessarily a law, but potentially like an executive order or a resolution.

SLAMA: That has the force of law, yeah.

HUNT: OK. Why not have an executive order in Nebraska instead of legislation?

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SLAMA: Because I believe in the strength of the legislative branch, and I don't think the executive should be legislating from his or her office.

HUNT: Do you-- have you had any conversations with the Governor about a potential-- about his support of this legislation or a potential resolution?

SLAMA: I have not. For me, personally, again, I think the legislative route is the best way under my belief in federalism to go in terms of letting the legislative branch legislate.

HUNT: OK. Thank you.

SLAMA: Thank you.

BREWER: All right. Senator Halloran.

HALLORAN: Thank you, Chairman Brewer. Thanks for bringing this bill, Senator Slama. So a company would be required to have a written certification that they are not in-- conducting a boycott on Israel to do business with them.

SLAMA: Yes.

HALLORAN: What if they sign that agreement certification and then we find out later that they are boycotting, boycott?

SLAMA: We've got representatives from DAS here who can run everybody through the legal repercussions of them going against their contractual obligations on that front.

HALLORAN: I do the same thing. I pass them off to someone smarter than me anyway but not you. Thank you.

BREWER: All right. Senator Raybould.

RAYBOULD: Thank you, Senator Slama. And I'm sorry I missed part of your opening remarks--

SLAMA: Oh, gosh, no worries.

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RAYBOULD: --so I apologize if you addressed this already. But I'm kind of curious in your research, how many Nebraska companies currently have a boycott against the state of Israel?

SLAMA: Well, thankfully, I believe Nebraska's been very proactive in our approach to contracting. And again, Director Jackson can speak more specifically to this. And I think it's important here to reference the Eighth Circuit's holding of the same language that we're proposing today in Arkansas in that a company can choose not to do business with Israel if it doesn't want to. I mean, I'm not actively doing so, but I'm not actively boycotting Israel either. The language of this bill makes it clear that you have to be in a public boycott of Israel. And I think Director Jackson can speak a little bit more to the details of how that applies to Nebraska. But the court's holding was really important just in the applicability of this case in Nebraska and ensuring that our businesses are still free to do business as they see fit.

RAYBOULD: OK. And so and Director Jackson will talk about the numbers. And I guess--

SLAMA: Absolutely.

RAYBOULD: --and you have to publicly register that you're boycotting--

SLAMA: No.

RAYBOULD: --or how does that work?

SLAMA: How it typically works in the contracting process in other states that have it, among other forms that any business doing business with the state have to sign, there's a large series of these. One form would be a simple certification that I'm not actively, nor do I intend to, nor will I be sorry, engaging in a public boycott of Israel as part of the BDS movement. It's a form that's been put together by other states and used and has been held up in court several times.

RAYBOULD: OK. But to the best of your knowledge, you are-- you are not personally aware of companies in Nebraska that are currently boycotting the state of Israel.

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SLAMA: If you ask me to rattle off the names of those companies, I would not be able to and I cannot testify to a specific number.

RAYBOULD: OK. Thank you so much.

SLAMA: Yeah, I mean, we've got thousands of contracts in the state of Nebraska, so I would hesitate to speak on that one from my personal perspective.

BREWER: All right. Any additional questions for Senator Slama? All right. You'll stick around to close?

SLAMA: Of course.

BREWER: All right. Thank you. All right. We're going to start with proponents to LB343. Welcome to the Government Committee.

JOHN MYERS: Thank you. My name is John Myers. I'm from Auburn, Nebraska. J-o-h-n M-y-e-r-s. I'm here today in support of LB343. This legislation is similar, as already been explained, to that which had been adopted by a number of states. I would like to point out that this is not a conservative or liberal question, since the states include Colorado, Illinois, Florida, Iowa, New York, California, Kansas, and South Dakota. It's a wide variety of political views. Support for the BDS movement, which this legislation targets, is applied against only one country, Israel. No other country, regardless of their human rights record, is targeted. BDS advocates distort issues surrounding the Palestinian areas in Israel in an effort to persuade organizations from doing business in Israel. Interestingly, with the advent of the Abraham Accords, the United Arab Emirates, Bahrain, Sudan and Morocco have begun both economic and security agreements with Israel. If proponents were correct in their assessment that Israel was trampling the civil and religious right of Palestinians, I believe that it's unlikely these agreements would have come to fruition. Thus, I can only conclude that proponent support for BDS and opposition to Israel has less to do with civil and religious rights and more to do with an agenda against Israel. Since this is a political issue, citizens of Nebraska should not enable and support by our tax dollars organizations which are engaging in actions detrimental to our close ally and the only true democracy in the Middle East. This legislation does not prevent an organization from

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engaging in a boycott, but it ensures that Nebraska government is not supporting such a boycott of our friend and ally. Thank you for allowing me to address my support for this legislation.

BREWER: All right. Thank you for coming and testifying. Let's see if we have questions for you. Any questions? All right. Thank you, John. OK. The next proponent for LB343. Welcome back to the Government Committee.

JASON JACKSON: Thank you, Colonel. Good morning, Colonel Brewer and members of the committee. My name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n. I'm the director of the Department of Administrative Services and I'm here to testify in support of LB343. Administrative Services and our State Purchasing Bureau oversee our procurement process for state government. And we have an interest in making sure that when we make purchasing decisions on behalf of the state that we're not acting in an adverse way to America's foreign policy interests. The State Department has identified Israel as one of America's greatest friends. They further have said that Israel's security is part of our longstanding security interests, and Israel has been identified as a non-NATO major U.S. ally. And so when we observe companies attempting to bring negative coercive economic pressure against one of our primary allies, that's obviously at odds with our foreign policy interests. And from the state's perspective, we don't want to be supporting that type of activity. From an implementation perspective and an administrative perspective, again, this will-- there are states that have gone before us, if the Legislature were to enact this law, it would bring us into alignment with more than 30 other states that have preceded us. From an implementation perspective, this would be a relatively easy bill to administer, and we don't anticipate any difficulty in working with our sister agencies to bring them into compliance with the law. With that, I'd be happy to answer any questions you may have.

BREWER: All right. Thank you for your testimony. Let's see if we have questions. Senator Halloran.

HALLORAN: Thank you, Mr. Jackson, for appearing here today.

JASON JACKSON: Yes, sir.

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HALLORAN: Ask you the same question I asked Senator Slama. If-- if a company signs the agreement that they're not boycotting Israel, and I would guess that you re-- review that company closely to determine that, but what if it slips through the cracks and, in fact, later we find out that they were boycotting, but we have a contract with them? What-- what-- what actions are taken?

JASON JACKSON: Yeah, I think the bill contemplates that if enacted, DAS would administer policies or regulations to bring the bill into effect. What we would do is look, benchmark with some of the states that have preceded us here and try to identify what are some of the leading contractual remedies that they've employed that would hopefully, you know, represent the will of the Legislature, but also not pose a business disruption to, you know, any agency for a critical service. So, yeah.

HALLORAN: Thank you.

JASON JACKSON: Yep.

BREWER: All right. Additional questions? Yes, Senator Hunt.

HUNT: Thank you, Chairman Brewer. Did you speak to if any Nebraska companies are boycotting Israel or part of the BDS movement that you know of?

JASON JACKSON: Yeah. So thank you to the question.

HUNT: Sorry, yeah.

JASON JACKSON: No, no, Thanks for the question. And if I may, I intended to do this in response to the first question, but I forgot. I also just want to share with the committee, it's not germane to this bill, but I was concerned about the private company that testified on the preceding bill with respect to their issue with DHHS. Our general procurement process is that we try to know a company's renewal status six months in advance to exactly prohibit or prevent that type of circumstance. And so my team is following up with that individual to figure out exactly what went wrong there and hopefully take corrective action. Senator Hunt, with respect to your question, I'm not aware of any companies, but we also haven't proactively done this work. We did see that some other states that have preceded us have created

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repositories or lists of companies that they've identified that are participants. But I'm not personally aware of any.

HUNT: Well, the famous one is Ben and Jerry's, which is owned by Unilever. And so if this bill were to pass, would Ben and Jerry's then go on some list saying, we're not going to contract with Ben and Jerry's or what? How would that be implemented?

JASON JACKSON: I wasn't aware of Ben and Jerry's.

HUNT: Well, it's a really famous case. So, you know, anyone who's followed this knows that.

JASON JACKSON: I think generally our intention would be to apply this prospectively. Where we've seen it done successfully in other states is basically, you know, the company certifies as part of the procurement process that they're a nonparticipant. That would be kind of the part of the specs or criteria for the evaluation of the bill or the evaluation of the bid and-- and-- and a representation on the part of the company that they were participating in the movement would disqualify them from doing business in the state. There's not an intention. Again, we would want to comply with whatever the will of the Legislature is on this. But as we read the bill, it doesn't really operate prospectively or, I'm sorry, retrospectively with any existing contractors.

BREWER: Any more questions?

HUNT: I'm good.

BREWER: OK. Any other questions? Thank you for testifying.

JASON JACKSON: Thank you, sir. Thank you.

BREWER: OK. We are still on proponents to LB343. Come on up. Welcome to the Government Committee.

ALICE MYERS: Thank you, Senator Brewer and the rest of the committee here. I am, Alice Myers, A-l-i-c-e M-y-e-r-s. And I'm going at a little different perspective. I support the LB343. The BDS movement has never helped any Palestinian, nor will it ever. Instead, it has served to drive a deeper wedge between Israelis and Palestinians by

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perpetuating the conflict. Pro BDS organizations like Students for Justice in Palestine-- Palestine support a Palestinian state from the river to the sea, calling for the elimination of the Jewish state. Disguising its destructive intention as concern for human rights, the BDS movement ignores real human rights abuses in Palestinian controlled territories and throughout the Middle East. Moreover, BDS advocates turn a blind eye to the way their movement harms Palestinians and Israelis alike by using rhetoric like genocide, oppression and apartheid. The BDS movement creates a threatening political environment in which all who desire justice must support BDS. For example, thousands of Palestinians work in Israel-- Israel with work permits to provide for their families in the West Bank. BDS threatens these families' security and source of income. Likewise, numerous Palestinians find employment working alongside Israelis and communities in Judea and Samaria. Consequently, boycotting, disputing-- disputed territories under Israel's control harms both Israelis and Palestinians and diminishes the positive on the ground and direction-- interactions these two peoples have when working side by side. Putting another way, boycotting Israel and its territories is not pro-Palestinian. It's antipeace and antihumanitarian.

BREWER: You're complete? OK. Thank you. All right. Questions for Alice? All right. Thank you for testifying. OK. Next proponent for LB343. All right. We will now switch over to opponents. Oh, you're a proponent.

COLLIN BONNIE: Yes.

BREWER: All right, come on up.

COLLIN BONNIE: Thank you.

BREWER: Welcome to the Government Committee.

COLLIN BONNIE: Thank you, Chairman Brewer. My name is Collin Bonnie. I'm the president of the TP USA chapter at UNL. And I'll try to have you.

BREWER: I'll have you spell that so.

COLLIN BONNIE: Oh, C-o-l-l-i-n, that's with two l's. I want to say my views don't reflect the views of the--

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BREWER: Last name and first name.

COLLIN BONNIE: Oh, C-o-l-l-i-n B-o-n-n-i-e.

BREWER: Thank you.

COLLIN BONNIE: Yeah. My views don't reflect the views of the organization. I'm just here on behalf of myself. I just kind of want go through a history lesson here. According to the U.S. Embassy, the U.S. was the first country to recognize Israel on May 14, 1948, under Harry Truman. Diplomatic relations were established on March 28, 1949. And they have been our eyes and ears in the Middle East and the single largest trading partner of the United States. And so even though they've been our most consistent and valuable-- valuable ally, there are still some have publicly opposed it. I have no idea why that could be. Could be fueled by rising anti-Semitism that I've personally seen firsthand. Part of that could be because the BDS movement or maybe it's just because of corporate pandering. Regardless, you know, at the end of the day, I'm a huge proponent of the First Amendment. Companies have the right to protest who they want to protest. And even if I disagree, that's their decision. However, I believe that Nebraska also has the right to decide who they want to support, and I believe the passing of this bill will reflect the majority of the views in Nebraska. And with that, I yield my time.

BREWER: All right. Thank you. Questions? All right. Thank you for taking the time to come in. All right, we're still on proponents. Welcome to the Government Committee.

GARY JAVITCH: Thank you. My name is Gary Javitch, G-a-r-y J-a-v-i-t-c-h. I'm from Omaha. It's my honor to be a co-representative of the Jewish Federation of Omaha before you today about this bill to prevent any company or public entities that boycott Israel from doing business with Nebraska. Three points: one, this bill addresses a direct threat to Israel, one of our country's most loyal allies, and its best ally in the Middle East. While not specifically named, the menace this bill addresses is the Boycott, Divestment and Sanctions movement, known by its initials BDS. BDS seeks ultimately the destruction of the world's only Jewish state by demonizing it, delegitimizing it, and holding it to a double standard to which no other country must adhere. And why should Nebraskans care about this

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country thousands of miles distant? Point two, self interest. And that's a compelling reason. At the national level, the U.S. and Israel share important technology in areas of medicine, science, agriculture, cybersecurity, and military defense. At the state level, you should know that in 2020, Nebraska exported over \$50 million worth of manufacturing goods to Israel, and since 1996, the value of Nebraska's exports are more than \$560 million, ranking Israel as Nebraska's 20th leading trade partner. More than 30 Nebraska companies have discovered the benefits of doing business in Israel, including UNL. Besides our business and academic connections, Israel is also a major tourist attraction to many Nebraskans eager to see the holy lands where all faiths get to practice their religious traditions. Our ally and trading partner shares our moral, cultural, and traditional values. And I emphasize of all the countries in the Middle East, North Africa, the Jewish state remains the only country in that area to permit free speech, free religion. Point three, the concern over free speech rights. A legal scholar pointed out that this law, anti-BDS laws do not infringe on speech. They don't regulate speech at all. Free speech and commercial rights are two different things. In 2022, the full Eight Circuit U.S. Court of Appeals ruled that boycotts are not protected by free speech. Free speech aside, as a sovereign state, Nebraska can certainly decide who they would do business with. And for all these reasons, this antidiscrimination law requiring a pledge to not boycott Israel deserves passage. Questions?

BREWER: Thank you. Let's see if we have questions for you. Questions?

GARY JAVITCH: I'd like to answer your question.

BREWER: All right. Thank you for coming in. Oh, I'm sorry.

HUNT: Thank you, Chairman Brewer. I would like to hear your view about a question I asked earlier.

GARY JAVITCH: I'm sorry, you'd like to what?

HUNT: I'd like to hear your views on a question that I asked earlier.

GARY JAVITCH: Yes, well, I'm not aware, and I don't think anybody else is of a country-- company that's currently boycotting Israel, but the ever increasing threat from the BDS movement is of major concern on

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college campuses across the United States. The BDS movement is gaining a foothold, as is the rise of anti-Semitism across campuses on the United States. And we all know that a portion of our Congress to the very, very far left, and I'm pointing out it's the very, very far left, is very anti-Israel. So we have to anticipate and that's why this law, this bill has value.

HUNT: What I'll ask you is, to you is a boycott the same as discrimination?

GARY JAVITCH: I think by definition it is.

HUNT: OK. Thank you.

BREWER: All right. Any other questions? All right. Thank you--

GARY JAVITCH: Thank you.

BREWER: --for your time. And we will move to the next proponent to LB343. Welcome to the Government Committee.

SHARON BRODKEY: Thank you, Senator. Good morning. My name is Sharon Brodkey, S-h-a-r-o-n B-r-o-d-k-e-y. I am the executive director of the Jewish Community Relations Council of the Jewish Federation of Omaha. I am here to urge you to vote in support of LB343 that prohibits state contracts with companies that boycott Israel. This bill accomplishes four things. It protects the financial interests of Nebraska citizens by ensuring that the state invests in funds and contracts are shielded from the economic damage and instability caused by parties that engage in discriminatory boycotts against businesses operating in Israel. Number two, it protects the social interests of Nebraska citizens, ensuring that your and my tax dollars are not party to discriminatory contracts and investments. Number three, it aligns Nebraska with 35 states that have already passed similar legislation or executive orders. And finally, number four, it aligns Nebraska with the federal government, which rejects boycotts based on national origin and interferences with foreign trade policy in general. It's important to note that courts have already determined that these policies do not violate First Amendment rights. Economic boycotts are not protected speech, but are instead a form of commercial activity. LB343 is limited and does not prohibit individual boycotts of Israel, as you've

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already heard, or penalize anti-Israel speech. Individuals remain free to call for or participate in and encourage others to join in boycotts against Israel. But let's be clear, the commercial boycotts addressed in this bill are a form of national origin discrimination driven by bigotry and hate. The international BDS movement at its core is anti-Semitic and does nothing to promote peace. Instead, it seeks to cancel Israel. Its campaigns represent a hostile delegitimization tactic that rests on a fundamental rejection of Israel's right to exist. BDS cofounder Omar Barghouti even said: Most definitely we oppose a Jewish state in any part of Israel's internationally recognized borders. The Palestinian and Israeli economies are intrinsically linked, and a boycott of Israel damages economic opportunities for both parties. BDS initiatives sever the economic ties between Israel and its Palestinian neighbors. This is not a good path toward a long-term, lasting peace. LB343 does not attempt to legislate how people feel or think. Unfortunately, anti-Semitism and Israel haters will always be around. LB343 simply says that the state of Nebraska will not use our tax dollars to support hatred. Nebraska says no to a movement that is harmful to the long-term security and economic viability of both Israelis and Palestinians. Perhaps the best service I can provide in conclusion is to articulate this point in practical terms so Nebraskans can appreciate the public policy protections our state is considering here today. BDS traffics in discrimination, which directly contradicts our federal government, our state government, and our Nebraska values. This law provides Nebraska's private sector with a clear business rationale for avoiding discriminatory practices and boycotts. So I urge you to vote on the right side of this issue. Vote for LB343 and against anti-Semitism, discrimination, and divisiveness.

BREWER: Thank you.

SHARON BRODKEY: Thank you for your time.

BREWER: OK. Questions for Sharon? Questions? All right. Thank you for your testimony.

SHARON BRODKEY: Thank you.

BREWER: We still are on proponents of LB343. Welcome to the Government Committee.

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JAKE BENNETT: Thank you. My name's Jake Bennett, J-a-k-e B-e-n-n-e-t-t. I'm director of policy and legislative affairs at the Israeli American Coalition for Action. And since this is Government and Veterans Affairs, I'll tell you, I'm also a veteran of the Golani Infantry Brigade of the Israeli Defense Forces and pleased to be with you here today. First, to solve any, any concerns that might be out there about Ben and Jerry's and Chunky Monkey and Cherry Garcia, Unilever has reversed the boycott of Israel as of a couple of months ago. So your ice cream supply is not going to be in contention here with the bill. So that's good news. There's been a lot of talk about the, the effect of this protecting America's relation with its foreign trade partner. I just want to stress also that there's an impact here for local businesses in protecting them against the coercive methods of the BDS hate movement, which tries to coerce local businesses to boycott Israeli-owned businesses. In addition, it tries to boycott any-- anyone operating locally who has a national origin connection to Israel. So Jewish or Israeli Americans also get targeted. So there's a local discrimination element here as well as the, as the targeting of Israeli-owned businesses. So I, I do want to provide a clear explanation just to dive a little deeper into what the bill does not do. So according to the U.S. Eighth Judicial Circuit, which Nebraska is a part of, in June 2022, the Eighth Circuit decisively ruled that the law in Nebraska is creating here does not regulate private conduct of free speech. In a very practically worded opinion that's worth reading, the Arkansas court clearly explained that these laws properly regulate the conduct of commercial activity. The pro-Israel community fully supports the First Amendment of the constitution, and in this case, states have created laws that carefully regulate commercial activity and not the conduct of free speech. Anti-BDS laws are narrowly tailored antidiscrimination laws, similar to many other antidiscrimination laws that protect, among other categories of people, women, racial minorities, LGBTQ individuals. All of these laws help highlight the critical distinction between commercial activity and the exercise of free speech, which comes into sharp focus in the course of carrying out the government's obligation to protect various classes of people from discrimination. In closing, in passing Nebraska's law defending the state from anti-Israel commercial boycotts, this Legislature has been perfectly clear in its intent, predicating its passage on the recognition that such boycotts are overwhelmingly anti-Semitic in nature and not political. That's why

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these laws have passed with such a high level of cosponsorship and bipartisan support in all instances. It's critical at this point, once again to re-emphasize for the benefit of the public and the onlooking courts that may need to further take this point into account. In conclusion, I congratulate the people and government of Nebraska for taking this stand and working on this bill. Thank you.

BREWER: All right. Thank you. Questions? Questions? All right. Well, thank you for your service to Israel and--

JAKE BENNETT: Thank you.

BREWER: --thanks for your testimony.

JAKE BENNETT: Thank you.

BREWER: All right. Next proponent to LB343. And you're going to see some folks moving because the Exec Board is going to start. And we have a member on the Exec Board that's here and I am the first presenter in Exec Board so don't panic. It's just kind of the shuffle we got to do to take care of all the committees and when we have long days they overlap. So with that, please, sir.

GENE ALPHIN: Thank you, Chairman Brewer and committee. My name is Gene Alphin, G-e-n-e A-l-p-h-i-n. I'm the pastor of The Life Church here in Lincoln, Nebraska. Listening-- well, I want to add my voice, obviously, to support LB343. Listening to all these comments, I, I feel like I have almost nothing to add. But as a preacher I can always find something to add. I have a unique perspective that I just returned from Israel. I stood on the border with Lebanon, stood on the border with Syria, stood at the very gates of the Gaza Strip, and talked with people from all walks of life from rabbis to family members to one guy from-- a man from the, the media, The Jerusalem Post, that was an Israeli Arab living, living there in Israel, came away with a unique perspective that what we probably most of us know is Israel has been hated for who they are from the very beginning of recorded history. And we live in a society that's trying to do away with bigotry. It's the most worthy fight that we have to fight today. And I want to call on, I want to call on this committee and this state to take a stand. There's been questions asked of, well, who do we know that actually does this violate or would be in violation of this? I

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don't know that even, members, if we have nobody in violation of this, I think we need to make a stand in support of our only ally, that we-- true ally that we have in the Middle East and the most stable government, if not the only stable government that we have there. These antiboycott, anti-BDS, or excuse me, these BDS movements are, are based in hatred. And I think not only does the world, but, and hopefully the United States, but definitely this great state, we've had enough of that kind of stuff and we need to stand up in support of this great nation. And those are my comments.

BREWER: All right. Thank you for those. See if we got questions. All right. Thank you for your testimony. OK. We are still on proponents to LB343. All right. We will now transition to opponents to LB343. Welcome to the Government Committee.

ALEXZIA PLUMMER: Thanks. OK. Good morning. Good morning, committee members. My name is Alexzia Plummer. That is A-l-e-x-z-i-a, Plummer, P-l-u-m-m-e-r. I'm here today as a private citizen and I oppose LB343 for three reasons: one, it does not materially benefit the residents of Nebraska; two, it curtails commercial speech and the political expression of businesses; and three, it sets a dangerous precedent. One, this bill does not benefit Nebraska residents. I can think of no meaningful ways that Nebraskans lives will improve because the state won't give contracts to companies boycotting Israel. It is solving a problem that doesn't exist in our state. The idea that residents look to government contracts as endorsements of ideology doesn't make sense. They're more concerned if the company is using their funds appropriately. Number two, the bill seeks to limit commercial speech. I can think of no other instance where a business has to pledge a loyalty oath to a particular political stance in order to do business in the state. Similar laws are being challenged in other states. It's been brought up a few times in the Arkansas case, Arkansas Times LP v. Waldrip. The ACLU has filed a petition with the U.S. Supreme Court urging the court to review a decision from the U.S. Court of Appeals for the Eighth Circuit. Here's a quote from one of the amicus briefs, this one by First Amendment scholars supporting the petitioner from the Boston Tea Party to the Montgomery bus boycott to the campaign for divestment from apartheid South Africa, boycotts have played a central role in this nation's history. Americans have used boycotts across a range of issues to express their shared convictions. As to the specific boycott of Israel, I think it is being mischaracterized as

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discrimination against all Jewish people. I can appreciate the desire to stop the rising tide of anti-Semitism, which is very disturbing, but the Boycott, Divestment and Sanctions movement is not about action against a Jewish state, but instead against a state that is perpetuating human rights abuses against its Palestinian residents, including not having the freedom of movement in the same way that boycotts of South Africa in the '80s and '90s was not against a Christian nation but an apartheid nation. Boycotts are a powerful way to use the markets to make political statements. Third, I'm, I'm afraid that if this passes, it'll set a dangerous precedent. It demands a loyalty oath when a company not only cannot boycott Israel, but cannot do business with any other companies that boycott Israel. And what other instance is awarding government contracts based on political ideology? My fear is that it will lead to other loyalty oath that will just be under the influence of whoever is in power in the state at that time. And this is, to me, is government overreach. In conclusion, this does not solve a problem that we, that we currently have. It limits commercial speech and it could possibly lead down a slippery slope for other government overreach. Thank you for your time.

BREWER: Thank you. Let's see if we have questions. Questions? All right. Thank you for your testimony. OK. Next opponent to LB343.

SARA PAHL-RAMIREZ: I'll go first.

BREWER: OK. Welcome. OK, we are on opponents to LB343. There we go. Thank you. Welcome to the Government Committee.

SARA PAHL-RAMIREZ: Thank you. My name is Sara, S-a-r-a, Pahl, P-a-h-l, Ramirez, R-a-m-i-r-e-z. I'm a retired public health nurse and I live in Omaha, and I speak in opposition mostly on First Amendment grounds. And I know you senators know this, but I have to say it, the First Amendment to the U.S. Constitution states, in part, that: Congress shall make no law abridging the freedom of speech. In 1982, the U.S. Supreme Court established that politically motivated consumer boycotts are fully protected by the First Amendment as free speech. LB343 says on page 2, line 29, "A public entity shall not enter into any contract with a company for goods or services unless the contract includes a written certification that the company does not currently engage in, and agrees for the term of the contract not to engage in, a boycott of

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Israel." I find this problematic. First, what is the advantage to the state of Nebraska in passing such a law? If we're doing \$50 million in exports now, we'll probably be doing \$50 million in exports next year too. How do the people of Nebraska benefit with a repressive loyalty oath requirement? And the result will be to increase paperwork, increase the expense in business, and increase the time spent to do business. Classic red tape. Second, I beg to differ with a previous speaker, it does impinge on the exercise of free speech. One of the speakers before mentioned that it's a coercive action. Well, it was pretty coercive to dump an entire cargo of tea into the Boston Harbor. But I think there are very few Americans who said-- who would think that should not have been done. And Senator Slama, that is your right. I could not hear you clearly from behind, even with the hearing aid.

BREWER: Stop.

SLAMA: Sorry.

SARA PAHL-RAMIREZ: But I believe you mentioned the Eighth Circuit Opinion, I know several of the proponents did.

BREWER: Focus on the committee here.

SARA PAHL-RAMIREZ: OK. Talk to you. Sorry. They use some pretty tortured reasoning to get to that Opinion. And just dividing the boycott from the purchasing decisions behind it, I think that's pretty tortured. And I'm sure there is going to be challenges reaching the U.S. Supreme Court to clear this up. Three minutes?

BREWER: OK. Thank you. Yes. Thank you for your testimony.

SARA PAHL-RAMIREZ: Please do not pass this bill--

BREWER: Ques-- questions?

SARA PAHL-RAMIREZ: --out of committee.

BREWER: OK. Next testifier. All right. And those of us that need to be in the Exec Board, it is time to move out. Hand the gavel over.

SANDERS: Give it just a minute. Welcome to the Government Committee.

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CYNTHIA HRUBY: Thank you. Whoops, wrong side. Good morning, Chairman Brewer and Senator Sanders and committee. My name is Cynthia Hruby, C-y-n-t-h-i-a H-r-u-b-y. I am here to oppose LB343 just as I did LB845. My opposition is based on U.S. government's unwillingness to pressure-- put pressure on the Israeli government to recognize the legitimate rights of Palestinians. My journey in understanding some of this issue began in 2019 when I saw a film about adolescents and how they were being treated and detained by the Israeli police. The adolescents I saw reminded me of the youth that I taught during my teaching years, and now I can see it on film and in the news, this causes me sadness. I attended a presentation by farmer Daoud Nassar. He described the destruction of his farm, the olive trees and the crops and the impossible building codes so that they couldn't build if they were in the Palestinian area. I grew up on a farm. I'm a gardener. I felt his distress. This book, *The Israel Lobby*, regards what's going on in Virginia, and it was published in 2019. I joined a book club. I don't understand a lot about commercial and all of that, but I did learn that the state governments, as it says, it's the rise of states-- the Israel lobby entering the state government. So that's more of the business commercial topic. I looked at the history and that's what I wanted to focus on and my handout has all the dates, but what I want to focus on right now is that both Jews and Arabs ever since 711 and on through history, both groups through the crusades, the Ottoman empire have been people who were displaced from their lands. So Jews and Arabs have both desired to return to their homeland; 1897 is a marked turning point when Theodor Herzl started the first Congress, first Zionist Congress, and the Balfour Declaration in 1917 recognized with the Jewish-- officially recognized the Jewish people's natural right to reestablish sovereignty. Sovereignty is key in their homeland and it's part of what the Palestinians are trying to do to return. I found a letter written by David Ben-Gurion, 1937, ten years before the state of Israel was declared, and he wrote to his son after their meeting when they were talking about having a Palestine divided into Jewish and Arab areas. He wrote his son: The greater the Jewish strength in the country, the more the Arabs will realize that it is neither beneficial or possible for them to withstand us. It will be possible for Arabs to benefit enormously from the Jews, not only materially, but politically as well. Oh, my gosh, I see why she was upset. The rest of my notes are in the handout I gave and I thank you for your attention.

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SANDERS: Hold on just a moment, let's see if we have any questions from other senators.

CYNTHIA HRUBY: Yes. Thank you.

SANDERS: Thank you. Senator Hunt.

HUNT: Thank you. In just your own words-- we have your handout here.

CYNTHIA HRUBY: Yeah.

HUNT: We have your testimony. Can you speak to the position that supporting BDS is anti-Jewish or anti-Semitic?

CYNTHIA HRUBY: Actually, I end my comment like that because--

HUNT: Well, I'd like you to speak yourself.

CYNTHIA HRUBY: Yeah, I believe after all the things I've studied in history and just trying to figure this-- what's going on and being antimilitary police, antifunding all of the military is not the same as being against the Jewish people. And when I heard some proponents talk about the BDS being coercive, I need to study more up on that because that's not my view of BDS. I don't know if I answered your question.

HUNT: Yeah, thank you, Sister.

CYNTHIA HRUBY: OK. I'm not anti-Semitic. Jesus was a Jew, so you know. OK.

SANDERS: Thank you, Senator Hunt. Are there other questions? Seeing none, thank you for your testimony.

CYNTHIA HRUBY: OK.

SANDERS: Are there other opponents? Thank you. Welcome to the Government Committee.

KEITH NELSON: Thank you. Good morning, Chairman pro tem and members of the Government, Military and Veterans Affairs committee. I am Keith Nelson, K-e-i-t-h N-e-l-s-o-n, and my home is in Omaha, Nebraska. I am here to speak in opposition to LB343, which seeks to put a gag on

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speech to silence the voices of persons and companies. Note the Supreme Court has determined there is no difference between person and company when it comes to freedom of speech rights who are concerned and appalled by the dysfunctional neighborhood known as Palestine-Israel. What is happening daily in Palestine, where in 1947 the U.S. [SIC] established Israel, is heartbreaking. Perhaps you know of a neighborhood which was disrupted when new residents of a different culture, color, religion, style of life, and customs moved in. People already living there have lives, routines disrupted. When I traveled to Israel to visit holy sites, I was privileged to have face-to-face conversations with Israeli and Palestinian citizens. I visited neighborhoods in the Israeli territories, the West Bank, and in Palestinian cities, villages, and, believe it or not, still existing refugee sites established in 1947 and again in June of 1967 for displaced Palestinians. I was shocked and saddened. The neighborhoods and settlements on Israel-claimed land in Palestine are tents. Pristine neighborhoods, parks, and agricultural fields are guarded by armed Israeli military. Police stopped citizens asking for papers. Tourist busses are searched. I was on one of those busses and I have no idea what they were looking for, but I do know we had to pass through a heavily guarded gate to travel to the other side of the wall separating Israeli-claimed neighborhoods from areas like Augusta Victoria Hospital in Palestine. The boycott of Israel is an attempt, much like citizens have used boycotts over the years since the Boston Tea Party, to call attention to injustice. In this case, the denial of Palestinian rights and encouraging governments to take action to address and correct these problems. A private individual, person or company, but not a government, is allowed to use its purchasing power when it wishes as freedom of speech. Do not advance LB343 which stop businesses, which the Supreme Court of the United States says are the same as people seeking contracts with any Nebraska governmental unit from boycotting Israel and seeking to advance the pursuit of justice for Palestinians. A business, company or individual seeking and succeeding is establishing-- in establishing a contract with the state of Nebraska while mounting a boycott of Israel is a right guaranteed by the First and the Fourteenth Amendment of the U.S. Constitution. This is a civil, national, law, and justice issue. Thank you very much for your attention. I apologize for running over and I welcome any questions that you may have.

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SANDERS: Are there any questions? Seeing none, thank you for your testimony. Are there other opponents? Welcome to the Government Committee.

DOUG PATERSON: Thank you very much. I'm glad to be here in front of the Government Committee. My name is Doug Paterson, D-o-u-g P-a-t-e-r-s-o-n. It's one t. Senator Julie Slama's LB343 seriously violates the Republican Party's historic refusal to use state power openly to coerce the private sector. Arising from her extensive ignorance of the Palestinian-Israeli Zionist struggle, she threatens to boycott companies that don't stand with Israel as she does, but which do business with the state of Nebraska. She says if you attack and seek to delegitimize our friend, the state of Israel, we'll not do business with you. This from a party that clearly rejoices in big government as long as big government does precisely what the party wants. Full disclosure, I'm not a supporter of Israel's 75 years of policies toward the Palestinian people. I've gone to Palestinian-- Palestine several times and Israel. I've seen the kind of catastrophe those policies are creating, including to Palestinian Christians. But note, I'm not a friend of Palestine. It's not personal. It's truth and justice. Still, forget the challenge to incor-- to, to corporate freedom of speech and subsequent legal peaceful action. Forget the actual pettiness of this needless antagonism with no benefit to Nebraska or our citizens. Forgot the fact that it seems sure that Senator Slama gets many of her political ideas from the right-wing, highly corporate American Legislative Exchange Commission, or ALEC, but not a very smart ALEC. The real question is, where does this kind of personal "do-gooderism" end? What if Senator Slama has a friend in Burma, Iran or with "big oil?" Does she want us all to ignore the historical complexities of international and business relations so that she can be a good person? In fact, at ALEC's instigation, big oil has now called precisely for sanctioning any company that promotes carbon neutrality. Their reactionary strategy copies almost exactly Slama's proposal to coerce companies that aren't in lockstep with her friend. Staggeringly, the bill is now the ALEC boilerplate for states to sanction private business, to punish free speech, and to go to ideological war within the United States. So what happened to the GOP that championed the free market, that championed the smaller, less intrusive government? I guess that GOP is dying in the Unicameral. Thank you.

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SANDERS: Thank you. Are there any questions? Yes, Senator Hunt.

HUNT: Thank you, Senator Sanders. Thanks for being here, Dr. Paterson.

DOUG PATERSON: You bet.

HUNT: Can you speak to the claim that supporting BDS is anti-Semitic?

DOUG PATERSON: My sense of it is there's an organization in the United States called AIPAC, the American Israeli Political Action Commission or Committee [SIC], and AIPAC has been the lead lobbyist for Israel. And one of their tactics has been to, to, to take the whole notion of criticizing Israel about anything as anti-Semitic. So I am clearly being anti-Semitic if I'm disagreeing with Israel's policy and behavior. And that's such a warping of language. I'm not anti-Semitic. Of course, I don't want to say how many Jewish friends I have, but it's a lot. I'm not anti-Semitic. I am critical of a state that is out of control when it comes to what it's done to the Palestinian people. I'm critical of it. That does not make me anti-Semitic.

HUNT: Thank you.

SANDERS: Are there any other questions? Seeing none, thank you for your testimony. Welcome to the Government Committee.

RHONDA BRUBACHER: Thank you. Good morning. My name is Rhonda Brubacher, R-h-o-n-d-a B-r-u-b-a-c-h-e-r, and I live in Lincoln. My husband, who is an Old Testament professor, and I lived in Israel for almost five years working and teaching in an ecumenical institute between Jerusalem and Bethlehem. Our colleagues were Jewish, Christian, and Muslim. Our daughter Sara, who's 32 years old, was born in Jerusalem. We have returned there with Nebraska college students and to do archeological work in conjunction with Israel. I've also returned to do peace work with an ecumenical organization. I believe this bill, along with similar bills being pushed in other states across the United States and likely drafted in advance by outsiders, is introduced without real knowledge of the situation on the ground in Israel and occupied Palestine, the West Bank and Gaza. And there's many organizations that document these things, Jewish Voice for Peace, for example, and the UN. As an American citizen and resident in Nebraska, I do not want our state legislating unconditional support

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for foreign government, ally or not, that imposes on our constitutional right for political free speech, whether as an individual or a business. Thank you.

SANDERS: Thank you. Let's see if there's any questions. Senator Hunt.

HUNT: Thank you, Senator Sanders. Do you have a typed copy of your remarks?

RHONDA BRUBACHER: I do not, but I can provide one.

HUNT: I would love to have that via email, if you can send that sometime.

RHONDA BRUBACHER: I will do that.

HUNT: Thank you.

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

RHONDA BRUBACHER: Thank you.

SANDERS: Welcome to the Government Committee.

DWIGHT WILLIAMS: Thank you. My name is Dwight Williams, D-w-i-g-h-t W-i-l-l-i-a-m-s. I serve as pastor at New Life Presbyterian Church in Omaha. I wish to speak against LB343. As a pastor, I am concerned that this bill is an infringement of our First Amendment religious rights as well as our free speech rights. I'm an ordained minister in the Presbyterian Church U.S.A., the largest Presbyterian denomination in the United States. Let me be clear, Presbyterians do not wish the destruction of the nation of Israel, but we do want ethical behavior and human rights. The highest governing body in the denomination, the General Assembly of the Presbyterian Church in its 220th annual meeting, voted with a 71 percent majority to boycott all Israeli products coming from the occupied Palestinian territories. At its next General Assembly meeting, we voted to divest from three American companies doing business in Israel-Palestine. Last year, a General Assembly voted that the Presbyterian Church U.S.A. recognizes that the laws, policies, and practices of the government of Israel regarding the Palestinian people fulfill the international legal definition of

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apartheid. Presbyterians are not the only religious communities who have officially voted to boycott, divest or sanction the state of Israel. We are joined by Mennonites, the United Church of Christ, the United Methodist Church, many Quaker bodies, the Unitarian Universalist Association, and others. I have been to Israel and I have seen how the Palestinian West Bank has been slowly and steadily overrun by Israeli settlers. Israelis have built illegal settlement upon illegal settlement, and Palestinian families who farmed the land for literally centuries have been forcibly pushed off their ancestral lands. In 1922, about 11 percent of Palestinians were Christian, and they are also Semitic. Today, the number is less than 2 percent in the nation of Israel. What happened? Former Congressman Henry Hyde said in 2007, expanding Jewish settlements in the West Bank, including East Jerusalem, are irreversibly damaging the dwindling Christian community. Illegal Israeli settlements in the Occupied West Bank should be no surprise to us. And in 1937, 11 years before the creation of the state of Israel, David Ben-Gurion, recognized as the founding father of the modern state of Israel, wrote to his son, and Cynthia referred to this letter. He said: What we really want is not that the land remain whole and unified. What we want is that the whole and unified land be Jewish with the ultimate goal to settle all parts of the country. In the 1940s, Ben-Gurion was asked what is to be done with the Palestinian population? Ben-Gurion waved his hand in a gesture which said, drive them out. Will you, the legislators of Nebraska, take away my ability to criticize the nation for what I understand is illegal behavior? Thank you for letting me speak to you today.

SANDERS: Please finish. You have-- I think you have another paragraph.

DWIGHT WILLIAMS: Yeah. I understand that other states have made this type of law, but I would hope that the wisdom of Nebraskans won't initiate the same type of trespass against law-abiding citizens. Thank you.

SANDERS: Thank you. Are there any questions? Seeing none, thank you for your testimony.

DWIGHT WILLIAMS: Thank you.

SANDERS: Welcome to the Government Committee.

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ROBERT RAMALEY: Senator. I recommend-- Robert Ramaley, R-a-- R-o-b-e-r-t R-a-m-a-l-e-y. I recommend that LB353 [SIC--LB343] not be advanced. I speak as a concerned member of the Religious Society of Friends, Quakers. The American Friends Service Committee, which is a service arm of the Quakers, has strongly endorsed the use of, of BDC [SIC], pointing out the apartheid practices of those being used in the state of Israel against their own Palestinian brethren. The use of BDs-- of BDCs [SIC] is a resort to not having to use war to settle differences. And it has been very effective. In fact, I've used them myself to help Jewish communities in south California. But you can demonstrate this very easily by seeing what happened in South Africa. The two sides were irrevocably locked together and it became embarrassing and economically punishing to the government of South Africa to continue on having this situation. And it was resolved. And it has been a very effective tool. And we, as Quakers, have, well, used it many times. And actually, the bill before you is not-- it actually is almost anti-Semitic itself because it says these people are better than anybody else and you are not. And that includes the long history of anti-Semitism, even in Nebraska. Thank you for your attention.

SANDERS: Let me check if there are any questions. Are there any? Seeing none, thank you for your testimony. Are there other, we're on opponents? Welcome to the Government Committee.

KEVIN BUSHNELL: Thank you so much, Senator Sanders. Good morning. Good afternoon, actually now. My name is Kevin Bushnell. It's K-e-v-i-n B-u-s-h-n-e-l-l. And thank you so much for taking the time to listen to our testimonies. I have a short prepared testimony, so I'll just read that quickly, but I also have some extraneous remarks as well, so. I strongly urge the committee to vote against LB343. I'm here today as a native Nebraskan. I was born and raised in Omaha, but I've had the opportunity many times to visit and work in, in a nonprofit capacity in both Israel and Palestine. And I, of course, like so many others, speak out as a concerned citizen as well on the issue of perhaps the way this, this legislation is going to restrict free speech for Nebraskans. I think it was right and correct to point out how the case of Citizens United from the Supreme Court has equated corporations and businesses with individuals. And not only that, but free speech with money. So money, free speech, corporations, businesses, and people are all together in some of these issues. And

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so this issue is of LB343 is-- directly ties all this together, but here in the state of Nebraska. And so this is why I want to urge the committee to not vote for it. But I also speak as a Christian who is appalled by the multiple human rights violations that regularly occur in part of the government of Israel against Palestinians. And as I said, I have, have had plenty of opportunities in the past 20 years, multiple times to witness actions on this government by this government against many Palestinians. I've worked in different parts of the territories, including the city of Hebron, but also in Jerusalem, East Jerusalem, Bethlehem, and the surrounding areas as well. Also, I'm a member of the committee on social justice and peacemaking for the Presbyterian Church here in the Presbyterian in the Missouri River Valley. We met on Tuesday and we were unanimous in support-- against this-- just-- so I'm here as representing in this-- in that capacity, we were unanimous against the voting for LB343. So I think that-- I'd like to thank the committee for its time and attention to this matter. I'm available for any questions along the, the lines or any clarifications for anything that has come up, so.

SANDERS: Are there any questions?

KEVIN BUSHNELL: No?

SANDERS: Seeing none, thank you for your testimony.

KEVIN BUSHNELL: Thank you so much.

SANDERS: Are there any others on opposition?

SANDRA HANNA: I'm not sure if it's good morning or good afternoon.

SANDERS: It's good afternoon and welcome to the Government Committee.

SANDRA HANNA: Well, good morning to the committee that's left here. And I'm sorry, I feel like I'm losing a little bit of my rights not to be talking to the whole committee. I'm sorry that had to happen today. Being here today, I'm having deja vu. Last year, about this same time the senator here was presenting LB--

SANDERS: I, I need your first and last name and to spell it as well.

SANDRA HANNA: Forgot it last year too.

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SANDERS: Thank you.

SANDRA HANNA: Sandra, S-a-n-d-r-a, and Hanna, H-a-n-n-a.

SANDERS: Thank you.

SANDRA HANNA: Last year about the same time the senator was presenting LB845. Today, although the legislator bill is numbered LB343 and carries a different name, it is the same basic bill that did not pass out of this Government, Military and Veterans Affairs Committee last year. I am thankful for that, not in an angry way, but just a very thankful because I have been to Israel and Palestine. I have seen the suffering on both sides and I am really concerned about a people under occupation, although there are also Israelis who may feel that way as well. The name of the bill last year was the Anti-Discrimination of [SIC] Israel Act. This year the name is prohibit public contracts with companies that boycott Israel. Both titles insinuate that the country of Israel is being mistreated. The first bill title indicates that discrimination toward Israel should stop, while the second one now says boycotting Israel should stop. Those are two very different things. One needs to examine the definitions of both words in the context of the titles. Discrimination means unfair treatment of the foreign country of Israel, while boycotting means using a United States First Amendment right of freedom of speech, which that freedom of speech is a nonviolent, peaceful tool to eliminate human rights violations. In this case, Israel's violations toward both Israel's Palestinian Muslim and Christian citizens and the Palestinians of both faiths under occupation in the Israeli-controlled territories. The real question for me about this bill is it, is it a necessity? And secondly, is it legal? We do-- do we Nebraskan citizens want companies who sign contracts with our state to give up their given right of the U.S. Constitution's First Amendment of free speech, known in part as collective political speech or boycotting-- that's the correct term there-- in order to work for our state? Or is this bill designed to keep the foreign country of Israel from getting criticism for the human rights violations it is committing? Israel consistently breaks international law and even some of the Geneva Conventions.

SANDERS: Do you want to go ahead and finish your sentence?

SANDRA HANNA: Yes.

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SANDERS: Please.

SANDRA HANNA: The UN-- or the convention-- the UN and justice organizations throughout the world, even those in Israel itself, have verified the violations.

SANDERS: Thank you. Are there any questions? Senator Hunt.

HUNT: Thank you, Vice Chair Sanders. I can see that you're almost done with your statement. It-- would you like to finish it?

SANDRA HANNA: I would love to.

HUNT: Thank you.

SANDRA HANNA: Thank you. As the senator told us last year, Israel and the state of Nebraska have already enjoyed a profitable economic relationship for years. So apparently having last year's bill not pass out of this committee made no difference, no difference in Nebraska and Israel's very profitable business relationship. A number of the proponents pointed that out before me. In the questions the committee members raised last year, we also learned from the senator that no companies applying to work for Nebraska's contracts had brought up the subject of boycotting Israel, making the subject of this bill a nonexistent problem. I hope you committee members will ask equally hard questions today, and thank you very much for your dedicated work.

HUNT: Thank you.

SANDERS: Thank you. Are there any other questions? I just wanted to-- the other committee members who had to leave wish they were here.

SANDRA HANNA: Oh, I know that.

SANDERS: We are just trying to split our time and get everything done in the 90 days so we apologize.

SANDRA HANNA: And I appreciate that and I hope they'll read what we handed in.

SANDERS: Absolutely, and we keep these all for them when they're done in their other meeting. But thank you for your testimony.

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SANDRA HANNA: Thank you.

SANDERS: Thank you. Are there other opponents?

SHARON CONLON: Good morning.

SANDERS: Good afternoon. Welcome to the Government Committee.

SHARON CONLON: Good afternoon, members. I, I very much appreciate you listening to what I'm going to say. My name is Sharon Conlon, C-o-n-l-o-n. While others here have been speaking about our First Amendment rights and the freedom of political speech, I want to widen this aperture and give a context for my opposition. I want to challenge the framework of American exceptionalism. In this frame, our U.S. behavior is only doing good as we promote democracy and freedom around the world. Human rights violations are the product of our adversaries like Russia and China and Iran, but not us. But when we have the rare opportunity to hear the voices of people in the Global South and elsewhere who experience our foreign policy, we are reminded that America is not always a beacon of democracy and freedom. America is a country that sends drones over their territory. America is a country that arms and supports the dictators who oppress them. America is a country that imposes broad-based sanctions that make it hard for civilians to get medicines and basic necessities in countries such as Cuba with a long history of sanctions. When we recognize that the United States is fully capable of human rights abuses, if we are introspective and focus on our violations, the next step is a question-- is to question the abusive behavior of our allies, governments like Israel and Saudi Arabia. And that's where Israel comes into focus. We have to be concerned about the billions of dollars in unconditional military aid to this government that oppresses its minorities. Even Israel's own leading human rights organizations, B'Tselem and Yesh Din, have documented that Israel is practicing apartheid. And the world's leading human organizations, such as Human Rights Watch and Amnesty International have said the same. You may say we shouldn't be boycotting our allies, and I say we should be boycotting Israel and Saudi Arabia if that will get them to change their long histories of human rights abuses. So I urge you to oppose LB343 and please then step aside and let the public use their own political voice to get these countries to comply with international law.

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SANDERS: Thank you. Are there questions? Seeing none, thank you for your testimony. Are there any other in opposition? How many more do we have in opposition? How about in the neutral? Thank you.

_____ : I think we're pretty much done.

SANDERS: Welcome to the Government Committee.

DANIEL GUTMAN: Good afternoon. Daniel Gutman, G-u-t-m-a-n, on behalf of the ACLU. Unfortunately for me, I have lost my voice. But that's probably fortunate for you. I am passing around a one-page sheet on the ACLU's position, and I would refer to that. The ACLU opposes this bill for the reasons in the handout. I would take any questions, maybe.

SANDERS: Are there any questions? Senator Hunt.

HUNT: Mr. Gutman, I'm sorry to ask you a question--

DANIEL GUTMAN: It's OK.

HUNT: --since you've lost your voice, but can you speak to the claim that supporting BDS is anti-Semitic and/or to the difference between discrimination and boycott?

DANIEL GUTMAN: On the second point, the ACLU has serious concerns, First Amendment concerns with prohibiting or government interference and any sort of boycott, whether it's Israel or anything else. Our concern is that you could take out the word Israel and put in literally any other country, any other organization, any other person and that would be a clear prohibition on freedom of expression. And so that is our primary concern with the bill. We think we have a first-- that Nebraskans have a First Amendment right to boycott no matter what they're boycotting. So that's our constitutional concern.

HUNT: Thank you.

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

DANIEL GUTMAN: Thank you.

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SANDERS: Take care. Anyone else in opposition?

LACY SMITH: LB 343 is a violation of free speech. "States with anti-boycott laws are effectively telling companies that if you do the right thing and disentangle yourselves from settlement abuses, you can't do business with us," said Andrea Prasow, deputy US advocacy director at Human Rights Watch. "States should encourage, not sanction, companies that avoid contributing to rights abuses." It is impossible to do business in the settlements without contributing to or benefitting from human rights abuse and violations of international humanitarian law, Human Rights Watch has said. Anti-boycott laws aim to deter companies from cutting ties to settlements and thereby ending their involvement in human rights abuses there. States should scrap anti-boycott laws that penalize companies for taking action that ends their involvement in rights abuses. Israeli authorities have facilitated the transfer of more than 600,000 Israeli citizens to the occupied West Bank, including East Jerusalem, in violation of the 1949 Geneva Conventions that prohibit transferring civilians into occupied territory. Israeli settlements are inextricably bound up with serious rights abuses, including forcing Palestinian inhabitants of the occupied territories off land seized for settlers, and restricting their freedom of movement. The two-tiered discriminatory system in the occupied territory treats Palestinians separately and unequally, undermining their livelihoods and economy. Business activities help to sustain illegal settlements and make them more economically viable. As set out in the UN Guiding Principles on Business and Human Rights, companies have a responsibility to take steps to identify and mitigate serious human rights risks across their operations. A business enterprise that contributes to human rights abuse should take the necessary steps to cease or prevent that contribution, and use its leverage to mitigate any remaining harm to the greatest extent possible. If a company cannot prevent or mitigate this harm, the only responsible path may be to terminate or refrain from entering into these operations. Doing business with Israel's illegal settlements is an example of a situation in which companies cannot do business without contributing to serious human rights abuses. The American Civil Liberties Union has challenged the constitutionality of several states' laws as violations of freedom of expression. Individuals have the right under international human rights law to express their views through non-violent means, including participating in boycotts.

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Authorities may restrict speech, but only under narrow and stringent conditions. David Kaye, the UN special rapporteur on the promotion and protection of the right to freedom of opinion and expression, has stated that "Boycott has long been understood as a legitimate form of expression, protected under Article 19 2 " of the International Covenant on Civil and Political Rights ICCPR . Kaye has argued that the anti-BDS legislation of US states "appears clearly aimed at combatting political expression" and that "economic penalties designed to suppress a particular political viewpoint" would not meet the conditions under the ICCPR for permissible restraints on speech.

SANDERS: In the neutral? Seeing none, we'll have a closing on LB343. We do have a summary report, LB343: proponent, 6; opponents, 12; neutral, zero. Thank you.

SLAMA: Had worst ratios before. Thank you members of the Government Committee who aren't in Executive Board, it is a privilege to present this bill before you today. Just a couple of quick tie backs to some of the opposition testimony before we wrap up. The ACLU in pushing their claim that this bill somehow restricts free speech, what-- they've lost every time they've brought that to the circuit Court of Appeals, the Eighth Circuit voted en banc 9-1 in the Arkansas case, as I referenced. It's been made clear that this does not infringe upon speech. It is simply a state government decision as to how they're going to operate. I've also been to Israel and Palestine. I've had the chance to meet with the Palestinian government officials. I had the chance to go over there for a summer in a joint program with West Point. So I am very aware and appreciate the geopolitical situation in the Middle East, in large part thanks to being able to go over there and visit for a time. It was wonderful. Nobody's pushed this bill on me. Nobody's brought this bill to me. That claim is just false and a little bit offensive to my capabilities as a senator. I wanted to get that on the record. And I'm happy to work with anybody on the committee, answer any of your questions. I think this is critically important as we look at the overwhelming majority of states that have already passed this that we show that Nebraska is an ally of our friends in Israel.

SANDERS: Thank you. Are there any questions for Senator Slama? Seeing none, thank you very much for bringing this bill. And this closes the hearing on LB343.

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BREWER: All right. Good afternoon and welcome to the Government, Military and Veterans Affairs Committee. I'm Senator Tom Brewer, representing the 43rd Legislative District of western Nebraska. I serve as the Chair of this committee. The committee will take up bills in the order posted on the agenda. Our hearing today is your public part of the legislative process. This is your opportunity to express your positions on proposed legislation before us. The committee members may come and go during the hearing. This is just part of the process. We have bills to introduce in other committees. I ask that you abide by the following procedures to better facilitate today's meeting. Turn off or silence your phones or electronic devices. Please move forward to the reserved chairs when you are ready to testify on your bill. Those are the chairs in the front row. The introducing senator will make the initial remarks followed by proponents, opponents and those are the neutral testimony. Closing remarks are reserved for the introducing senator. If you're planning to testify, please pick up one of the green sheets. Fill it out legibly so it goes into the record correctly and then be prepared to turn the green sheet in when you come forward. If you're here and you don't plan to testify but want a record of it, there's a white sheet on the table that you can fill out. If you have handouts, we'd ask that you provide ten copies. If you don't have them, our pages can help you make more copies. Bring those forward when you bring the green sheet forward and give that to the pages. When you come up to testify, please speak clearly into the microphone, tell us your name and then spell both the first and last name so that goes accurately into the record also. How many are here to testify today? All right, we'll go with five minutes and I'll trust you, but if you get done in three, I will like you better. OK. We're going to use the light system. You have five minutes: four minutes, green; one minute, yellow; and then when it turns red, you'll get a light. And soon after that, you will get an alarm also that will tell you that you're done. No displays of support or opposition to a bill, vocal or otherwise, are allowed at this public meeting. We will go ahead and get started by introducing the senators that are here today. Again, we got folks doing things in other committees we're not in today. So we will start with Senator Sanders.

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SANDERS: Good afternoon. Rita Sanders, representing District 45, which is the Bellevue-Offfutt community.

LOWE: John Lowe, District 37: Kearney, Gibbon and Shelton.

HALLORAN: Good afternoon. Steve Halloran, representing District 33, which is Adams, Kearney and Phelps County.

HUNT: Megan Hunt, District 8 in the northern part of midtown Omaha.

BREWER: Senator Sanders is Vice Chair. Dick Clark is legal counsel. Julie Condon is the committee clerk. And this afternoon, we got Logan and Audrey. Very good. With that, we will go to our first bill of the afternoon and let's see, it is LB293 and Margaret will be introducing it for Senator Cavanaugh. Margaret, please.

MARGARET BUCK: Thank you, Senator Brewer and members of the committee. My name is Margaret Buck, M-a-r-g-a-r-e-t B-u-c-k. I'm the legislative aide for Senator Machaela Cavanaugh. She represents District 6 in Omaha. LB293 is a reintroduction of a bill that former Senator Mark Kolterman introduced earlier to allow a formal protest procedure for large state contracts. Currently, the only process we have is a protest letter going to the department that the protest is about. It's not a true appeal. Senator Kolterman and his staff, Tyler Mahood, put a great deal of work and research into it and I'm going to quote some of the things that they came up with. One example they gave was from 2007, when DAS selected a company to perform a complex, long-term Medicaid managed information system contract valued at more than \$50 million a year. The award was protested on the basis that the company awarded the contract was not responsible. That means they didn't have the ability to perform the work. That was one of other reasons. That protest was rejected. Less than two years later, however, the contract was terminated for nonperformance after paying the company more than \$7 million. In 2018, another contract was awarded to a company who did not perform. That contract was for the eligibility and enrollment system. The cost to the state was \$6 million plus \$54 million in federal funds. That case went to court with the state alleging that the company deliberately underbid the contract and misrepresented itself. That contract, too, was protested and the protest was rejected by the department. LB293 would require that regulations be written for formal protest procedures and incorporated into the Administrative

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Procedures Act. It requires a hearing and an appeal process. The appeal could only be used after the other administrative remedies had been exhausted. This would apply to contracts for services awarded in excess of \$10 million. I know LB461 is coming up next. It implements the recommendations of a consultant on how to improve the procurement process itself. This bill, though, LB293, takes the next step, requiring that formal protest and appeal process. Senator Cavanaugh believes that both bills are necessary. Thank you. She believes a formal protest process will improve the quality of the bids that the state receives and give us one more opportunity for department leaders to be making better choices. This is the handout she wanted handed out. It's a article written several years ago by several Kutak Rock attorneys about the procurement process in Nebraska and it points out dangers that-- to the actual companies doing the bidding on Nebraska contracts because of several things in the procurement process, but also a lack of a formal protest procedure. Having this protest procedure and appeal process would improve the process and I think get better quality bids for services in Nebraska. Senator Cavanaugh asks you to support this bill. Thank you.

BREWER: All right. Thank you, Margaret. Traditionally, we don't ask any questions because you're here filling in and that's not very fair to you. So we'll go ahead and start with proponents to LB293. Come on up. Welcome to the Government Committee.

MONIKA GROSS: Thank you. Good afternoon, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Monika Gross, M-o-n-i-k-a G-r-o-s-s. I'm here representing myself and I'm here in support of LB293. Two years ago, I appeared before this committee testifying in support of LB61, introduced by Senator Kolterman, which is nearly identical to LB293. At that time, the procurement process had failed the state of Nebraska, its taxpayers, vulnerable children and families who relied on child welfare services in the eastern service area, as well as dedicated child welfare professionals who work in the field every day. There have been several high-profile procurement failures in Nebraska in recent memory and two of them since 2017 involved the eastern service area child welfare contracts. We all know the result of that disastrous procurement failure. The successful bidder suffered unsustainable financial losses after knowingly submitting an unreasonably low bid. And even after receiving a new contract with additional funding, they could not

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perform to a minimum standard of quality until DHHS terminated the contract in December 2021, less than one year into the new contract term. And it all could have been avoided. On the sidelines, it was like watching a train wreck in slow motion and knowing there was nothing you could do to stop it. In 2019, after DHHS awarded a five-year contract to Saint Francis Ministries based on their unreasonably low bid, PromiseShip, the unsuccessful bidder, filed a protest with the Department of Administrative Services arguing that Saint Francis' cost proposal was unrealistically low, that DAS had failed to qualitatively review the cost proposals, that DAS had failed to make a meaningful comparison of the two proposals and that Saint Francis' proposal was not responsive to the RFP because it violated Nebraska law. On the same day that DHHS signed a five-year contract with Saint Francis, DAS rejected PromiseShip's proposal-- PromiseShip's protest, leaving no opportunity for PromiseShip to request a meeting with the Director of Administrative Services before the contract became effective and as provided in the DAS vendor manual, the final step in the current protest process. There are lingering effects of that entirely avoidable disaster. First and foremost is the impact that it had on children and families who have languished in the system, who have churned through numerous caseworkers and extended their time to achieve permanency. Then there's the child welfare workforce already reeling from the numerous transitions and uncertainties that plagued the system for so many years. The result of all this was that fully trained caseworkers left the field for good. Other professionals lost jobs that they loved or they lost benefit accruals, seniority or vesting rights and employer-sponsored retirement plans as a result of constantly transitioning to new employers. And the taxpayers of Nebraska ended up paying more money for inferior services that have had real-world consequences for children and families involved in the child welfare system. There are other costs as well, including the opportunity cost to the state of Nebraska from having companies nationwide come in and bid on contracts in the state of Nebraska. There's also the harm to reputation across the country of the state of Nebraska when we don't have a fair protest process in place. A formal protest process would increase transparency and confidence in the procurement process for both bidders and taxpayers. It would also result in more businesses willing to do business with the state of Nebraska because they would feel like they are being treated fairly. Fraudulent bidding and

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underbidding would be deterred because of the increased scrutiny provided under the Administrative Procedure Act in an appeal to the district court. We need a state procurement system that is fair and transparent. We need to encourage more businesses to consider doing business with the state of Nebraska and we need to protect vulnerable citizens in Nebraska from unscrupulous bidders. A fair process that includes formal protest procedures would go a long way toward addressing the need for fairness, transparency and competition in government contracting and LB293 is a good start on that path. The taxpayers and the children deserve no less. I urge the committee to advance LB293. And I want to thank Senator Cavanaugh for introducing this legislation. Thank you.

BREWER: All right, thank you and, and thanks for that kind of a Reader's Digest version of what happened because a lot of folks, over time, it kind of fades exactly what happened in those events. And we need to, we need to make sure it doesn't happen again. All right. Questions? Oh, yes, Senator Hunt.

HUNT: Thank you, Chairman Brewer. I don't have a question, but I remember you coming in the past and testifying about this. And I just want to thank you for, for coming back and keeping this fresh in our minds, as Chairman Brewer said. Thank you.

BREWER: Yeah, you did a very nice job. All right, any other questions? Thank you. Thanks for coming in and testifying.

MONIKA GROSS: Thank you.

BREWER: All right, any additional proponents for LB293? All right, we'll switch to opponents to LB293. Amara, welcome back to the Government Committee.

AMARA BLOCK: Hello. Thank you. I have a cushy five minutes now, but--

BREWER: Yeah, yeah. You don't have to use it all through.

AMARA BLOCK: I'll try and stay in your good graces. Hi. Good afternoon, Chairman Brewer and members of the committee. I sat before the committee this morning. Hello again. For the record, my name is Amara Block, A-m-a-r-a B-l-o-c-k. I am the Materiel Administrator for the state of Nebraska and I am here to speak in opposition to LB293.

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This last summer, the Department of Administrative Services and the Nebraska Legislature selected and hired an independent third-party consultant, Ikaso Consulting, which you will hear more about with LB461, to review our state procurement operations, including protests. What the report found was that while there was room for improvement in our protest procedures, they were not out of line with comparable states. Ikaso ultimately recommended that changes be made on a policy level as opposed to a statutory one. But in either case, we should avoid making the protest procedures more rigorous and complex. This was due to a number of concerns, including but not limited to that complex protest procedures can incentivize protests. They can create barriers for small businesses and less resource vendors and can lead to significant delays in contract transitions and business operations. DAS agrees with Ikaso's findings and does not want to incentivize protests or disadvantage small businesses. Furthermore, should this bill passed, DAS does not currently have the resources to handle new contested case protests, as evidenced by our fiscal note. That being said, DAS is committed to adopting all of Ikaso's recommendations in modifying our protest policy, which includes: consolidating the control of protest policy under SPB, at the State Purchasing Bureau; having the State Purchasing Bureau handle all protests, regardless of which agency bids it; establishing grounds for protests in policy; permitting protests earlier in the process; waiting to contract until the protest process is complete, unless the DAS Director or designee approves; and permitting bidder debriefs. We believe these are strong recommendations that would benefit both the state and vendors without the negative consequences that would be brought about by complex protest procedures as presented in the bill. And with that, I'll take any questions. I also have the excerpt from the Ikaso report about protest procedures that I can pass out if anyone wants to read that portion.

BREWER: And I have a request for you, Amara. Is it impossible to get your testimony? Just because I didn't keep up with all the stuff and I didn't want to not have, have--

AMARA BLOCK: Sure.

BREWER: --it recorded, so I had everything down. And we don't need it right now.

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AMARA BLOCK: Yes.

BREWER: Just when-- whenever we can--

AMARA BLOCK: Yeah, I'll-- I have some scribbles on mine so I'll, I'll clean it up and--

BREWER: Yeah, give us a clean one, geez.

AMARA BLOCK: Yes.

BREWER: OK. Questions for Amara? All right, thank you for your testimony.

AMARA BLOCK: Thank you.

BREWER: All right, any other opponents to LB293? If not, then we will go to those in the neutral. OK, well, Senator Cavanaugh. By the way, Margaret did a very nice job of opening for you.

M. CAVANAUGH: Thank you. She certainly does. I don't know if you know, but I snagged her up before Senator Aguilar returned to the Legislature, so.

BREWER: All right. Well, you did good.

M. CAVANAUGH: She previously served when he served-- served with him when she served so I just-- I'm sorry I wasn't here to open. I was across the hall. We actually haven't adjourned for lunch yet in HHS so I just wanted to come back to give you an opportunity, if there were any further questions around this. I think it's pretty straightforward that what I'm seeking is a protest process. There is litigation currently happening around the managed care organizations protests-- or contract award. I, I also tried to catch the last testifiers, everything that they were talking about, changes and improvements. Unfortunately, those things are not being enacted currently with our, our current procurement process, which is again leading us to litigation. There has been an injunction put on the procurement process for our contracts with the managed care organizations and there will be a hearing set in June. Our Department of Health and Human Services does not have to move forward. They could extend the current contracts for a year and rebid. They are choosing to not do

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that. So clearly we have an issue with even using, in our current bounds, good judgment, in my opinion. But I will leave it there and let you ask if you have any questions.

BREWER: And for those of us who are a little bit long in the tooth, this bill is very similar to the one that Mark Kolterman had.

M. CAVANAUGH: Yes.

BREWER: OK. All right, questions for Senator Cavanaugh? All right, you're going to get out of here easy. You've got to head back to--

M. CAVANAUGH: I guess so. Might get a lunch break--

BREWER: --HHS?

M. CAVANAUGH: --now. Back to HHS, yes.

BREWER: All right, well--

M. CAVANAUGH: Thank you.

BREWER: --have, have a fun afternoon over there. OK and we need to read into the record on LB297 [SIC, LB293], we have three proponents, no opponents and zero in the neutral. With that, we will reset for LB461 and welcome the Speaker to the Government Committee. Speaker Arch, welcome to the Government, Military and Veterans Affairs Committee.

ARCH: Thank you, Senator Brewer. Good afternoon, Senator Brewer and members of the Government, Military and Veterans Affairs Committee. For the record, my name is John Arch, J-o-h-n A-r-c-h, and I represent the 14th Legislative District in Sarpy County and I'm here this afternoon to introduce LB461. LB461 was brought to me by the Department of Administrative Services and it is a culmination of events and legislative action that has taken place over the past several years. This is a very technical bill. I am going to let DAS touch on those aspects. What I want to talk about in my opening is how we got here. For background-- and you heard a little bit of that from previous testifier, Ms. Gross. For background, during the 2021 Legislative Session, the body adopted LR21-- LR29, which was introduced by Senator Machaela Cavanaugh, which created a special

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committee, the Eastern Service Area Child Welfare Special Investigative and Oversight Committee-- that's a mouthful-- also known as the LR29 committee to examine the state's contract with Saint Francis Ministries for child welfare case management services in the eastern service area. Saint Francis was awarded the contract in 2019 after submitting a proposal that was about 40 percent below that of the long-time incumbent contractor. By the time the LR29 committee was created, Saint Francis was financially unstable and had a number of serious performance deficiencies. The contract with the state would eventually be terminated. The LR29 committee joined with the Legislature's Health and Human Services Committee in holding a series of listening sessions and hearings, which I Chaired, as well as identifying past procurement failures in 2007 and 2014. What became clear, that while Saint Francis had significant internal issues specific to them that prevented it from properly functioning, it was Nebraska's procurement process that allowed Saint Francis to be awarded the contract in the first place. And we saw that pattern in 2007 and 2014 where you had a low bidder that was awarded a contract unable to perform, more money provided and eventually just stopped and, and we did not receive the product. One of the primary conclusions of the committee was that the state needed to reform its procurement system support-- to support better decision-making in the future. In response to the LR29 committee findings, I introduced LB1037 during the 2022 Session. The bill, which was passed and signed into law, directed DAS, in consultation with the Legislature, to hire a contractor with expertise in procurement to conduct an in-depth analysis of the state's procurement process. On June 17, 2022, DAS entered into a contract with the Ikaso Consulting. Ikaso reviewed state statutes, rules, reports and manuals and conducted extensive interviews that included procurement stakeholders and legislators. On November 15, Ikaso issued its final report, which included 33 recommendations, many focused on internal policies and procedures, but statutory revisions were included as well and LB461 reflects the recommendations put forth in the report. For me, the two components of the bill that really get to the heart of the Saint Francis issue are, are these. And by the way, I-- as I mentioned at the beginning, this is a very technical bill and, and so DAS has a lot of understanding of some of the technicalities. But what we saw in the Saint Francis investigation was that there were certain things that biased the procurement process to award the contract to Saint Francis. And I know

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that Senator Kolterman and I had a lot of discussions about the appeals process. He was involved in interviews with Ikaso. He was a current senator when, when the Ikaso Consulting was going on and so he was involved in that. And, and what-- the two, the two major components that this bill does address, in my mind, are the establishment of responsibility as a standalone factor. Current language states that competitively bid contract shall be made to, quote, the lowest responsible bidder. You'll find that in Section 8, which is page 6 of, of your bill. And so the question that, that Ms. Gross had in the previous testimony about responsible, that is, that is-- that was a big issue. Could-- can the department simply identify that responsibility and, and in, in effect, stop, stop negotiations and stop discussions with that, with that bidder if not responsible? But that term, lowest responsible bidder, I believe, is a, is a biased-- is a bias towards that 40 percent, as in this case-- in Saint Francis' case of 40 percent below the other bidder, and, and it biased it. They now-- as is stated, that now is a standalone, is a standalone factor. And by the way, page 7 of your bill, it-- is, is another, is another section that talks about how to determine responsibility. So that's equally important. The other, the other section is the ability for bids to be evaluated for realism and reasonableness. As drafted, this bill allows for price realism and price reasonableness to be grounds to disqualify a bidder and that's Section 10 on page 9. Two very important, two very important, I guess, to evaluate for both the realism and, and the reasonableness, very important factors. While all the recommendations of the report will improve our procurement process, these two provisions are key. Had emphasis been placed on the most responsible bidder as opposed to the lowest responsible bidder, it is likely that Saint Francis contract, in addition to other contracts, would not have been entered into in the first place. Our current statutes automatically put too much weight in favor of the lowest bidder. While we must be responsible stewards of taxpayer dollars, we also must make sure we are entering into contracts with responsible bidders. Additionally, allowing for the rejection of bids for which the price is not realistic or is not reasonable-- and that is too low or too high-- it will go a long ways in protecting the state from entering into contracts at the beginning of the process, as opposed to after the contract has become more costly and problematic. I do want to address the issue of appeals. I know the bill you heard before this establishes a formal appeals process in statute for

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contested contracts. LB461 does not take this approach. According to the Ikaso report, which I think you received a copy of this-- of that section, past procurement challenges have focused on the procurement process itself and not on the protest procedures. States that have statutorily adopted formal protest procedures have created a process that is complex and costly, actually encouraging protests by well-resourced and larger vendors while creating barriers for smaller and less financially equipped vendors. These complex appeals also lead to significant delays in contract transitions. Ikaso did recommend streamlining the process as a policy matter. And I believe that there were four specific recommendations there, but, but specifically recommended against putting such a process in statute. Annually, the state oversees hundreds of contracts worth billions of dollars to carry out our government functions to serve Nebraska. It has been over 20 years since we updated our procurement procedures. I think Ikaso has done a thorough evaluation. I want to applaud DAS for welcoming this in-depth review and for embracing the recommendations. I'm glad to have this opportunity to introduce LB461 on behalf of DAS and to work with the administration improving our important procurement process. I urge you to advance LB461. And I will try to answer questions, but as I mentioned, this is a very technical bill and I would ask that technical questions be addressed to Director Jackson, who will be following me. Thank you.

BREWER: Thank you. I want to start with, with a question. So if we look at the bid process and someone comes in-- and say it's not an astronomically lower, you know, a 40 percent lower bid, but say it's, it's 15. Who becomes kind of the umpire to determine whether that's not a realistic bid and that the company might potentially not fulfill their responsibilities?

ARCH: Yeah. Well, I mean that's, that's part of it. There's, there's technical review groups that meet on this, not just an individual, but there's groups that review and the, and, and the, and the bid itself is weighted according to certain factors and so multiple people take a look at it and that, that's part of the decision-making process. But what this does is it, is it allows for the evaluation of that realistic and reasonable and, and so that's, that's a big change.

BREWER: Realistic and reasonable, got it written down right here.

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ARCH: Yep, too, too low or too high.

BREWER: All right, let's see if we got questions for you. Questions? All right, well-- and you'll stick around for close?

ARCH: I will.

BREWER: All right. Thank you, sir.

ARCH: Thank you.

BREWER: OK. So our first proponent, come on up. Welcome back to the Government Committee.

JASON JACKSON: Thank you. I may be more than five minutes.

BREWER: I have-- we'll--

JASON JACKSON: So I'm a little worried, but I'll do the best I can.

BREWER: We're going to, we're going to-- we're gonna need to hear your stuff so I've got a hunch we're going to let you have a little extra time if need be here, so--

JASON JACKSON: All right. Thank you, Colonel. I appreciate it.

BREWER: --drive on.

JASON JACKSON: Good afternoon, Colonel Brewer and members of the committee. My name is Jason Jackson, J-a-s-o-n J-a-c-k-s-o-n. I'm the Director of the Department of Administrative Services and I'm here to testify in support of LB461, the state procurement act. I want to begin by thanking Speaker Arch for his leadership in bringing this bill forward. This bill represents comprehensive procurement reform for the state of Nebraska. It is an end-to-end rewrite of a body of law that was first enacted in 1940. I think the bill is also commendable as being the product of a tremendous amount of interbranch collaboration and the Speaker spoke at some length about that. The bill owes its genesis to the work of the LR29 committee that looked at child welfare privatization generally and the state-- or the Saint Francis procurement specifically. On the recommendation of the LR29 committee, the Legislature passed, with the, with the Governor's

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support, LB1037, which obligated DAS to commission an independent expert report on the end-to-end procurement and process-- procurement process for the state of Nebraska. In consultation with the Speaker, we selected Ikaso Consulting to conduct that report. They brought to bear experience having contributed to reform efforts in ten other states before working with us. Ikaso was given unfettered access to the breadth of our procurement operations, documentation, procedures, past procurements and staff. And in advance of the production of their report, they reviewed over 300 documents, conducted over 60 interviews, including with members of the Legislature, private vendors, outside counsel and staff on our procurement teams. They synthesized those findings and we published a report in, in November that identified 33 recommendations for improvements. Ikaso also benchmarked with four other peer states, including Colorado, South Dakota, Iowa and Missouri. The 33 recommendations that Ikaso identified, it's our intention to implement all of them. And this is where I'd like to involve your help because LB461 includes all of those recommendations that require statutory change. I want to ask that the committee not let the length of the bill obscure some of the elegance in its solutions. The bill owes its length to one of its features, which is the combination and synthesis of our goods and services statutes, which currently are in separate chapters of the Nebraska law. What this bill does is it pulls them together so there is a single source of truth and a single process and a single standard for state contracting, both with respect to goods and services. The Speaker hit upon some of the key big swings that this bill takes that go to the heart of the Saint Francis procurement and some other past procurements that have gone awry. I want to just touch and give perhaps one click down on additional detail with those. And again, the first big swing that this bill takes is a standalone responsibility analysis for vendors. We heard some of the prior testimony on the previous bill that dove into this. The current standard is lowest responsive bidder. What this bill does is it gives procurement evaluators the tool to be able to evaluate the vendor's ability to perform the work and lays out criteria for doing that: their ability, their experience, their prior performance. And now that can be a standalone evaluation process that's severed from the cost analysis. So that's a big swing. The other big swing that this bill takes at our existing procurement process is this concept of cost realism. Current Nebraska law provides that cost is evaluated for reasonableness.

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Reasonableness is an upper guardrail on a bid. So in the context of procurement law, an unreasonable bid would be the state getting swindled. It's too high. Current Nebraska law, we lack a tool for the lower guardrail, an irresponsibly low bid, and that's what this bill does. It gives us that tool, that cost realism assessment, which is just an assessment of can the vendor realistically perform the work at the cost that they're bidding? So with these provisions enacted, we'll be able to have-- the cost evaluators will have both an upper and a lower threshold from which to address these questions. Again, that gets right at the heart of the issues in the Saint Francis procurement. There's three other substantive changes that I would just highlight upon. The first of which is on Ikaso's recommendation, we moved the proof of need analysis to earlier in the procurement process. Current statute lays out that a proof of need needs to be basically asserted to on the, on the part of the agency that's making the procurement, basically just substantiating that yes, they need this service and why. But that, that analysis happens before contract consummation. What Ikaso recommended and what this bill incorporates is moving that assessment in advance of the procurement because why even do the procurement if we can't substantiate that we have a need? That's just common sense. The bill also addresses Nebraska's in-state preference for in-state contractors. And if there's Q&A on this, we'd invite discussion. Basically, this is what the-- what Ikaso recommended was either the complete elimination of a very convoluted process that Nebraska currently has or its simplification. This bill elected simplification. Basically, agencies that are procuring services have the choice of whether or not they want to preference Nebraska bidders. We regarded that as most closely adhering with prior legislative intent. And also again, getting back to the Saint Francis procurement, some of the discussion around that was, hey, we went with an out-of-state provider. If DHHS had wished to maintain the relationship with PromiseShip, the opportunity to offer a in-state preference might have been an important tool that could have aided them in doing so. And then finally, the bill brings Nebraska law into alignment with federal standards with respect to grant administration and cooperative agreements administration. And that will significantly aid those agencies that are heavily involved in the grant administration process. Collectively, these changes represent significant reform and a significant modernization of state procurement law and take significant strides to mitigating the risks

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that were present and contributed to the Saint Francis procurement specifically. So I want to reiterate my appreciation to the leadership of Speaker Arch on this issue and further express my gratitude on behalf of state procurement professionals across the state that will eagerly welcome the changes that are incorporated in this bill. And with that, I'd be happy to take any of your questions.

BREWER: All right, thank you. Obviously, you're kind of the go-to guy with knowledge on how all of this 33 recommendations and 50 pages of law got all put together so you get extra time when you're the, the one that we need to ask questions to.

JASON JACKSON: Thank you, Colonel.

BREWER: No problem. Now, since all of us up here had to write law, we know that sometimes it's hard to write a two-page law without having three amendments to it. You got 50 pages here.

JASON JACKSON: Yes, sir.

BREWER: You just put enough time in to figure it out and get it right the first time through or are there amendments to this?

JASON JACKSON: Right now, we don't anticipate any.

BREWER: OK. Well, you must have spent the right amount of time getting it figured out. Let's see if we've got questions for you right off hand here.

HALLORAN: Mr. Chairman.

BREWER: What?

HALLORAN: Mr. Chairman.

BREWER: Oh, you. Up higher. Senator Halloran.

AGUILAR: I thought he was waving.

BREWER: I was too.

HALLORAN: Thank you, Mr. Chairman. Thank you, Mr. Jackson--

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JASON JACKSON: Yes, sir.

HALLORAN: --for being here again today. So I'm just curious. I would assume maybe you've done this, maybe you haven't, but it seems like it would be a-- kind of a good test of these statutes or proposed statutes to run by and run through the Saint Francis proposal again and see if they would have flunked. Would that be a reasonable thing to do or is that not-- would that be too costly to do or too cumbersome to do? I mean, we know how it turned out. I get that. But if, if Saint Francis proposal came to you today, as it did when it came to us, would it pass or fail?

JASON JACKSON: I think it would have failed. These tools were unavailable to the, to the evaluators at DHS-- DHHS that evaluated it at that time. So if the-- that same evaluation team were to come back together and do, do it over again with the advantage of hindsight and these tools, I think you would have a different result.

HALLORAN: Well, there's a difference between I know and I think.

JASON JACKSON: Yeah.

HALLORAN: My question is, would it be unreasonable? I know-- we, we know the results of Saint Francis so it's hard to take that out of our mind about how that turned out. But I'm just asking whether or not, now with these tools-- I understand these tools would and should make a difference. I'm anticipating they would. But it seems to me it would be kind of an interesting test. We don't test things around here very often. We just say this should work. I think it'll work. Maybe it will work, maybe it won't work. But it seems like it would, it would take some exercise. It would take some time. But it seems like wouldn't that be a good test to see whether or not something we know in the past failed, but now that we're proposing these statutes-- and I'm not against these at all. I'm a proponent of them-- but whether or not in fact they would have said fail?

JASON JACKSON: I don't think that's unreasonable and I have no reticence about that. We can work with the HHS and see if we can wargame that procedure--

HALLORAN: I think It would be interesting.

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JASON JACKSON: --and see what the results are.

HALLORAN: OK.

JASON JACKSON: I'm very confident. Again, this is, this is the work product of a great deal of due diligence, about 18 months of--

HALLORAN: No, I appreciate it.

JASON JACKSON: --24 months of due diligence and a lot of benchmarking and thoughtful work. But absolutely, we can, we can wargame that and see what the results are.

HALLORAN: All right.

BREWER: All right. Any additional questions? Senator Sanders.

SANDERS: Thank you, Mr. Jackson, for bringing this forward and all the work that you've done on this. Does it give you enough tools in there to look at the, the bids or those that have been on your contract and their history? And I just know in our business, commercial real estate, sometimes those low bids, if you look at the history of former projects, there's a lot of change orders that can certainly make up the difference and even more. So does this give you the tools to be able to go back and look at the reputation and look at the history of who is bidding on the contract?

JASON JACKSON: Yeah, great question. So just for the benefit of the committee, this is a common problem in state procurement practice is that if a contractor kind of bids the minimum on the scope of the project but anticipates that it may cost more, what they'll do is they'll just kind of change order you to death. And then the cost kind of creeps up to what would have-- probably should have been the true cost of the original bid. And yes, so what this bill does with that responsibility analysis is we can examine the contractor's past performance history and if they have a track record of engaging either with us or another public entity where they've underbid contracts and as a consequence, those contracts have a lot of change orders, that could be considered in part of the analysis.

SANDERS: Thank you.

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JASON JACKSON: Yep.

BREWER: All right. Any additional questions for Mr. Jackson? All right, thank you, Jason.

JASON JACKSON: Thank you, team.

BREWER: OK. Let's see. We are on proponents to LB461. Come on up. Welcome to the Government Committee.

NICK BATTER: Thank you and good afternoon. I'm Nick Batter. I'm a member of the Associated General Contractors Nebraska Chapter. And just as an aside, I'm an Army veteran so just wanted to thank you all for your service for our state's veterans.

BREWER: OK. Now this-- a veteran-- you're going to have to be a veteran with attention to detail. I need you to spell your name for us.

NICK BATTER: Yes, sir. B-a-t-t-e-r.

BREWER: N-i-c-k?

NICK BATTER: Yes, sir.

BREWER: All righty.

NICK BATTER: I can give you a native alphabet, if you'd like.

BREWER: Got it. Thank you.

NICK BATTER: LB461 is a bill intended to clean up state contracting and incorporate the recommendations of a DAS study authorized by last year's LB1037. AGC supports this bill. However, I am testifying to point out one concern with the bill, which would create serious unintended consequences if this language becomes law as drafted. Many states, including Nebraska and five bordering states, have what is called a golden rule law. Simply put, these states mirror the in-state preferences of a contractor's home state. This allows contractors to freely follow work, which results in more opportunity for contractors and savings to taxpayers. For example, Wyoming does not have a golden rule law and, and favors Wyoming contractors over Nebraskans. Our

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current law allows Nebraska to mirror those restrictions. By contrast, Nebraska and Iowa have golden rule laws. This allows contractors to bid work in each other's states freely. Section 39 of this bill seeks to delete Nebraska's golden rule law and replace it with an optional in-state preference. The problem, and I don't believe this was the intention of the Bill Drafters, is that if this language passes, it will trigger the golden rule law in every other state where Nebraskans do business. In other words, it will activate laws in other states by creating an explicit disadvantage for Nebraskans. For contractors, this would make it tremendously difficult to compete and grow. Because highway jobs have a geographically large footprint, most Nebraska public contractors also do business in neighboring states. Section 39 would also create the same barriers to companies that supply construction products to public owners. It's worth noting that these supply companies are very often veteran-owned businesses. Public contracting is a very common career choice for transitioning service members. As I stated, LB461 was largely drafted to incorporate the study findings from last year's LB1037. Section 39 does not do that. There is nothing in the study that supports replacing Nebraska's golden rule law with an in-state preference. In fact, the study specifically states on page 49 that it is not recommending such a preference. Simply put, Section 39 does not belong in this important and timely bill which we otherwise support. Thank you.

BREWER: All right. Thank you. I'm trying to mark and make notes at the same time here. OK. Questions? All right, thank you for your testimony and I'll get to reading as soon as things slow down today.

NICK BATTER: Thank you.

BREWER: All right, next proponent testifier for LB461. OK, opponent to LB461? Neutral for LB461? Senator Arch, would you like to close?

ARCH: Thank you for your, your time and attention to this matter. I-- this is, this is probably one of the larger, larger exercises that certainly occurred over the interim and, and it was a very thorough process. I don't want to go back and rehash all of the Saint Francis. I would only mention that there was one other bill that came out of that, of that study and that was in addition to this issue of, of procurement, we also have issues with child welfare reform. That bill was introduced as well, which required DHHS to hire a consultant, as

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we required DAS to hire a consultant. And, and they have done so. They are in the process-- that, that, that is underway right now-- of taking a look at child welfare reform, a report due at the end of this year in December. When we, when we went through the whole process-- and it was, it was lengthy-- on the LR29 combined with the HHS Committee, it-- what, what became apparent to me is that this process has to be good from beginning to end. My discussions with Senator Kolterman on the appeals process focused on the end when things go bad, what happens. And, and yet when we saw the history of some times in previous-- you know, previous examples of things going bad when-- that spanned administrations, spanned directors, it wasn't-- we, we saw that there was a system issue. We needed to get upstream in that. And so a lot of the, a lot of the conversations that I had with Ikaso in this process was, you know, making the right decision and not trying to correct the bad decisions, so much of the work that was done in this legislative bill focused on that. There was a question that just kept coming back over and over and over in our process and that was this question of how could you possibly have, have given this contract to somebody that bid 40 percent below your competitor? Not, not just, not just the other bidder, but also against the same costs that the state was incurring elsewhere. Not in the eastern service area, but they were managing, case managing these youth elsewhere in the state and it was a very similar cost to that. It was a very similar cost to PromiseShip, the bid. And this-- Saint Francis came in 40 percent low and was awarded the bid. And, and that, that question-- and I, I always described it as due diligence, that question of due diligence. Can we do our due diligence in these contracts? And, and what we found was language, language that really-- I mean, words are very important and language that prevented the state from doing that, that locked them in to this lowest responsible bidder. And, and in not having responsible-- responsiveness, responsible as a standalone criteria, all of these things became very apparent. So I feel very good that, that we have corrected in this language a system that supported that Saint Francis bid. What we're doing here, I think, is, is a bit generational because we're building a system that supports good decision-making. Sometimes in government, we allow ourselves to say, well, we've got a great director here or we've got a great executive there or, you know, Governor, whatever, and so therefore, we're good. As long as we have great people, then we're good. And it depends upon those people, but, but people come and go and we've got

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to have a system that supports it. And that's what I think we're doing with our procurement system here. We're actually building that system. With regards to Section 39 that was mentioned by the last testifier, we'll, we'll, we'll keep looking at that. It did-- it's, it's a little confusing because if you go in there and you, and you read it, it moves to "may" and so it gives latitude. But I understand the point that was made and we've had those discussions outside of this hearing as well. And so we'll, we'll take another look at that and, and see if there's better language. We certainly don't want to disadvantage our in-state contractors doing business in other states. So we'll certainly take a look at that. And with that, I'll stop and answer any questions you might have.

BREWER: Well, my question was on Section 39. You answered that so that was my only question. Any questions for the Speaker? Yes, Senator Hunt.

HUNT: There's some dots to connect here on the theme of the bills we've been hearing. And I would ask do, do you believe that this bill is really about legislative oversight?

ARCH: I-- well, see, not directly. It is about the Legislature's responsibility to make sure that we have processes that support good government. It's not so much, it's not so much oversight as, as an investigation because that certainly was done in triplicate with, with our LR29 committee. But the findings of that says we need to have good systems. And that-- and I do believe that that-- the Legislature is very much involved in that.

HUNT: Thank you.

ARCH: Yeah.

BREWER: All right, any additional questions? I need to read into the record that position letters, we had two proponents, zero opponents and zero in the neutral. And that will close out our hearing on LB461 and we will reset for the next hearing.

SANDERS: Speaker, thank you.

BREWER: Now, people have been growing in number here so I'm just figuring out if I'm still at five or we're going to three. Let's see

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how many people leave. I worry because a lot of times, the lobbyists will come in here to sleep in the afternoon. I count you, but I-- all right, so of those remaining here that are going to-- go ahead, John. Have a seat. Sit down and make yourself at home. How many in here plan to speak on one of the two remaining bills before us? All right, we're going to stay with five minutes. I'm going to trust you. All right, with that, we will open on LB133. John, welcome to the Government Committee.

J. CAVANAUGH: Thank you, Chairman Brewer and members of the Government Committee. Good afternoon. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent Legislative District 9 in midtown Omaha, historically called the Sunshine District. I'm here today to introduce a sunshine law, LB133, which would include entities that have the power of eminent domain in the definition of public bodies under the open-- Nebraska Open Meetings Act. The power of eminent domain is one of the most serious powers the state is invested with. The power to take the land of someone against their will should only be exercised in the most rare of circumstances and when exercised, should be done in the sunshine. I sit on the Natural Resources Committee and in my time in that-- in, in the Legislature, I've sat through many hearings over many bills dealing with entities that have the power of eminent domain. In these hearings, I was shocked to discover that there are entities invested with the power of eminent domain who are not subject to open meetings. I do not think it's right that anyone should operate in darkness while using the power of the state to take someone's property. This is a-- this bill is simple. It simply adds, "entities, whether private, public or quasi-governmental, which may by law exercise the power of eminent domain" to the definition of a body that is subject to the open meetings requirement. I'm certain that you'll hear from private businesses today that have been granted the power over the decades that this law is too burdensome and that following the Open Meetings Act would put them at a competitive disadvantage. To that, I will only say that perhaps the advantage of using the state's eminent domain power is not worth it. I will confess some curiosity myself as to who will come in opposition. Since introducing LB133, I've been surprised to learn of the many more private entities that already have the power of eminent domain. I'm willing to sit down and discuss the technical changes of this bill consistent with the intent of transparency and protecting the

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interests of Nebraska property owners. Eminent domain should be a rarely utilized tool for government and we have allowed too many private actors to be granted that power with little oversight or accountability. LB133 is a step to correct that. I thank you for your time and I'd be happy to take any questions.

BREWER: All right. Thank you, Senator Cavanaugh. Let's see if we have questions for you on LB133. Senator Lowe.

LOWE: Thank you. Thank you, Senator Cavanaugh. How is eminent domain achieved?

J. CAVANAUGH: Well, there's statute that is pretty specific on that. Essentially, somebody who has the power-- I mean, a good example is a, you know, city or county-- would have some public good, some public need for land. They would attempt to purchase it. And if they do not achieve an agreement and they really do need that land, they could go through a condemnation process. I, I guess I can't tell you the folks who may come in and testify against it, whether they have some specific, different scheme. So in the process of developing the statute, I did go to Legislative Research to find out who all has the power of eminent domain. And the list is-- well, probably 15 pages long of just line after line of different entities. So there are really hundreds of different entities in the state that have eminent domain, not all of them public. And so that's what I'm trying to get to here is make sure that everybody that is using the power of eminent domain is doing it in the public eye.

LOWE: But it's a pretty thorough process, isn't it, to go through from beginning to end. It's-- there's a lot of checkpoints going through.

J. CAVANAUGH: Well, the question is, when is the beginning?

LOWE: Well, I'd say the beginning-- now you're asking me questions.

J. CAVANAUGH: Rhetorically I'll ask that question and I'll answer it, I guess, if you like. So for a public entity, the beginning would be the discussion at the county board meeting about whether or not we should undertake such project, which-- what area it should go in, maybe a discussion about where those different areas are and then ultimately the decision to move forward with public comment and input

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and then the decision to try and purchase that property and make those plans. For a private entity who has the power of eminent domain, a lot of those decisions about whether even to undertake the project and which area you're going to pursue it in would be out of the public eye. The only part that then would be in the public eye is once you begin that condemnation process. So it's-- and that's kind of the part that I think is really fundamentally important to the conversation. If you're going to use the state's power of condemnation, taking people's property, then the whole conversation about whether we should do this should be part of the public discussion.

LOWE: Would, would this added language in this, would this also affect their other meetings besides the one where they're looking to condemn property?

J. CAVANAUGH: As written, that would be my reading of it and kind of why I put in comment there about willing to work on technicalities of it. And as I stated, there are apparently a lot of people that this applies to. And first off, to make a change like this, we may need to wrap, wrap our arms around who all we're talking about and hopefully we'll get a better idea of that today. And then perhaps we can have a better concept of how to tailor it in that way.

LOWE: Thank you.

BREWER: Senator Halloran.

HALLORAN: Thank you, Chairman Brewer. Welcome, Senator Cavanaugh. You referred to your district as the Sunshine District.

J. CAVANAUGH: Yes, sir.

HALLORAN: And I'm guessing that your district would be in favor of Senator Briese's daylight savings time?

J. CAVANAUGH: I did vote in favor of that last time.

HALLORAN: Yes. Thank you.

BREWER: I, I would definitely be interested in your list of those who have that authority. I had no idea it was that many people. I mean, some of them already give meetings, you know, for roads and things

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like that. But that number just seems incredibly high to give that kind of authority to. So maybe--

J. CAVANAUGH: I'd be happy to share it. I've got one copy here. I can probably have copies made or I can circulate it for-- by email.

BREWER: No, I'd, I'd love to see that if you could. All right, other questions for Senator Cavanaugh? All right, you gonna stick around for close?

J. CAVANAUGH: Yes, sir.

BREWER: All right. Thank you. OK, we will start with proponents to LB133. Proponents. All right. I have to do a little bit of a delay here, so I-- yeah, there we go.

KENNETH WINSTON: Well, I haven't filled out--

BREWER: I knew you were out there somewhere.

KENNETH WINSTON: --the sheet. Yes. I'll do my testimony and I'll hand it in after I finish.

BREWER: We're going to trust you.

KENNETH WINSTON: Thank you.

BREWER: Actually, if you want to take it and just go ahead and fill it out there real quick and then we don't break procedure here and then you turn in your--

KENNETH WINSTON: OK.

BREWER: --your green copy.

KENNETH WINSTON: I'd be glad to do that. While I just--

BREWER: Because what will happen is Julie will give me the eye.

KENNETH WINSTON: OK.

BREWER: And I know that I'm doing something wrong and I would rather have you take a little bit time there than me get the eye.

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KENNETH WINSTON: I appreciate that, Senator.

BREWER: All right.

KENNETH WINSTON: I believe that-- I want to honor--

BREWER: Didn't have much time from when you came in till we threw you in the hot seat here, so.

KENNETH WINSTON: Yeah, well, I did just walk in the door, so. I was expecting there would be other proponents and I would not--

BREWER: Well--

KENNETH WINSTON: --be the first person up.

BREWER: --John needs all the friends he can get.

KENNETH WINSTON: Well, I'm always glad to support legislative activities. Oh, sorry, I--

BREWER: All right. My comments about lobbyists sleeping in my committee evidently hid somewhere because people are leaving.

KENNETH WINSTON: They don't realize how fascinating my testimony will be.

BREWER: Could be a factor.

KENNETH WINSTON: I'm trying to bring a bit of levity on this Friday afternoon.

BREWER: All right, there we go. Now we're going to be efficient. OK and you got handouts.

KENNETH WINSTON: Copies of my testimony.

BREWER: All right. Very good. Welcome to the Government Committee.

KENNETH WINSTON: Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. My name is Kenneth Winston. Name is spelled K-e-n-n-e-t-h W-i-n-s-t-o-n and I'm appearing on behalf of the Bold Alliance in support of LB133. First,

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let me apologize for taking extra time to fill out the green sheet. I thought I was going to have time to, to make it here on-- in plenty of time, but in any event-- all right. Well, first of all, the Bold Alliance is an organization that works to protect land, air and water from pollution. We also are interested in protecting fundamental American rights to own property. We work with farmers and ranchers to protect their property rights. We support the protection of private property rights guaranteed by both the United States Constitution and the Nebraska Constitution. We are strongly opposed to the use of eminent domain for private gain. Both the Fifth Amendment of the U.S. Constitution and Article I, Section 21 in the Nebraska Constitution forbid the use of eminent domain unless it is for a public use and just compensation is provided. Further, there's a number of Nebraska statutes that specifically prohibit the use of eminent domain for economic development purposes. In addition, there's abundant case law that indicates that eminent domain is disfavored as a public policy and should only be used as a last resort. We support LB133 because it would require public disclosure of the factors related to the project for which eminent domain is sought. This would provide an opportunity for public discussion of whether the proposed project or proposed activity meets the standards required by the U.S. and state constitutions, as well as the other provisions of state law that I've also cited, including the prohibition of eminent domain for economic development purposes. I just want to offer a suggestion that that we believe that a narrower or a different draft of this bill could achieve the same purposes that Senator Cavanaugh is seeking to achieve, but-- and we would be glad to work with the Chairman and the members of the committee to, to create the appropriate language that would achieve this goals without creating additional requirements for entities prior to the time that they seek to exercise eminent domain authority. With that, I'd be glad to respond to questions.

BREWER: All right. Thank you for that testimony. Let's see if we have some questions for you. Senator Lowe.

LOWE: Thank you and thanks for coming in and testifying. Is Bold Alliance a national organization or just a Nebraska organization?

KENNETH WINSTON: It's primarily in Nebraska, headquartered in Hastings. Bold Nebraska, of course, is the most well-known part of that. I'm not sure how many states Bold works in, but the Bold

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Alliance does work in several states--- I know in Iowa and Minnesota, at least. So, so I don't know exactly how many states.

LOWE: Do you know-- are there any other states where this-- where private entities would be subject to the Open Meetings Act?

KENNETH WINSTON: I'm not aware of, of that specifically, but I do think that there, there is some good-- there are good public policy reasons for requiring a public-- a private entity to follow the public meetings laws if they are seeking to exercise eminent domain. And I think I described the reasons, that way you can have a public discussion about the-- about what's being contemplated. And what are the purposes being sought? Is it a public use? How are they planning-- are they planning to-- will there be economic development activities involved? So those kinds of act-- of things could be discussed at that public meeting.

LOWE: Isn't that kind of what the process is for eminent domain to-- for the court system to go through this?

KENNETH WINSTON: At the point-- at the time that it goes to the courts, there's no opportunity to discuss any of that. It's basically what-- the court will just decide whether they're going to allow the eminent domain proceeding to go forward or in the amount of the compensation if they do. So there really isn't--

LOWE: That would, that would be in county court?

KENNETH WINSTON: Yes, yes it would.

LOWE: But then it could go to district court following that.

KENNETH WINSTON: I, I'm not sure of the appeal process and-- because I have not personally dealt with an eminent domain case. They're-- I can, I can find out that information if that's something you'd like to--

LOWE: Please, if you would.

KENNETH WINSTON: OK, I will.

LOWE: Or maybe somebody behind you could--

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KENNETH WINSTON: OK, yeah.

LOWE: I can see some heads nodding back there.

KENNETH WINSTON: OK. There may be, there may be wiser heads in the audience.

BREWER: All right. Additional questions? All righty, thank you for your testimony.

KENNETH WINSTON: Thank you.

BREWER: OK. Any other proponents to LB133? All right, we'll go to opponents to LB133. And if-- yeah, you're going to be testifying, move forward and then I'll, I'll have a better idea how many we got. Welcome to the Government Committee.

JILL BECKER: Thank you, Chairman Brewer. Good afternoon, members of the Government, Military and Veterans Affairs Committee. My name is Jill Becker, spelled J-i-l-l B-e-c-k-e-r, and I appear before you today as a registered lobbyist on behalf of Black Hills Energy. I'm also representing today the Nebraska State Chamber, the Nebraska Telecom Association, and NorthWestern Energy. As an organization, Black Hills Energy is a natural gas utility, proudly serving approximately 300,000 customers in Nebraska in over 319 communities. In total, the Black Hills Energy family serves 1.3 million natural gas and electric customers in eight states. We have literally thousands of miles of natural gas pipelines in Nebraska alone. We are opposed to LB133 today for three main reasons. First, as an organization, as a private entity, we are not structured to comply with the bill as written and with the Open Meetings Act. For example, we do not have a board or commissioners that are involved in our day-to-day operations. Our board of directors for our corporation live across the country and as a publicly traded utility, I have no idea, but I'm going to assume that every type of action may fall within the Open Meetings Act. So this for us to be very onerous. We are not structured to post our meetings, you know, per statutory requirements, in advance. We just really are not structured that way. Secondly, we're opposed because according to our reading of the bill, it applies to every and any activity of our organization. So even though it references eminent domain, the green copy of the bill doesn't restrict the requirements

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of the Open Meeting Act solely to eminent domain activities. And finally, I would just mention, because this bill has a submitted fiscal note, that fiscal note certainly does not apply to us. It would be tremendously costly for us to notice-- whatever we would have to provide for public notice, it would cost us very significantly. So while I appreciate the process of our fiscal notes and the entities that they ask, frankly, it's completely wrong if you asked us-- if you would ask us in this application. So because of those reasons, we would encourage you not to advance LB133 to the floor. I'd be happy to answer any questions.

BREWER: All right. Thank you. And yes, our fiscal notes are always a challenge to figure out. All right, questions? All right, you're going to get off easy this afternoon.

JILL BECKER: Great, thank you.

BREWER: Next testifier in opposition to LB133. Welcome to the Government Committee.

JAMES DUKESHERER: Thank you. Good afternoon, Chairman Brewer and committee members. My name is James Dukesherer, J-a-m-e-s D-u-k-e-s-h-e-r-e-r. I'm the director of government relations for the Nebraska Rural Electric Association. NREA is testifying today in opposition to LB133. The, the Nebraska Rural Electric Association represents 30 rural-- 34 rural public power districts and electric cooperatives throughout the state. The more than 1000 dedicated employees of our system serve 240,000 meters across nearly 90,000 miles of line. I'm also testifying on behalf of the Nebraska Power Association, which represents all of Nebraska 165 public power utilities. LB133 would define any entity that can exercise eminent domain as a public body under the Open Meetings Act. The bill would not-- as has been said, the bill would not be limited to only those meetings that deal with eminent domain proceedings, but would rather apply to every meeting of an entity of an impacted entity. The NREA includes, among our membership, nine electric cooperatives. Three of these cooperatives are headquartered within Nebraska: Midwest Electric Cooperative Corporation in Grant, Panhandle Rural Electric Membership Association in Alliance and Niobrara Valley Electric Membership Corporation, headquartered in O'Neill. Although in many aspects, these rural electric utilities operate similarly to a public power district

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and they possess condemnation authority under Chapter 70, they are not public bodies. They are private, not-for-profit corporations with some key differences when compared to their public power district counterparts. Co-op member-owner, co-op member-owners are not political subdivisions of the state. They elect their board members at an annual meeting, not on a general election ballot. Co-ops pay property taxes. They're not exempt from OSHA and DOT regulations. Our member cooperatives rarely use their condemnation authority. In fact, when asked, they'd be hard pressed to, to-- these three co-ops would be hard pressed to find a time in the last 30 years when they've used their condemnation authority. They go out of their way to get easements signed to utilize the, the right-of-way when necessary and avoid using eminent domain whenever possible. If they pursue, if they pursue the eminent domain, the process would be similar to that of a public power district. They would first need board approval. And as already stated, the board is elected from among the consumer members. member-owners can attend the board meetings, they can address the board, they can review their meeting minutes. The cooperatives would also hold meetings open to their membership to discuss the proposed project, ensuring an open and transparent project. Whether it be a power district or an electric cooperative, transparency has been a hallmark of all public power utilities in the state for the past 75 years. It's for these reasons that we ask that LB133-- or that un-- LB133 unnecessarily impacts public powers, electric cooperatives and we ask you to oppose the advancement of this bill. Thank you.

BREWER: All right. Thank you. So let's, let's go back and talk the-- well, the ones that are going to be the Nebraska Power Association. If you want to take it and move a power line from point A to point B and there isn't one there right now and-- do you have to go before, like, a planning and zoning board in order to get permission to move that power line across someone's land? Or how would you go about that so that the right people were aware of what's going on and how it's being done?

JAMES DUKESHERER: All of my members have publicly elected boards. They give a notice of those meetings. So the publicly elected board, whether it be a cooperative member-owner or a public power district, the public would be invited to come into that meeting and have that discussion.

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BREWER: OK. But even if the people come in and said we think this is a really bad idea, you could still run the power line, right? Because you're going to have the ability, the authority to do that.

JAMES DUKESHERER: Ultimately, it'd be a board decision.

BREWER: OK. And what you're saying is, if the board disregards the will of the people, then they'll pay a price when the time comes for reelection.

JAMES DUKESHERER: That and if they did have to go-- and I said it's rarely used, but if they did have to use condemnation authority, as was stated earlier, there's a court process available to that. You have to approve public use and they may not do that. I am familiar with a case where the railroad tried to move a rail line in western Nebraska and the court wouldn't allow them to do it, said it was not a public use to add an additional line for efficiency purposes. That didn't meet the requirement for public use.

BREWER: Well, I think it was Custer Public Power that got hold of me, but they were, they were using the same right-of-way, but they were going to a, you know, whatever-- when you upgrade to a bigger, better line. But it didn't seem like an issue because you're using the same right-of-way. The only thing you were changing was the amount of power you could move from A to B, which didn't seem like that big a deal. I just didn't know if you actually were going to take a different route, what kind of authority there, but it goes essentially to the board after there's hearings and then a decision is made and you guys go ahead and--

JAMES DUKESHERER: And to back that up, before they would use eminent domain, they would, they would get easements, which would mean they would have to reach out to landowners to get that easement. It's only under circumstances where they weren't given an easement that they would have to go use condemnation authority.

BREWER: OK. All right, questions? All right, thank you for your testimony. Welcome to the Government Committee.

ADAM FESER: Good afternoon, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. I won't quite do

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a Senator Halloran ditto, even though you might like to hear it, but I'll be echoing a lot of what you just heard. My name is Adam Feser, A-d-a-m F-e-s-e-r. I'm the director of cooperative advancement for the Nebraska Cooperative Council. We represent the interests of agricultural, rural electric and telephone cooperatives in our great state. Our membership includes three rural electric cooperatives, two telephone cooperatives, the private member-owned corporations. They're democratic entities governed by boards, elected by their members with bylaws approved by the members. Membership in cooperatives is open and voluntary to all uses and services. And Nebraskans getting power or telecommunications through these cooperatives are member-owners and have an equal vote in how it's governed. If LB133 were enacted, rural electric and telephone cooperatives would be subject to the Open Meetings Act. I reached out to our members that would be affected by this legislation and none of them can remember even utilizing eminent domain. I spoke to a lot of them. I'm sure maybe at some point in time, it's happened, but they couldn't remember it if it has happened, which seems like a lot of overreach to say all their meetings should be subject to Open Meetings Act if they can't even remember the last time they've used the eminent domain that is the reason for the bill. So they have in place bylaws that determine how their meetings are announced and conducted. LB133 would necessitate the rewriting of their bylaws and place undue burden on-- the undue burden of complying with the entirety of the Open Meetings Act with the threat of criminal sanctions for violating it. And I was going to print out the outline, just the outline from Attorney General Hilgers' website and the outline alone was 43 full pages. So it's obviously a lot to figure out how do we do this? I would guess there'd be legal counsel involved, the cost of that, and then your leadership and administrators having to figure out, OK, how do we comply with this so that we aren't, you know, charged with a misdemeanor, that if we don't follow it, whatever we do in the meeting might not be valid. It seems like a whole heck of a lot of work when especially in our case, it's not even achieving the goal of, you know, open government, open public entities, which seems to be the actual goal. So with that, we urge-- we-- for those reasons, we urge you to-- urge the committee to not send LB133 to the floor of the Legislature. And if you have questions, I'll try my best to answer them.

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BREWER: All right, Adam. Let's see if we got any questions. Questions? All right, seeing none, thanks for your testimony. OK, next opponent to LB133. Is there anyone here in the neutral? All right, Senator Cavanaugh, would you like to come and close on LB133?

J. CAVANAUGH: I would love to. Thank you, Chairman Brewer and members of the Government, Military and Veterans Affairs Committee. Appreciate your attention on a Friday afternoon. Just kind of wanted to point out a few things. I do-- I appreciate everybody coming to testify on both sides today. I appreciate the comments. I would certainly suggest you take a look at the comments on-- that are both opposed and in favor of this bill because I think that they-- everybody here kind of-- this is not necessarily an adversarial bill. I think everybody kind of has a similar perspective about eminent domain is a serious thing, should be taken seriously when we do it. But the things I want to point out-- and one thing, Senator Lowe, I forgot I should've told you is when somebody implements or gets to the point of eminent domain and you get to a point you can't have an agreement, even before you go to court, the condemner is allowed to go on somebody's property to make assessments and look at easements and things like that. And they're not allowed to be turned away even before they've been granted the, the eminent domain. So there is-- even if you go to court and lose condemnation, you still get to go on people's property and look around, which I think we should be very serious about. But in my kind of-- this bill was a learning experience for me. I came to bring this bill because of something I discovered and started looking. And so in the process of reading about this in preparation, I noticed the Nebraska Constitution has specific references to eminent domain, including-- I brought my nice constitution that they give us here, the updated one with the change from the last ballot initiative. And under, let's see, Section-- it would be Article V, Section 8 says no railroad corporation organized under the laws of any other state, or of the United States and doing business in the state shall be entitled to exercise the right of eminent domain or have the power to acquire the right of way, or real estate for depot or other uses, until it shall have become a body corporate pursuant to and in accordance with the laws of the state of Nebraska. And then there are two or three Supreme Court cases on point basically just finding out, discerning what means a body corporate in the state of Nebraska. But essentially what it means is that if you want the power of eminent domain as a

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railroad in the state of Nebraska, you have to incorporate here and subject yourself to the laws of the state of Nebraska. And what that means is eminent domain is such an important power that we want to make sure you're here and we can get a hold of you, right? And so the theme I heard from folks today, and I think it's a fair one, is that this bill would be overly cumbersome for them. But what I also heard was that they don't use eminent domain. They can't remember the last time they used it. And so I am not married to the idea of the fact that they have to be open to-- subject to public meetings. I don't particularly think that all of these organizations do need to be open to public meetings. However, I think that they maybe don't need the power of eminent domain. And so what I'm hearing here is all of these entities that came and opposed my bill don't think that they need eminent domain so much that they would subject themselves to regulation. And so I think you can do one of two things: you can say you can have the power of eminent domain, but you have to do it in public; or you don't need the power of eminent domain. If they don't use it enough to justify subjecting themselves to this regulation, then don't do it. The railroads, starting back in the 1800s, if they wanted eminent domain in Nebraska, they had to subject themselves to the laws of the state of Nebraska. I'm saying the same thing today. You don't have to have eminent domain-- or you don't have to subject yourself to this law, but if you do want eminent domain, then you have to give us a little bit more. You have to be a little bit more open to the public and that's all I'm saying here. You can pick, pick your poison, one or the other.

BREWER: All right, questions for Senator Cavanaugh? Senator Lowe.

LOWE: Thank you. Do you know of any other states that subject whatever businesses to the Open Meetings Act?

J. CAVANAUGH: I don't-- the Open Meetings Act, you know, is very-- it's relatively new. So the Open Meetings Act of Nebraska is 1975. And so I don't know that. I do know states that are starting to pull back on the power of eminent domain, including our neighbor to the east. Iowa, I just heard on the radio this morning, has a bill about pulling back power of eminent domain for some of these entities that came and testified today. And so that-- and that may be their, their approach. Honestly, it just didn't even occur to me until today.

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BREWER: All right., other questions? All right, we need to read into the record here before we let you go. On LB133, we had five proponents, three opponents, zero in the neutral ground. With that, we will close on LB133. What do we got next?

SANDERS: You.

BREWER: Oh, me. OK, I'm up. Here, hand that over to the Vice.

Thank you. How many of those do you have?

Speaker 6: I just want to confirm that.

Speaker 1: Yeah.

Speaker 5: I don't have a what for?

Speaker 2: I'm okay. I'm taking.

Speaker 5: Kind of raised those. You don't want to watch for me.

SANDERS: The floor is all yours, Senator Brewer.

BREWER: All right, one more time. We're gonna try and save the voice here. All right, thank you, Vice Chair Sanders, and good afternoon, fellow members of the Government Committee. I am Senate Tom Brewer. For the record, that is T-o-m B-r-e-w-e-r. I represent 11 counties in the 43rd Legislative District of western Nebraska and I'm here to introduce LB513. This bill was brought to me by the request of the League of Nebraska Municipalities. The bill makes two changes: one, the bill allows local government to meet notice requirements under the Open Meetings Act when a newspaper fails to notice-- fails to get notice out in a timely fashion. The bill does not eliminate the newspaper notice or any other public notice requirement. The notice will still go in the paper and go on to the newspaper website and be published in the press association state website. This bill just prevents the public body from having to totally reset on the public hearing if the newspaper misses a deadline. Two, the bill-- will go-- will also change the list of public bodies that can use video conferencing more than half of the time. In recent years, the Legislature has had a few changes to how our public bodies use technology for public meetings. The last update was when Senator Flood

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brought us LB83 in 2001-- or-- 2001-- 2021. This bill expands on that progress. I believe I will be followed by representatives from the League that will probably answer your technical questions. Are there any questions?

SANDERS: Are there any questions for Senator Brewer?

BREWER: I'm the only one between you and going home.

SANDERS: Seeing none, you're closing though, right? You'll stick around?

BREWER: I'll be here.

SANDERS: Welcome to the Government Committee.

LYNN REX: Thank you very much. Senator Sanders, members, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. First, we really want to thank Senator Brewer for introducing this very important bill. We also want to thank Dennis DeRossett of the Nebraska Press Association and also media of Nebraska for negotiating with us. This is the result of a negotiated agreement. It was with the League of Nebraska Municipalities, the Nebraska Association of County Officials, the Nebraska Association of Resources Districts and also the Nebraska Community College Association. So with that, I'd appreciate you just opening up your bill. I'm going to walk you through this. It's a great bill and one, again, that will modernize the act again. And we really appreciate, again, the Nebraska Press Association for having the vision to move forward on some of these very important concepts. On page 2, you'll note that 25-1274 is being amended. And again, this is the vision of Dennis DeRossett of the Nebraska Press Association to basically update and modernize how you give legal notice, proof of publication. So you'll know we're inserting the words not just in a newspaper, but inserting, "or on a statewide website established and maintain as a repository of public notices by a majority of Nebraska newspapers." Translation: NPA website. So we really appreciate that update. Very quickly, I'll just walk through some of this for you. Section 2 of the bill is just harmonizing for SID, sanitation improvement districts. Section 3, just harmonizing for the Nebraska Investment Financing Authority. Section 4, harmonizing provisions for

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the Nebraska Educational Health, Cultural and Social Services Finance Authority, Section 5, updating and harmonizing for the ESUs. So we then go to page 4 and this is where the bill becomes, I think, substantive in the sense that on page 4, Section 6, line 7-- and these are amendments to Section 84-1411 of the Open Meetings Act in the state of Nebraska. Since this bill does have the E clause, which is very important to us, these provisions that I'm going to talk to you about will take effect immediately upon the Governor's signature. That's assuming-- and we appreciate you advancing this bill to the floor and of course, it passing this year. On line 9, "until January 1, 2024." And why that date? The Nebraska Press Association has indicated to us that they need at least basically a year to kind of get some things finalized with their website. So until that time-- so until January 1, 2024, basically the same types of provisions are in effect with one exception. And just as a quick overview, because this is current law, if you look on lines, basically 9 through 18, this governs what's reasonable advanced publicized notice. And it's important to note that we also have in lines 14 to 18, basically dealing with governing bodies except second-class cities and villages-- let me rephrase that, governing bodies of political subdivisions-- because it's a little bit different for everyone else. Lines 19 through 27, this is all current law. This is what applies if you're a city of the second class or village. And one of the big exceptions there is on lines 25 and 27. In current law, they can post in three public places. Then on lines 28 to 30, this is for all public bodies that are not political subdivisions. And we'll talk about some of those later today. So starting on line 31 on page 4, this is what is important and why we need the E clause because of issues that have occurred here. And again, it's not just refusal or neglect necessarily, but we thought those were the important words. Sometimes it's just the inability of the newspaper to make the publication. So on page 4, line 31, "In case of refusal, neglect or inability of the newspaper to timely publish the notice,"-- going on to page 5, line 1-- the public body shall do the following things (a) post such notice on its own website if it's available, (b) post such notice in a conspicuous public place in the public body's jurisdiction, and then of course have a written notice, written record of the posting and the record of that posting shall be evidence that the posting was done as required and sufficient to meet the requirement of publication. Because of time, we've kind of divided out some responsibilities of

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what those following me will testify about. John Spatz, executive director of the Nebraska Association of School Boards, can give you some specific examples of why this is important and why it needs to pass with the E clause because of things that have occurred there. So in any event, moving on throughout the rest of this bill, on page 5, line 26, this is what happens beginning January 1, 2024, when this bill passes. By that time, the Nebraska Press Association's website will be up. And if I may have maybe a question or be allowed to continue through this, I'd appreciate it.

SANDERS: I'll allow it. Thank you.

LYNN REX: Thank you.

SANDERS: You can slow down a little bit. I think we've got some extra time--

LYNN REX: OK. I just didn't, I just didn't know.

SANDERS: --to go through this carefully.

LYNN REX: OK. Thank you. Thank you, Senator. It's on page 5, line 26. Now, we've gone through a year where there are provisions here, but by this time then, the Nebraska Press Association will have its platform up so that it gives other options here. And again, we really appreciate the fact that they've gone the extra mile to modernize and tie into where we are in terms of technology now. Page 5, line 26, "Beginning January 1, 2024:" This is-- again, if you look at lines 27 to 30, that's really the same language that you have above. There's a lot of repeat in terms of drafting of this. It was designed to basically just repeat the whole thing again. So this is the same that you have on 84-1411(1)(a). Same thing, how you give reasonable advanced publicized notice. Going on to the next page, this governs-- looking on lines 4 through 17, this is how governing bodies of all political subdivisions and their advisory committees, except second-class cities and villages, this is how they give notice and would be giving notice and what their options are for doing so. And again, governing bodies of all political subdivisions and their advisory committees, but not second classes or villages. We're not talking about state entities or anybody else. So line 4, "Publication in a newspaper of general circulation within the public body's

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jurisdiction--" and this is critical language, critically important-- "that is finalized for printing prior to the time and date of the meeting." And as John Spatz will note, there are times when we've had this with cities too, when you have to have a special meeting, but maybe you only have a weekly paper. So that's the kind of concept that we're talking about here. Secondly, posting on such newspaper's website, if available, and posting on a statewide website-- in other words, the NPA's website-- established and maintained by NPA. And note that the notice will be placed in the newspaper and on the websites by the newspaper. The other option, on line 11, lines 11 through 17. And again, this is for governing bodies of all political subdivisions and their advisory committees except for second-class cities and villages. Posting to the newspaper's website, if available, a statewide website-- again, always referencing that is NPA-- and then this occurs if there's no addition of a newspaper of general circulation within the public body's jurisdiction finalized for printing. So what you have in lines 4 basically through 10 is what happens when basically you can meet the deadline for printing. What happens in lines 11 through 17 is if there is no edition of a newspaper of general circulation within the public body's jurisdiction that's finalized a printing prior to the time and date of the meeting. And these are things that have occurred with all of our political subdivisions from time to time. It does happen. It's not typical, but it does happen. And then what occurs when that happens? Posting to the newspaper's website and posting to the statewide website, which is the NPA platform. Going on to lines 18 through 31 on page 6, this applies to second-class cities and villages and their advisory committees. And essentially, it's the same thing that you had up above in there, (A) and (B). So for second-class cities and their advisory committees, same thing that we've talked about above. However, they have another option, which we have retained here on page 7, lines 4 through 6. So in other words, everything that applies to the other political subdivisions, except second-class cities and villages, applies to second-cities and villages here. However, they also have the ability to post written notice in three conspicuous places. Such notice shall be posted by the public body in the same three places for each meeting. And by the way, that's typical. That's what almost all of our second-class cities and villages do. But in addition, they're going to have other options there. And then you'll note lines 7 to 9-- this is on page 7, lines 7 to 9-- this is for the other public bodies that are

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not political subdivisions: the Board of Regents, for example, NRDs, those sorts of folks. Well, actually, that's not them because they are a political subdivision. So basically it would be those types of entities, risk management associations and others as well. Lines 10 through 18-- so page 7, lines 10 through 18. This is really important. Again, the language of in case of refusal or neglect of the newspaper to publish the notice-- and I want to underscore here, we don't have we're not here to report that, oh, my gosh, the newspapers are not being collaborative. They're not being cooperative. It's just sometimes, they can't do it. It just comes down to that. Then what happens? The public body shall (A) post notice on its website, if they have one, (B) submit a post on NPA's website, which is-- means a statewide website-- and (C) post in a conspicuous public place, again, keeping a written record that's evidence that such posting was done and sufficient to fulfill the requirements of publication. So this is really important because it's intended to address some scenarios that those that follow me can talk about. Starting a line 19-- page 7, line 19, again, we're still amending just the one statute 84-1411. This deals with virtual conferencing. You'll note that there are no changes to this on page 7, but you'll note who's in this, who's in the list. Starting on line 22, these are regional or state entities. And right now, the general rule is regional or state entities, they cannot have more than half of their meetings virtually, meaning video conference, telephone conference, that sort of thing-- or Zoom, if you will. So basically, that list doesn't change. Going onto page 8, I'll just underscore again what we appreciated this committee doing with LB83 in 2021. Lines 7 through 10 actually have the newest members of these-- these are statewide. They're regional entities. Then what you also have here is how they go about what you have to do to hold a meeting virtually. So lines-- starting with line 11, no changes here, but this is how you have a virtual meeting. So there's no changes there, just wanted to let you know those requirements are still in place. Going to page 9, starting on line 2, again, the general rule on page 9, line 2. No more than one half of the meetings of the state entities, advisory committees, boards, councils-- and they mean statewide/regional boards and councils-- organizations or governing bodies are held by virtual counseling-- conferencing in a calendar year. In other words, you can't have more than half of your meetings that way. So the Board of Regents cannot have more than half of their meetings that way, as an example. But there are some exceptions that have been longstanding.

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You'll note the lines that are being deleted on lines 14 through 18 on page 9, those apply-- the deleted language applies to risk management agencies. That would be like the League Association of Risk Management, the Nebraska Intergovernmental Risk Management Association, NIRMA, ran by the counties, Alicap, ran by the school boards association. So basically what the role has been for risk management agencies is that you can have unlimited virtual meetings if you have at least one meeting in-person every calendar quarter. We're deleting that and putting them up in the category, along with a couple of others we'll discuss here, to make it clear you have to have at least one, one meeting in person annually. Why would that be? Because sometimes, it is very, very difficult-- and we're having this difficulty, others are as well-- in recruiting folks, frankly, west of Grand Island to participate on these very important statewide boards and commissions, when in fact, maybe you only need them for 15 or 20 minutes, but to drive in is problematic. And so the point here is to address that issue. We've also included language here dealing with-- I'll reference this on lines 9 through 11-- or-- this is (D)-- "any advisory committee of any state entity created in response to the Opioid Prevention and Treatment Act." There are roughly 26 or 27 members that were put together in an opioid advisory task force, if you will, advisory committee requested by the Attorney General's Office. There was an act that passed in terms of how the state of Nebraska will be distributing opioid funds from the settlements, which our Attorney General's Office has done really a phenomenal job here in terms of representing cities and counties across the state, in terms of what, what occurs to get the settlements. You've been reading about them periodically: \$40 million with Walmart settled, you know, another umpteen million from various pharmaceuticals, Purdue and others. So this is the committee that's deciding how to do that. And it has been very difficult to get folks from all six behavioral districts, from all the different areas to come in for these various meetings. And so they, too, would be under the requirement that they'd have to have at least one meeting annually in-person. The rest could be virtual. So we think that's extremely important. Also, you'll note on line 6, we're striking the words, "at wholesale on a multistate basis" so that it's basically an organization created under the Municipal Cooperative Financing Act. And this provision of at least one meeting annually, this has already been in the law on lines 5 and 6, an organization created under the

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Interlocal Cooperation Act that sells electricity or natural gas. So essentially, we think this is very, very important to have participation across the state of Nebraska. And, you know, I think that with-- the technology certainly embodies that. Folks now-- I-- if there's any silver lining to COVID, I hate to say that there's any silver lining to COVID, but if there is, it's the ability of Nebraskans-- I put myself on the top of that list-- to finally know how to do Zoom and do those kinds of important processes. So again, I know that there are others that will be testifying behind me that will give you real examples of why these kinds of provisions are necessary. But I'm happy to respond to any questions that you might have.

SANDERS: Thank you. Are there any questions? Senator Lowe.

LOWE: That was a lot of information.

SANDERS: I know.

LOWE: Thank you, Ms. Rex, for being here. And going back to one of the last bills we just had, how does a virtual meeting-- how do they do the Open Meetings Act with that?

LYNN REX: OK, with a virtual meeting--

LOWE: People can join in and, and-- with, with the meeting. I mean, if you don't get the link to the meeting and--

LYNN REX: OK are you, are you asking what--

LOWE: I'm just asking--

LYNN REX: --how does one go about having a virtual meeting?

LOWE: I'm just asking on a whole because I thought you may know about--

LYNN REX: I do, yes.

LOWE: --virtual meetings. And how does the public join in on a--

LYNN REX: OK.

LOWE: --virtual meeting?

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LYNN REX: OK so for example-- great question. If you turn to page 8, these are the requirements for having-- I thought you were going to ask me the technology in terms of how those platforms are put together, which I would have to say I do not know.

LOWE: I would never do that to you.

LYNN REX: I'm so sorry. So page 8, starting on line 11, "The requirements for holding a meeting by virtual conferencing are as follows:" And these are very tightly followed and I think the public too is getting to understand better how to do this. So you'll note that in line 15, there's a link to the virtual meeting. So when you give notice to the public-- you're giving notice to the members of the governing body, you're giving notice to the public and to the press that's requested it. And in that notice, which has to include the agenda, you also put a link. So here's the link. And frankly, you can send it out electronically so they just press the link and then they can participate if you're a member of the public. And by participate, as we know that when you're dealing with the Open Meetings Act, not everyone is allowed to participate as a citizen, for example, at all meetings in terms of speak, but they can't be precluded from doing that at all meetings, right? So it's really important that the public be able to-- and, and the media be able to participate. But when you're dealing with virtual conferencing, unless it is a-- for example, that's why-- with-- I'll take the League Association of Risk Management-- why it be important so that our member from Scottsbluff or from Gering, that they could actually, by Zoom then, if you're a member of the public body-- by Zoom that's been properly noticed, Senator-- then they can vote, they can be counted as part of the quorum. If it is not noticed as a virtual meeting, then they simply can't do that. It's an in-person meeting. They can join by Zoom, but they're only joining as a citizen, if you will, so they're not going to be counted as part of the quorum and they're not going to participate. But let's look at some of the other requirements. On line 16, in addition to the public's right to participate by virtual conferencing, you have to have reasonable-- line 17-- reasonable arrangements are made to accommodate the public's right to attend at a physical site. You have to have reasonable seating, at least one designated site in the building that's open to the public and identified. So for example, when LARM, which I'm most familiar with, our League Association of Risk Management, when it has its meetings,

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that means that it has a meeting-- for example, we'll pick one of our members. Let's say it is, oh gosh, Oshkosh, Nebraska, or Ansley, Nebraska, and they will have the Open Meeting Act. They will have a room open. Folks will be welcome to come in. Citi-- you know, citizens can come in and listen and participate. They're welcome to do that. You'll note that you have a recording of the hearing by audio or whatever. You've got-- and you've got at least one member of that entity that's holding the meeting or her-- his or her designee present. So it's not just that they're going in and, you know, a meeting that no one's there. We think that's really important. And of course, line 23, a reasonable opportunity for input such as public comment or questions is provided at least to the same extent as if virtual conferencing was not used, meaning that there may be a time and there-- this has happened. So again, with the League Association of Risk Management, where it's simply a briefing by a consultant. In other words, here are the new laws governing loss control. It's just a briefing. There really is no-- but it's still subject to the Open Meetings Act. But you're not going to allow public participation to basically have people comment, whereas maybe the next time that they have that meeting, the public will be able and certainly will be able to comment on what they think of those loss control rules. I don't know if that makes sense or not. So these are very tight requirements. Line 26, at least one copy of all documents being considered that meeting, a virtual meeting, is going to be available at that site. So if I show up in Ansley, Nebraska, they will have posted the Open Meetings Act. They will have a copy of all the materials that that-- that the League Association of Risk Management will be considering. And this is true for anybody doing these types of virtual meetings. So I think that that is really important. And then line 28, the public shall also provide links to an electronic copy of the agenda, all documents being considered at the meeting and the current version of the Open Meetings Act. So that's all done virtually. So it's-- there's a lot of information that goes forward and there's a lot of detail that goes into making sure that you're comporting with the Open Meetings Act so that you can have a virtual meeting that fits all of these requirements.

LOWE: OK. Thank you.

LYNN REX: You're welcome.

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SANDERS: You get all that, Senator Lowe?

LYNN REX: I hope that was responsive. I'm sorry if it wasn't.

LOWE: I thought your intro was long.

SANDERS: Yeah.

LYNN REX: I'm so sorry.

LOWE: No.

LYNN REX: No, I'm so sorry.

LOWE: That's OK, that's OK.

LYNN REX: It actually was, I'm sure.

LOWE: It's, it's good information.

SANDERS: Thank you. Are there any other questions? Seeing none, thank you for your testimony.

LYNN REX: Thank you very much. And again, thanks to Senator Brewer and this committee. Thank you.

SANDERS: Thank you for all the information. Are there others, proponent?

JOHN SPATZ: Yes, thank you very much, Senator Sanders and members of the committee. My name is John Spatz, J-o-h-n S-p-a-t-z. It is pronounced "spots," believe it or not and I'm the executive director for the Nebraska Association of School Boards. And I want to echo Lynn Rex's appreciation of Senator Brewer and our partners in the press association, Dennis DeRossett. I think all of our constituents, when, when we have this type of collaboration between schools and cities and counties and our, and our partners in the media so I really do appreciate that. Lynn Rex gave a great detailed explanation as to what the bill does. I'm going to give you a couple of real-world examples as to how this may apply. So for years and years, we've been using the standard of reasonable advanced publicized notice and there's been a little bit of case law out there to, to explain what that is. But our

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Attorney General's Office has been a great partner over the years and disposition letters and working out how do we provide notice in a way that we're complying by the law and making sure that our constituents know when we're having meetings. And then in 2020, there was an additional requirement that it be published in a local newspaper, and that hadn't been there before. That wasn't a problem for the vast majority of the meetings, but two things arose as a result of that. One-- and I'm just going to give an example for a school board-- if they're meeting on a Monday night and they're identifying candidates who interviewed for a superintendent position, they want to schedule interviews maybe on Thursday or Friday after they selected those members. But the weekly local newspaper only comes out on a Tuesday. So this would happen periodically where we have a meeting on Monday night, but we couldn't schedule a special meeting for over a week because when the local newspaper came out. So this bill addresses that. Another issue, I've gotten a few calls by nervous superintendents on a Monday, a Monday of a school board meeting where they said, we submitted it to the newspaper, but it didn't get published. It wasn't in the newspaper. And the question is, can we have our meeting tonight? And unfortunately, the answer was no. And we have a few schools out there that have their meetings on the third Monday of the month and state law says you shall meet once a month by the third Monday of the month so we were in a tight spot there. Do you have a meeting that wasn't published or do you put the meeting off and violate the state law there? So in collaboration with their partners in the media and the cities and the counties and other political subdivisions, language addresses those two issues. And then real quickly, regarding our risk pool, Alicap, this is, this is beneficial to them as well. We meet three times in person and I don't anticipate that changing in the near future. And we also have a membership meeting in conjunction with our state conference in Omaha and I'm always very pleasantly surprised how many people show up for an insurance membership meeting for school board members. But just as an example, on our insurance pool board, we have a board member from Chadron, a board member from Scottsbluff and a school board member from Dundee County. And, and unfortunately we pay them as much to serve on our Alicap board as they get on their local school board. We don't pay them anything. So it's a tremendous sacrifice to serve on a school board and I'm very grateful that we have so many good people that do that. But it's a, it's an additional sacrifice when I go to

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them and say, can you serve on this insurance pool board? Because they have a lot at stake there financially and in developing a good system. So this is another tool for our Alicap risk pool to be able to meet virtually if they decide to do that. I'd be happy to answer any questions.

SANDERS: Are there any questions? Seeing none--

JOHN SPATZ: Yep.

SANDERS: --thank you so much for your testimony.

JOHN SPATZ: Thank you for your time on a Friday afternoon. Thank you.

SANDERS: Thank you. Welcome to the Government Committee.

ELAINE MENZEL: Thank you. Good afternoon, Vice Chair Sanders and members of the Government, Military and Veterans Affairs Committee. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials. I, too, would like to express support to Senator Brewer and to the partners that we've had for developing this legislation. I wasn't the one that was primarily involved in the discussions from our association. Rather, that was my executive director. However, he's unable to be here today. I won't take your time. I will try to adhere to the five minutes that Senator Brewer said at the beginning of the session, but essentially just say thank you again to everyone and we view LB513 as a reasonable effort and we appreciate the partnership with the press association to move forward with these alternatives that have been proposed. So please favorably consider that and move the legislation to General File. With that, if there's any questions, I will attempt to answer them.

SANDERS: Thank you. Are there any questions? Seeing none, thank you--

ELAINE MENZEL: Thank you.

SANDERS: --for your testimony.

ROBIN SPADY: Good afternoon.

SANDERS: Welcome to the Government Committee.

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ROBIN SPADY: Thank you. I will try to be an overachiever and get done in less-- substantially less than five minutes. Good afternoon. My name is Robin Spady. That's R-o-b-i-n S-p-a-d-y. I am the director of legislative affairs on the Council for Natural Gas for the Nebraska Municipal Power Pool. I am a registered lobbyist. I am here to testify in support of LB513 on behalf of an NMPP and the other NPA, the Nebraska Power Association. NMPP includes the Public Alliance for Community Energy, ACE, a retail choice natural gas supplier; the Municipal Energy Agency of Nebraska, MEAN, a wholesale electric supplier; and the National Public Gas Agency, NPGA, a wholesale natural gas supplier. The other NPA, the Nebraska Power Association, is a voluntary organization representing all segments of Nebraska's power industry: municipalities, public power districts, public power and irrigation districts and cooperatives engaged in generation, transmission or distribution of electricity within our state. NMPP and the NPA are in favor of LB513 and how it will make it easier to post notification of public meetings in a press-sponsored website. Thank you, Lynn, for all the detail that you went through. I won't go through that as well. Specifically, I am here to testify today on behalf of ACE, our retail natural gas supplier. LB513, if you look on page 9, lines 6 and 7 would remove language, "at wholesale on a multistate state basis or." The impact of this change would be that it would allow ACE, an interlocal, to have its virtual meetings as long as it has one in-person meeting during the calendar year. This change is very limited in applicability and ACE is currently unaware of any other entity in the state that the change would apply to. The result would allow ACE to conduct its meetings in the same manner of other NMPP entities like MEAN and NPGA. ACE was formed under the Interlocal Corporation Act in 1998 by a group of Nebraska communities and our membership now is 75 strong. ACE is proud of its unique board governance, where it's one person, one vote. So we have actually 70-- 75 or 76 voting members. So in order to get all of them who are very geographically dispersed in one area to vote on issues such as our budget and rates is very difficult. We especially run into that issue at our January annual meeting that sets budget. This past January, we had to scramble around a little bit given some of the weather difficulties that we had. So for these reasons, ACE supports LB513. It gives us more flexibility to act in manners in line with some of our other entities and we would ask that you advance this bill. Thank you. Any questions?

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SANDERS: Thank you. Seeing none, thank you very much for your testimony. Welcome--

DEAN EDSON: Welcome.

SANDERS: --to the Government Committees.

DEAN EDSON: Senator Sanders and the members of the Government Committee, my name is Dean Edson, D-e-a-n E-d-s-o-n. I'm the executive director for the Nebraska Association of Resources Districts testifying on-- in support of LB513 on their behalf. Again, I'd like to reiterate and I thank the group that worked on this in the interim, especially the press association. I want to emphasize we strongly support using the websites for additional posting of upcoming meetings. All 23 of our districts have websites. They utilize them to post their meetings, but they also put the minutes up on the websites so to try and encourage more public involvement. By developing the state website system, that'll help get information out to the public for future meeting notices. One thing that's key for us in the bill is the requirement for local newspapers and the press association to work together so we only have one contact person to get those meeting notices too. So if they can get-- we can get it to the local press, local media source and they can also copy it over to the state website or that contact, that would save a lot of steps. So I want to talk about a couple of problems we've run into the past couple of years. One is primarily the loss of the local newspapers that-- to run notices and this is a problem for rural areas. And the example I'm going to give you is my hometown newspaper, Gothenburg Times. It was a paper that's been in operation for over 100 years. I was a fourth-generation subscriber to, to the paper. One day last spring, they announced on one day we're ceasing operations, close down shop today. No more future papers going out. Website is down, OK? So you have political subdivisions that had run their ads to that paper to be posted for an upcoming meeting the next week. Now, they're in violation of the Open Meetings Act if they go ahead and have that meeting. So they had to cancel their meeting, find another medium source to post on and then hold the meeting in the future. But I see this as being a potential problem in the future and here's why is that the readership of hard-copy newspapers is going down. I'm still part of the older generation. I read four newspapers a day. It's a bad-- it's a habit of mine. I got employees. You couldn't get them to pick

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up that newspaper. They will not do it. They get their news from other sources. They're not going to read a newspaper. I can see that as adding to the problems for these local little small-town papers. And if they're not going to have the readership on hard copy, they're not going to have their sales and it's going to be a problem. I want to give you another example of, of some cost with doing these ads. Recently, the Lower Loup NRD had a proposed rule change to their water quality regulations. They cover 16 counties, all or part of 16 counties. It cost them over \$30,000 to public notice those meetings with the local newspapers. So, so when you think about this, that this is all free, it's not. It's, it's expensive to do. Well, the complaint they got from a lot of the farmers that attended is that we should have been putting those notices out on Twitter because they don't read the paper. And so we're getting-- you know, that's, that's the point of this whole thing is this is all going toward electronic social media. Especially with the younger generation, we got to figure out a way to get it to them. So with that, I'll close and answer any questions you may have.

SANDERS: Thank you. Are there any questions? Seeing none, thank you for your testimony.

DEAN EDSON: Yes.

SANDERS: Are there other proponents? Welcome to the Government Committee.

KEVIN EDWARDS: Welcome, Senator. Sanders and the members of the committee. I'm Kevin Edwards, K-e-v-i-n E-d-w-a-r-d-s, and I represent the Papillion Rural Fire District and the Millard Suburban Fire District. This bill gives us a lot of opportunity to meet the Open Meetings Act when we have difficulties. For example, in the recent past, I had a Papillion Times-- that I submitted the paper, the notice, and they simply didn't get it or didn't recognize that they got it. And so they didn't post so we didn't have our meeting. It was not a real big deal, but we just moved it to another time and posted for that. But it would have been handy to be able to use the alternative methods to post the meeting and go ahead and have the meeting. With that, I close and take any questions.

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SANDERS: Thank you. Are there any questions? Seeing none, thank you for your testimony.

KEVIN EDWARDS: Thank you.

SANDERS: Are there other proponents? Opponents? Neutral? One neutral. Welcome to the Government Committee.

DENNIS DeROSSETT: Thank you. Good afternoon, Senator Sanders, members of the committee. My name is Dennis DeRossett, D-e-n-n-i-s D-e-R-o-s-s-e-t-t. I am the executive director of the Nebraska Press Association and I'm here today to testify in the neutral capacity to LB513. It is true that we participated in developing the language for this bill and we appreciate the municipal league and school districts reaching out to us. And we just felt it was better to represent our position to further explain some of the detail behind the language and the intent and purpose of modernizing public notice through the statewide website through this neutral position. First, a background. We've been around a long time. This is our 150th anniversary this year, one of the oldest associations. We've been around for decades. We represent all newspapers across Nebraska and we've steadfastly advocated for transparency in government throughout the entire history of our association. We advocate for the public's access and the right to know the full workings of how their tax dollars are being spent. And there's four key components that you've heard me say many times to transparency: open records, open meetings, FOIA, and public notices. The key to public notice is it must be through an independent third party. And I just have to say, I don't think-- it's got to be a trusted third party. The sections of LB513 involving public notice reflect good-faith negotiations and compromise and we thank the proponent groups for reaching out and engaging in that discussion. For those sections of the bill unrelated to the public notice, we don't-- we're not taking a position. The language we've provided and that is included in this bill pertaining to changes in Section 84-1411 was offered to deal with a singular item of meeting notices of the public bodies. And even further, in those instances where there was an error or failure on the publication process of that notice that could impede the work of the public body. As we understand the need for these changes to be, this section is to accommodate the schedules for major non-routine business items, such as interviews of superintendents or timely decisions with business or construction projects. For anything

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beyond the non-routine that needs to be accommodated for, the traditional time requirement for meeting notices should continue to work with the traditional publication schedules of newspapers. It's worked well for decades and would continue to do so. If, for some reasons, the pieces don't come together and the notice doesn't get properly published, in the past year, I think there's been 140,000 public notices uploaded to the statewide website. And we've been notified, notified of about 10 to 12 notices that were not properly published and we followed up on each of those. If we know there's an issue, we contact the publisher, but it is not a common thing. In fact, state statute actually has a solution. While we prefer the notice to be in the local newspaper, the nearest daily is already an option used-- even used by some government bodies as the back up for notice because it just requires publication in a newspaper of general circulation. So we launched a statewide website in June of 2021 to help modernize public notice because that has been the call and request for years of government entities and our own industry. And as of last October, this body instituted a bill that made it mandatory for newspapers to upload all notices to our statewide public notice website after they appear in print. And that's the basis for the legal basis of a notice, that it must first appear in print. Currently, since we started the website January 1, 2021, there's 240,000 notices on this website; fully searchable, no cost to government, No cost to government, I'd like to add, and all this is created by the newspapers. With regard to placement on our websites, our intent with language is for those meeting notices not published due to neglect or error to still be given to the newspaper so that they can appear on the newspaper's website if available and then for the newspaper to upload it to the statewide website. Newspapers are the critical independent third party and only they can upload to the statewide website because they are the only ones that confirm that it has been published. So our intent with our language in LB513 and with this testimony is to still steadfastly advocate for transparency, but also show our good-faith intent now and in the future to work with elected officials and the public bodies to find solutions to real problems because this is a public business and we are that critical independent third party. So with that, thank you and I'm happy to answer any questions.

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SANDERS: Just got right in time. Very good. Thank you for your testimony. Are there any questions? Seeing none, thank you very much.

DENNIS DeROSSETT: Thank you.

SANDERS: Do we have any other in neutral testimony? I see none. We'll go to closing, Senator Brewer. We also have position comments. We have four proponents, zero opponents and zero neutral.

BREWER: OK, let me recap Lynn's testimony. I have no issues. I'll take any questions.

SANDERS: Are there any questions?

BREWER: All right, thank you.

SANDERS: I see none. Thank you. This closes the hearing on LB513. Thank you all for coming out today. Have a great weekend.